

**France: Financial Sector Assessment Program—Detailed Assessment of Observance of
IOSCO Objectives and Principles of Securities Regulation**

This paper was prepared by a staff team of the International Monetary Fund as background documentation for the periodic consultation with the member country. It is based on the information available at the time it was completed in June 2013. The views expressed in this document are those of the staff team and do not necessarily reflect the views of the government of France or the Executive Board of the IMF.

The policy of publication of staff reports and other documents by the IMF allows for the deletion of market-sensitive information.

Copies of this report are available to the public from

International Monetary Fund • Publication Services
700 19th Street, N.W. • Washington, D.C. 20431
Telephone: (202) 623-7430 • Telefax: (202) 623-7201
E-mail: publications@imf.org Internet: <http://www.imf.org>

FINANCIAL SECTOR ASSESSMENT PROGRAM

FRANCE

IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES
REGULATION

DETAILED ASSESSMENT OF
OBSERVANCE

JUNE 2013

INTERNATIONAL MONETARY FUND
MONETARY AND CAPITAL MARKETS DEPARTMENT

Contents	Page
Glossary	3
I. Summary.....	4
II. Introduction	5
III. Information and Methodology Used for the Assessment	5
IV. Institutional Structure	6
V. Market Structure	7
VI. General Preconditions for Effective Securities Regulation	11
VII. Main Findings.....	12
VIII. Response of the Authorities	23
IX. Detailed Assessment.....	24
 Tables	
1. Multilateral Trading Facilities Registered in France	10
2. Summary Implementation of the IOSCO Principles—Detailed Assessment	14
3. Recommended Action Plan.....	20
4. Detailed Assessment of Implementation of the IOSCO Principles	25

GLOSSARY

ACP	Autorité de Control Prudentiel
AFECEI	Association Française des Établissements de Crédit et des Entreprises d'Investissement
AFEP	Association Française des Entreprises Privées
AIFM	Alternative Investment Fund Manager
AMF	Autorité des Marchés Financiers
ANC	Autorité des normes comptables
ARPP	Autorité de régulation professionnelle de la publicité
AUM	Assets Under Management
BdF	Banque de France
CCLRF	Comité consultatif de la législation et de la réglementation financière
CIS	Collective Investment Schemes
CNCC	Compagnie Nationale des Commissaires aux Comptes
COMOFI	Code monétaire et financier
COREP	Common Reporting framework of the ACP
COREFRIS	Conseil de la régulation financière et du risque systémique
CRAs	Credit Rating Agencies
CRBF	Comité de la Réglementation Bancaire et Financière
CRE	Commission de régulation de l'énergie
DEA or DMA	Direct Electronic Access or Direct Market Access
DGA	Direction de la gestion d'actifs (AMF)
DGAM	Direction de la gestion d'actifs et des marchés (AMF)
DREP	Direction des relations avec les épargnants (AMF)
DGCCRF	Direction générale de la concurrence, consommation et de la répression des fraudes
ESMA	European Securities and Markets Authority
ESRB	European Systemic Risk Board
FIAs	Financial Investment Advisors
FSB	Financial Stability Board
H3C	Haut Conseil du Commissariat aux Comptes
HFT	High Frequency Trading
IEDOM	L'Institut d'Émission des Départements d'Outre-mer
IF	Investment firm
ISPs	Investment Services Providers
LRBF	Loi de régulation bancaire et financière, n° 2010-1249 du 22 octobre 2010
MTF	Multilateral Trading Facilities
MoF	Ministère de l'Economie et des Finances
OMTF	Organized Multilateral Trading Facilities
PIE	Public Interest Entity
PMC	Portfolio Management Company
RDT	Reporting Direct des Transactions (AMF)
RG AMF	AMF Règlement général
RM	Regulated Markets

I. SUMMARY

1. **France exhibits a high level of implementation of the International Organization of Securities Commissions (IOSCO) principles.** The legal framework is robust and provides the *Autorité de Marchés Financiers* (AMF) and the *Autorité du Contrôle Prudentiel* (ACP) with broad licensing, supervisory, investigative, and enforcement powers within their respective competences. There are robust arrangements for cooperation between the two authorities. Vis-à-vis investment service providers (ISPs), each supervisor has developed offsite monitoring systems, including risk scoring frameworks. They have also set up arrangements for the oversight of the French portals of NYSE Euronext and for the oversight of the various related trading platforms. In addition, the AMF has robust market surveillance systems and has been active in enforcement of market abuse provisions. Finally, the authorities have demonstrated results in the implementation of supervisory arrangements to cover new areas of responsibility required by the principles approved by IOSCO in 2011. In particular, the AMF has developed specific arrangements for the identification and monitoring of emerging and systemic risks. It is important to note, however, that best practices in this area have not yet emerged and guidance from IOSCO is limited.

2. **However, some areas of supervision and enforcement require strengthening.** In particular, it is important that the AMF strengthens the inspection tranche of its program of supervision of ISPs and financial investment advisors (FIAs). Given the AMF hands-on enforcement culture, enforcement activities will increase as a result. The enforcement activities of the ACP will benefit from changing its supervisory culture towards a more enforcement mindset. Moreover, more frequent reporting of capital adequacy would enhance the supervisory approach of the ACP. The effectiveness of the *Haut Conseil du Commissariat aux Comptes* (H3C) in supervising auditors' oversight is restrained by the number of resources available. Increasing the number of resources (as envisioned) will be the key. In addition, the lack of direct enforcement powers of the H3C can have a negative impact on the overall effectiveness of the oversight regime for auditors.

3. **Certain aspects of the current governance structure of the AMF, ACP, and H3C raise concerns vis-à-vis independence.** First, while not having a voting right, the presence of a representative of the Ministère de l'Économie et des Finances (MoF) at the meetings of the Boards of the AMF and the ACP as well as at the meetings of the enforcement committees raises concerns; in particular, in the case of the Boards, as he/she has the right to ask for a second deliberation, i.e., a second discussion, except on matters concerning sanctions. The authorities have emphasized that the participation of the MOF representative ensures good coordination and efficient information sharing on issues related to financial stability, financing of the economy, and European and international negotiations. In addition, these exchanges improve the quality and responsiveness of the process of elaboration of the financial regulations. However, as is done in many other countries, there are other ways to achieve these goals without putting the independence of the AMF, ACP, and H3C at risk. Second, the participation of industry representatives raises concerns vis-à-vis independence from commercial interests. In addition, the current framework does not prohibit participation by representatives who are still "active" in the industry and, in some cases, "active" members participate indeed in the governance structure. The authorities have highlighted that a

framework to address conflict of interest is in place. However, there are other mechanisms by which industry expertise could be brought to the decision-making process. Moreover, both the case of the AMF and ACP direct retail investors' representation appears limited, thus tipping over the natural balance of interests on the Boards within the chosen governance structure. Third, the current legislative limits to headcount at both the AMF and the ACP could affect the ability of the regulators to keep sufficient resources for market supervision. Finally, the ACP could be given a more formal role in developing prudential rules.

4. **Finally, market fragmentation poses challenges to market transparency and oversight that should be addressed at the European level.** The implementation of Markets in Financial Instruments Directive (MiFID) has brought benefits to the European markets in particular in regard to transaction costs. At the same time, it has brought challenges, mainly due to market fragmentation that can only be successfully addressed fully at the European level. The review of MiFID provides an opportunity to address these challenges.

II. INTRODUCTION

5. **An assessment of the level of implementation of the IOSCO Principles in the French securities market was conducted from January 10 to 27, 2011 as part of the Financial Sector Assessment Program (FSAP) by Ana Carvajal, Monetary and Capital Markets Department (MCM) and Theodor Kockelkoren, from the Netherlands Authority of the Financial Markets.** An initial IOSCO assessment was concluded in 2005. Since then, changes have taken place in the French (as well as the European and global) markets, and in the institutional structure for the regulation of securities markets. In addition, IOSCO approved a new set of Principles in 2010 and a revised Methodology on September 30, 2011, i.e., France is among the first jurisdictions to be evaluated against the revised Methodology.

III. INFORMATION AND METHODOLOGY USED FOR THE ASSESSMENT

6. **The assessment was conducted based on the IOSCO Principles and Objectives of Securities Regulation approved in 2010 and the Methodology adopted on September 30, 2011.** As has been standard practice, Principle 38 is not assessed due to the existence of a separate standard for securities settlement systems. A technical note on the oversight framework for systemically important financial market infrastructures will be delivered during this mission.

7. **The IOSCO methodology requires that assessors not only look at the legal and regulatory framework in place, but at how it has been implemented in practice.** The recent global financial crisis has reinforced the need for assessors to take a critical look at supervisory practices to determine whether they are effective enough. Among others, such judgment involves a review of the inspection programs for different types of intermediaries; the cycle, scope, and quality of inspections; how issues are prioritized; as well as how the agency follows-up on findings, including the use of enforcement actions.

8. **The assessors relied on:** (i) a self-assessment prepared by the AMF with the contribution of the ACP; (ii) the review of relevant laws, reports, and supervisory files;

(iii) meetings with staff from the AMF, the ACP, the H3C, the MoF, the Ministry of Justice and the Judiciary, and the European Securities and Markets Authority (ESMA); as well as (iv) meetings with market participants and other stakeholders, including issuers, ISPs, portfolio management companies (PMCs), investors, associations that represents such groups, exchanges, external auditors, credit rating agencies (CRAs), and law firms. The assessors also relied on the findings of the Basel Core Principles Assessment for their assessment of the ACP vis-à-vis Principles 1–5 of the IOSCO Methodology.

9. **The assessors want to thank the AMF and the ACP for their full cooperation, as well as their willingness to engage in very candid conversations regarding the regulatory and supervisory framework in France.** The assessors also want to extend their appreciation to all other public authorities and market participants with whom they met.

IV. INSTITUTIONAL STRUCTURE

10. **The current regulatory structure is a variation of the twin peaks model.** The ACP, recently created, is primarily in charge of the prudential supervision of ISPs and market infrastructure providers, including regulated markets (RMs), multilateral trading facilities (MTFs), and central clearing counterparties (CCPs). On the other hand, the AMF is the markets supervisor and is responsible for conducting supervision of all participants in the securities market, including ISPs, PMCs, FIAs, and market infrastructure providers, and exercises prudential supervision over PMCs and the funds they administer. A third authority, the H3C, is in charge of the oversight of external auditors, who conduct audits of public interest entities (including auditors of listed issuers) and nonpublic interest entities.

11. **Both the AMF and the ACP are governed by a Board, while a separate enforcement committee is in charge of the imposition of sanctions.** In both Boards, there is representation from different interests, including representatives from specialized public entities, issuers, intermediaries, and, in the case of the AMF, investors. The composition of the enforcement committees is also built upon the principle of representation of interest of the various market users or participants. There are conflict-of-interest provisions in place which seek to address the drawbacks of industry representation. While not being formally a member, a representative from the MoF attends the meetings of the Boards, as well as the enforcement committees, with no voting rights. However he/she has the power to request a second deliberation, i.e., a second discussion, in decisions taken by the Boards, but not by the enforcement committees.

12. **To carry out their respective mandates, the AMF and the ACP have been given broad licensing, investigation, supervision, and enforcement powers.** The only limitation in powers relates to rule making. The AMF has the power to draft its own regulations, which are subject to “homologation” (i.e., stamping) by the MoF. The ACP does not have such powers. Finally, the authorization of exchanges remains in the hands of the MoF, based on an AMF recommendation.

13. **Both regulatory authorities operate under a framework of accountability and transparency.** Authorization requirements are established by law and developed via regulations which are all available in their websites. The AMF follows a consultation process

to develop regulations. Individual decisions must be motivated and are subject to judicial review. The AMF and the ACP prepare annual reports in which they provide a detailed account of their activities and budgets. Their budgets are subject to oversight by the audit of the *Cour des Comptes*.

14. **Several mechanisms are in place to foster cooperation.** Regular meetings are organized on a monthly basis between the AMF and the ACP, and there is cooperation at an operational level on a day-to-day basis regarding the ongoing supervision of regulated entities. An institutional cooperation mechanism (the *Pôle Commun*) was created by law in 2010 to address (i) the need for coordinated monitoring of all investment vehicles (particularly unit-linked life insurance policies); and (ii) the rise of firms distributing a complete range of banking and insurance products, such as *bancassurance* networks and wealth management advisors. The AMF and the ACP have also signed bilateral Memoranda of Understanding (MoU) with the H3C. Finally, the *Conseil de la régulation financière et du risque systémique* (COREFRIS), composed by the MoF, the AMF, the ACP, the *Autorité des normes comptables* (ANC), and the *Banque de France* (BdF), was introduced in 2010 with the aim of identifying and address possible systemic risks.

15. **There are no self-regulatory organizations (SROs).** Mandatory membership to an association is required for all ISPs and FIAs. However, they do not have a material role in self-regulation, as they do not have real supervisory or enforcement powers, and therefore they are not considered SROs for the assessment purposes. As in many other countries in Europe, the AMF is the frontline supervisor for purposes of ensuring compliance of issuers with their disclosure obligations, as well in market surveillance for the purpose of detecting market abuse. The RMs and Organized Multilateral Trading Facilities (OMTFs) have a complementary role in both areas, as will be explained further in the assessment. However, given the limited role that market operators have, they are not considered SROs for purposes of this assessment. Nevertheless, it should be highlighted that the AMF has subjected them to oversight.

V. MARKET STRUCTURE

Equity markets

16. **As of end 2011, there were 586 companies listed in the Paris segment of Eurolist, the main regulated market (RM) in France.** Market capitalization amounted to €1,197 billion, compared to €1,425 billion at end-2010. The top 10 companies concentrated 27 percent of total market capitalization. Turnover for 2011 amounted to €1,027.9 billion, with a daily average of €4 billion.

17. **This contrasts with 617 companies at end-2010.** The falling number of listed companies since the onset of the financial crisis in 2008 stems less from de-listings, which have declined steadily since 2005, than from a sharp slump in initial public offerings (IPOs). The slump affects the B and C Compartments of small and medium caps on Euronext, in contrast to Compartment A (blue chips) and Alternext, which show a positive trend. The number of new companies listed was 7 in 2011 compared to 10 in 2010.

18. **An important number of issuers are listed in Alternext Paris and Marché Libre.** As of end 2011, there were 167 companies listed in Alternext Paris, an OMTF managed by Euronext, compared to 145 at end 2010. Market capitalization amounted to €5 billion, the same as at end 2010. There were 15 new companies listed in 2011, compared to 13 in 2010. As of July 2010, there were roughly 250 companies listed in *Marché Libre* with a market capitalization of roughly €6.8 billion. Very few companies have made a public offer on the *Marché Libre* since late 2006. During this period there were three IPOs and four other public transactions opened to shareholders.

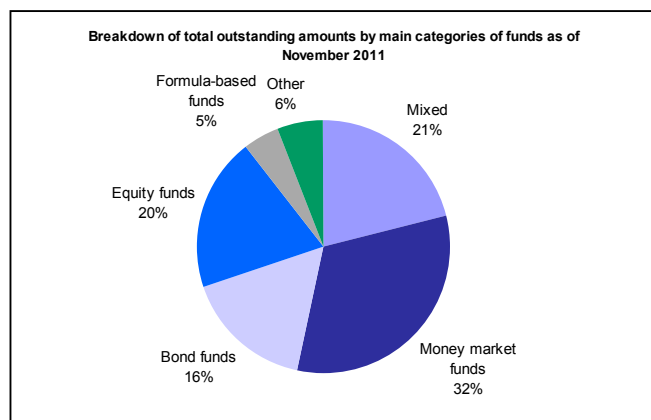
Bond markets

19. **As of November 2011, 233 issuers (including financial institutions and government agency) had at least one outstanding debt issue on Euronext-Paris.** The aggregate outstanding debt (CP excluded) amounted to €528 billion (27 percent of GDP) on 979 outstanding listed issues. The outstanding amount for corporate only amounted to €253 billion raised by 130 issuers. The bulk of the trading takes place OTC. Since 2009, the French bond market has seen an increase in issuance by small- and mid-sized companies, which went from €950 million in 2009 to €2.5 billion in 2010.

Collective investment schemes (CIS)

20. **There were 12,182 CIS registered at the end of 2010, compared to 12,200 at the end of 2009.** Assets under management (AUM) by CIS amounted to €1,474 billion, which represents more than one-half of AUM on discretionary accounts. The AUM in CIS was affected by outflows in money market funds and early signs of tensions in the European sovereign debt market. Conversely, discretionary mandates totaled €1,161 billion, i.e., a 10 percent increase compared to 2009. In November 2011, AUM totaled €1,188 billion.

21. **Money market funds (MMFs) represent roughly one-third of AUM by CIS.** There is no available figure to identify passive management (e.g., index funds, ETFs, formula-based funds, etc.); however, exchange-traded funds in France have grown, mirroring trends observed in other countries. The total number of listing, as at end June 2011, was 494 (of which, 270 were primary listings) and total AUM was \$64.3 billion.¹



¹ Source: Blackrock, NYSE-Euronext.

22. **Financial institutions are the main investors in CIS.** In CIS excluding MMFs, they represent 54.6 percent of AUM (of which 37.2 percent are insurance companies), while individual represent 21.5 percent of AUM. In MMFs, they represent 50 percent, nonfinancial corporate around 30 percent and retail investors less than 10 percent of total AUM.

Structured products

23. **The French structured products market remains small in scale vis-à-vis total households investment flows.** Gross subscriptions increased in 2010, but did not exceed €13 billion, and, according to the authorities, seem to have slowed down, with approximately €10 billion as of end-October 2011.

Markets and trading venues

24. **The main RM in France is Euronext France, which is operated by Euronext France, a fully owned subsidiary of Euronext NV and part of the NYSE-Euronext group, with listings in several jurisdictions.** Euronext NV operates Eurolist and Liffe Connect. Eurolist is a cash market that integrates the markets of Brussels, Paris, the Netherlands, and Lisbon into a single market with the same rules for access as well as listing requirements. Starting in 2010, it has also integrated a cash market from London through the London gateway. Eurolist is a centralized, electronic order-driven market, in which priority is assigned based on price and time, and quotes are anonymous. LCH Clearnet SA, a bank registered under French Law, provides central counterparty and clearing services. Settlements are made via Euroclear in a DVP T+3 basis. Liffe Connect is a regulated market for derivatives. Trading mechanisms are order-driven for futures and quote driven for options. LCH Clearnet S.A. provides central counterparty and clearing services, although the structure of these entities remains in flux.

25. **In addition to Euronext Paris, the following RMs have been recognized in France:**

- Matif and Monep, both operated by Euronext, offer futures and options trading; and
- BlueNext (organizer of markets in CO2 emission allowances and credits) offers spot and derivatives products.

26. **There are several MTFs registered in France.** Within the French framework, MTFs may be established as an organized MTF (OMTF) or non-organized MTF.

Table 1. France: Multilateral Trading Facilities Registered in France

Name	Operator	Status	Instruments traded	Significance
Alternext Paris	Euronext	OMTF	Instruments of French small and medium-sized economies (SMEs)	169 companies listed as of October 2011, with a market capitalization of €6 billion at end-2011. Reported deals for 2011 amounted to €1,879 million.
NYSE BondMatch	Euronext	OMTF	Corporate bonds	Recently authorized. No figures available.
Marché Libre	Euronext	MTF	Instruments of French and foreign small and medium sized economies (SMEs)	250 companies; with a market capitalization of €6.8 billion as of July 2010. Reported deals for 2011 amounted to €106.5 million.
Galaxy	Trading screen	OMTF	European fixed income (sovereign and corporate)	Recently authorized. No figures available.
MTS France	MTS France	MTF	French sovereign bonds and a few euro-denominated nonsovereign	23 institutions participate (20 of them primary dealers). 45,000 transactions on French sovereign bonds between January and October 2011, with a total net volume close to €300 billion.
Powernext Derivatives	Powernext SA	MTF	Gas derivatives market	
Alternativa	AM France SAS	MTF	French microcaps (below €50 million)	30 companies.

Investment service providers

27. **As of end-2011, there were 368 ISPs other than PMCs, compared to 361 as of end-2010, and 390 as of end-2009.** Out of such number, there were approximately 100 investment firms (IFs), while the remaining were credit institutions authorized to provide investment services. Roughly, 50 percent of the IFs are owned by financial institutions (either credit institutions or insurance companies). According to the ACP, IFs have simple business models, and, although some engage in proprietary trading, they are not highly leveraged. In practice, credit institutions dominate the retail market in France.

28. **In addition, there were 590 PMCs, compared to 567 in 2009 and 571 in 2008.** This is the highest figure recorded and follows five years of growth (with the exception of 2009). Out of such number, 512 companies report managing CIS. As of mid-November 2011, 35 new asset management companies had been authorized by the AMF. Roughly, 60 percent

of PMCs are “independently” owned (i.e., they are not owned by a financial institution); however, they manage only 5 percent of the total AUM. Bank subsidiaries represent more than 60 percent of the total AUM and a quarter of the number of companies, followed by the PMC subsidiaries of insurance companies (27 percent of total AUM).

29. **The asset management industry (excluding discretionary mandates) remains very concentrated, the top 20 players representing 82 percent of the total assets under management.** However, this concentration has diminished slightly in 2011, as the total market share of the top 10 and top 20 players decreased by 3 percent and 4 percent, respectively.

30. **There are roughly 4,000 FIAs authorized to provide services.**

VI. GENERAL PRECONDITIONS FOR EFFECTIVE SECURITIES REGULATION

31. **General preconditions necessary for the effective regulation of securities markets appear to be mainly in place in France.** There are no significant barriers to entry and exit for market participants. Competition is encouraged and foreign participation is welcomed. The legal and accounting system supports the implementation of requirements and effective regulation of market participants. The commercial law is up-to-date, and so are corporate governance standards. The framework for insolvency was updated in 2006. The *Loi de Sauvegarde des Entreprises*, effective in 2006, introduced restructuring procedures in the French legal system. Managers now have the opportunity to restructure their business before the company declares inability to pay its current debts with its available assets (the state of suspension of payments). This procedure is an adapted version of the U.S. Chapter 11, which relates to reorganizations through the introduction of safeguard proceedings. This Insolvency Act also codified the practice of *mandat ad hoc* procedures (whereby a company's legal representative confidentially requests assistance from a receiver appointed by the court) and improved corporate voluntary arrangements through conciliation proceedings. Therefore, with the new conciliation and safeguard proceedings, French insolvency law now provides strong incentives for debtors to anticipate their difficulties, and for creditors to help businesses in difficulty and to participate in their financial recovery. The regulators have legally enforceable powers of decision and action.

32. **Tax incentives on certain insurance products might be creating distortions that, in turn, can affect the goal of the IOSCO Principles of efficient markets, as the distribution and placement of products is largely based on these tax incentives rather than on the specific risk characteristics of the products.**

33. **Finally, there are also a number of level-playing-field issues at the European level, which, however, can impact French companies and, thus, the French financial market.** In particular, participants commented on the existence of stricter standards in France in connection with the asset management industry (safeguard of assets, rules on diversification, approval of marketing material for highly complex products); facilitation; and the definition of investment advice vis-à-vis suitability requirements. There are also concerns regarding differences in supervisory practices among regulators in Europe. It remains to be seen whether the appeal procedure of ESMA can serve as an effective procedure to mitigate

some these issues. Probably, it would make sense for France, as well as the other European countries, to promote at the European level a process to harmonize to some extent the supervisory approaches across the European Union.

VII. MAIN FINDINGS

34. **Principles for the regulator:** The mandates of the AMF and the ACP are clear and stem from the law, and sufficient cooperation arrangements exist between these authorities, and between them and the H3C. Through the *Pôle Commun*, the French authorities are seeking to address challenges arisen from the different regulatory treatment of investment-like products and distributors of financial products; although its work is still at an early stage. The current governance structure of their Boards and enforcement committees poses threats to independence. In addition, current legislative initiatives have imposed caps on the level of resources of all independent agencies, which includes both institutions. Resources at the AMF appear limited in light of the state of development of the market and the number of entities under supervision, in particular in the inspection area. The AMF has developed processes to identify, and monitor emerging and systemic risks that are also supportive of a review of the perimeter of regulation. These processes are still evolving. Through COREFRIS, the AMF, ACP, and BdF exchange views and cooperate on financial stability issues. There is a strong framework of accountability and transparency that applies to all of the institutions.

35. **Principles for enforcement:** The AMF and the ACP have extensive powers to supervise regulated entities within the areas of their competencies. They both have broad investigatory and enforcement powers. At the AMF, the number of onsite inspections and sanctions aimed at ISPs, and especially FIAs, is relatively low. This seems not to be the result of lack of quality or willingness to pursue a sanction, but of the capacity available to perform inspections. The ACP has also used only in a very limited way its formal enforcement powers. Criminal enforcement faces challenges.

36. **Principles for cooperation:** There are several arrangements in place to foster domestic cooperation. At the international level, most of the cooperation takes place through the AMF. The AMF has responded to requests in a timely manner for information that is in its file, and has also worked proactively to obtain information that was not in its files through the opening of investigations. The AMF has also taken testimony and obtained court orders on behalf of foreign regulators.

37. **Principles for issuers:** Issuers of public offering and/or those admitted to trading on an RM are subject to a prospectus requirement. Extensive periodic and ongoing disclosure obligations apply to issuers admitted to trading on a RM. Requirements for OMTF are in line with the IOSCO Principles, although lower than that for RMs, in line with European legislation. The AMF has established robust arrangements for the supervision of issuers' compliance with such obligations. Mandatory tender offer provisions and rules for the notification of substantial holdings and transactions by "insiders" apply to issuers admitted to trading in an RM and in an OMTF (although the thresholds differ). Such disclosure requirements and minority protections provisions do not apply to issuers admitted to trading only in MTFs, but those MTFs operate in practice as markets for institutional and professional investors.

38. **Principles for auditors, credit rating agencies, and other information service providers:** Auditors are subject to oversight by the H3C. The supervisory approach established by the H3C is reasonable, but resources appear to be a challenge. Of more concern is the fact that the H3C lacks enforcement powers. CRAs were subject to a thorough registration process by colleges of European supervisors and are now subject to ongoing supervision by ESMA, which is in the process of defining its supervisory approach. Research produced by sell-side analysts is subject to a robust framework of disclosure, which has also been extended to “independent analysts.” Other evaluative services have also been subject to disclosure obligations.

39. **Principles for collective investment schemes (CIS):** Authorization requirements for PMCs are robust and include capital, fit-and-proper, and organizational requirements. Disclosure requirements for CIS are robust and include both a prospectus and periodic information. The AMF has an active supervisory approach and is applying the law stringently. The current framework requires that assets be properly segregated and be held by a depositary, whose liability framework is very strict. There are clear rules on valuation, and the AMF has provided guidance in connection with illiquid assets. Suspensions of redemptions must be notified.

40. **Principles for securities intermediaries:** Authorization requirements are robust and include capital, fit-and-proper, and organizational requirements; however, fit-and-proper requirements apply only to the two senior managers in line with EU Directives. The supervisory program includes both offsite reporting as well as onsite inspections. The AMF has made significant progress in putting the investor and consumer protection topics on the agenda, and is achieving commendable results with some of its actions. The introduction of the highly complex products doctrine has delivered good results and is a good example of how the AMF is giving priority to investor protection. There is reason to increase the scope of the approach created by this doctrine. However, the AMF should increase its capacity to supervise appropriately the large groups of FIAs and ISPs. The ACP has developed a risk-scoring system for the supervision of prudential requirements by ISPs. Such system is supported by a series of reporting obligations, including on capital adequacy. However, the frequency of capital adequacy reporting is limited, and there is no obligation for the ISPs to notify when their capital falls below defined thresholds. The ACP conducts full-scale onsite inspections on ISPs.

41. **Principles for secondary markets:** Requirements for the authorization of RMs and MTFs are robust. Both the AMF and the ACP have established arrangements for ongoing supervision of operators of RMs and MTFs. Currently, the bulk of the resources are dedicated to the supervision of Euronext. The AMF has established a robust automated system for market surveillance. The AMF conducts an important number of investigations every year, and administrative sanctions have been imposed for market-abuse infractions. Criminal enforcement has been limited. LCH Clearnet monitors positions daily, and a comprehensive system of intraday margin applies. Default procedures are in place. The college of LCH Clearnet has developed a framework for crisis management, which includes periodic simulations. A system of mandatory reporting of short-selling is in place.

Table 2. France: Summary Implementation of the IOSCO Principles—Detailed Assessment

Principle	Grade	Findings
Principle 1. The responsibilities of the Regulator should be clear and objectively stated.	BI	The responsibilities of the AMF and the ACP are clearly defined by law. There are robust arrangements for cooperation. The authorities are seeking to achieve a consistent approach in connection to investment like products and their distribution through the <i>Pôle Commun</i> . The <i>Pôle Commun</i> has delivered positive results, but it is still at an early stage.
Principle 2. The Regulator should be operationally independent and accountable in the exercise of its functions and powers.	PI	The current governance structure of the Boards of the AMF and the ACP raises concerns due to (i) the participation of a representative of the MoF at the meetings who, while not being a member and not having a voting right, can ask for second deliberation, i.e., second discussion, except on matters concerning sanctions; and (ii) the participation of industry representatives, while at the same time there is limited retail investors' representation. In addition, on some Boards a number of industry members are still active in industry. However, the AMF and the ACP work under a strong framework of accountability and transparency. While these entities are self-funded, recent legislative initiatives have put a cap on the number of human resources. Governance issues in connection with the H3C are described in Principle 19.
Principle 3. The Regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.	BI	Especially the AMF has made considerable progress with its objective of boosting investor protection. It also has made some noticeable steps in creating a risk culture within the organization. The AMF has a hands-on culture willing to apply sanctions where necessary; however, the inspection capacity of the AMF is limited in relation to the large population it supervises. At the ACP, there is sufficient capacity, yet the mindset could benefit from a change towards a willingness to enforce where appropriate. Issues related to powers and resources of the H3C are described in Principle 19.

Principle	Grade	Findings
Principle 4. The Regulator should adopt clear and consistent regulatory processes.	FI	The AMF has established a consultation process for the development of regulations. Requirements for the authorization of regulated entities are set up in laws and regulations, which are publicly available. Administrative decisions must be motivated. Individuals affected by decisions of the AMF and the ACP must be afforded a due process prior to taking such decisions. Administrative decisions that affect third parties are subject to judicial review.
Principle 5. The staff of the Regulator should observe the highest professional standards, including appropriate standards of confidentiality.	FI	Staffs of the AMF and ACP are subject to robust ethics conduct obligations, which include provisions on conflict of interest, restrictions on trading of securities, cool-off periods, and confidentiality rules.
Principle 6. The Regulator should have or contribute to a process to monitor, mitigate, and manage systemic risk, appropriate to its mandate.	FI	Through the Risk Committee, the AMF has established a structure for the identification and monitoring of systemic risk. This is complemented by work of the ACP. The COREFRIS provides a framework for all the authorities to cooperate and exchange views on financial stability. The structures are of recent creation and therefore evolving.
Principle 7. The Regulator should have or contribute to a process to review the perimeter of regulation regularly.	FI	The structures identified above also serve the purpose of supporting risk identification at a more general level, and therefore they provide the foundation for reviews of the perimeter of regulation.
Principle 8. The Regulator should seek to ensure that conflicts of interest and misalignment of incentives are avoided, eliminated, disclosed, or otherwise managed.	FI	The supervisory processes in place for different types of intermediaries have helped the AMF to identify and address conflicts of interest. There are a number of risk areas, mentioned by respondents during the assessment that could benefit from further exploration.
Principle 9. Where the regulatory system makes use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, such SROs should be subject to the oversight of the Regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.	NA.	There are no SROs.
Principle 10. The Regulator should have comprehensive inspection, investigation and surveillance powers.	FI	The AMF and the ACP have been given broad powers to supervise regulated entities.
Principle 11. The Regulator should have comprehensive enforcement powers.	FI	The AMF and the ACP have been given broad powers to investigate and impose enforcement actions, including money penalties.

Principle	Grade	Findings
Principle 12. The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance, and enforcement powers as well as implementation of an effective compliance program.	PI	The AMF has supervisory programs in place for the supervision of all types of regulated entities, which include offsite reviews as well as onsite inspections. However, onsite inspections of ISPs and FIAs appear limited and, as a result, so are enforcement actions. The ACP relies in a combination of both off and onsite inspections for the prudential supervision of ISPs. On the enforcement side, the ACP culture still relies on “informal” measures. Criminal enforcement faces challenges. Issues related to the supervisory program of the H3C are described in Principle 19.
Principle 13. The Regulator should have authority to share both public and nonpublic information with domestic and foreign counterparts.	FI	The AMF, the ACP, and the BdF are required to cooperate with each other. The AMF, the ACP, and the H3C are authorized to provide information to each other. The AMF and the ACP are authorized to cooperate with foreign authorities. There are no limits to the type of information that can be provided.
Principle 14. Regulators should establish information sharing mechanisms that set out when and how they will share both public and nonpublic information with their domestic and foreign counterparts.	FI	Several formal arrangements have been put in place to foster domestic cooperation. The AMF is signatory of the IOSCO MoU. The bulk of cooperation at the international level takes place through the AMF. The AMF cooperates extensively with foreign regulators, and their response time is reasonable.
Principle 15. The regulatory system should allow for assistance to be provided to foreign Regulators who need to make inquiries in the discharge of their functions and exercise of their powers.	FI	The AMF and the ACP can provide assistance to foreign regulators to obtain information that is not in their files. The AMF has opened investigations, taken testimony, and received courts orders on behalf of foreign regulators.
Principle 16. There should be full, accurate, and timely disclosure of financial results, risks, and other information that is material to investors’ decisions.	FI	Issuers of public offering are required to submit a prospectus. There are extensive periodic and ongoing reporting requirements for issuers admitted to RMs. An adapted regime applies to issuers admitted in an OMTF. The AMF has put in place a robust system to review compliance by issuers with reporting obligations. Disclosure requirements do not apply to securities listed on MTFs only, in line with EU legislation. However, the latter MTFs operate in practice as markets for institutional and professional investors.
Principle 17. Holders of securities in a company should be treated in a fair and equitable manner.	FI	Company Law establishes a basic framework for investor protection. Additional protections for minority shareholders exist in connection with issuers admitted to trading in RMs and to a large extent for OMTFs. In particular, tender obligations and notification of substantial

Principle	Grade	Findings
		<p>holdings and transactions by insiders apply. Such additional framework does not apply to securities listed on MTFs only, in line with EU legislation. However, the latter MTFs operate in practice as markets for institutional or professional investors.</p>
<p>Principle 18. Accounting standards used by issuers to prepare financial statements should be of a high and internationally acceptable quality.</p>	FI	<p>International Financial Reporting Standards (IFRS) apply to issuers admitted to a RM. Issuers admitted to an OMTF can choose between French Generally Accepted Accounting Principles (GAAP) and IFRS. Few differences remain between French GAAP and IFRS, the main one in connection with financial instruments.</p>
<p>Principle 19. Auditors should be subject to adequate levels of oversight.</p>	PI	<p>The H3C conducts onsite reviews of audit firms with Public Interest Entity (PIE) engagements (except those with one PIE engagement which have been delegated to the Compagnie Nationale des Commissaires aux Comptes (CNCC), under the supervision of the H3C). The supervisory program developed by the H3C is reasonable; however, additional resources would be key for the implementation of such program. The H3C lacks direct enforcement powers as it has to go through the prosecutor. Finally, the current governance structure of the H3C raises concerns, in particular due to the participation of active auditors in the Board (albeit a minority). The current legislative limits to headcount are also a source of concern.</p>
<p>Principle 20. Auditors should be independent of the issuing entity that they audit.</p>	FI	<p>Auditors are subject to strict rules on independence, which are overseen by a combination of mechanisms, including oversight by the H3C and by the audit committees of the issuers, in the case of issuers admitted to trading in an RM.</p>
<p>Principle 21. Audit standards should be of a high and internationally acceptable quality.</p>	FI	<p>French auditing standards apply. They are broadly consistent with ISA. H3C is in charge of overseeing compliance with them.</p>
<p>Principle 22. Credit rating agencies should be subject to adequate levels of oversight. The regulatory system should ensure that credit rating agencies whose ratings are used for regulatory purposes are subject to registration and ongoing supervision.</p>	BI	<p>CRAs registered in France were subject to registration by a college of European supervisors. Under the current EU regulatory framework supervisory powers over CRAs have been transferred to ESMA. ESMA has conducted initial onsite inspections on the larger CRAs. Individual reports were delivered to them and a report with general findings was recently released. Obtaining the remaining human resources planned is key to effective ongoing supervision.</p>

Principle	Grade	Findings
Principle 23. Other entities that offer investors analytical or evaluative services should be subject to oversight and regulation appropriate to the impact their activities have on the market or to the degree to which the regulatory system relies on them.	FI	Disclosure requirements are in place in connection with research produced by sell side analysts. The AMF has extended such framework to "independent analysts," i.e., investment analysts not associated with an ISP. In addition, disclosure requirements aimed to address potential conflicts of interest have been developed for other types of evaluative services.
Principle 24. The regulatory system should set standards for the eligibility, governance, organization, and operational conduct of those who wish to market or operate a collective investment scheme.	FI	Authorizations requirements for PMCs are robust, and include capital, fit-and-proper, and organizational requirements. The AMF has an active supervisory program, which includes both offsite and onsite monitoring.
Principle 25. The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and for the segregation and protection of client assets.	FI	There are robust rules on segregation of assets. Assets of CIS must be held by a depository whose liability regime is very strict. Depositories can be related entities, but additional safeguards are in place including special reports from the statutory auditor of the depository and robust supervision. The segregation and protection of clients' assets have received and are receiving extra attention because of the crisis as well as in the wake of the Lehman, Madoff failures. In the events following these failures, French investors did not suffer any losses from incorrect segregation or protection by French regulated entities.
Principle 26. Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.	FI	Disclosure requirements for CIS are robust and include a prospectus and periodic reporting. The doctrine of high-complex products is an example of the priority given by the AMF to investor protection issues.
Principle 27. Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.	FI	There are clear provisions for valuation of assets, including guidance on valuation of illiquid assets. Rules on subscriptions and redemptions must be included in the prospectus. Suspensions of redemptions must be notified to the AMF.
Principle 28. Regulation should ensure that hedge funds (HFs) and/or hedge fund managers/advisers are subject to appropriate oversight.	FI	HFs are regulated like other CIS in France and are subject to registration or authorization requirements. HF managers are subject to requirements and regulatory supervision as stringent as those of other CIS managers.
Principle 29. Regulation should provide for minimum entry standards for market intermediaries.	BI	There are robust authorization requirements for ISPs, which include capital, fit-and-proper, and organizational requirements. However, fit and proper requirements apply only to the two senior managers, in line with EU Directives.

Principle	Grade	Findings
Principle 30. There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.	BI	ISPs are subject to minimum capital requirements as well as requirements adjusted by risks. ISPs are subject to periodic reporting of their financial situation, including annual audited financial statements and semi-annual results. More frequent reporting applies to larger ISPs. Capital adequacy is generally reported on a semiannual basis, and occasionally on a quarterly for only a segment of the larger ISPs. However, more frequent reporting can be demanded on an ad-hoc basis. The ACP conducts onsite inspections on ISPs.
Principle 31. Market intermediaries should be required to establish an internal function that delivers compliance with standards for internal organization and operational conduct, with the aim of protecting the interests of clients and their assets and ensuring proper management of risk, through which management of the intermediary accepts primary responsibility for these matters.	BI	ISPs must have robust internal controls and risk management processes; such processes must be evaluated periodically by an independent unit of the ISP. There is a robust framework of business conduct obligations applicable to ISPs. The AMF has in place a supervisory program for ISPs that include both off- site reviews and onsite inspections. However, onsite inspections for ISPs and FIAs are limited.
Principle 32. There should be procedures for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.	BI	The ACP does not have in place plans to deal with the failure of ISP; however, its risk scoring system also functions as an early warning tool. In addition, the ACP has powers to deal with the failure of an intermediary, including transferring of clients' assets, and there is an investor compensation scheme in place. The ACP is currently engaged in the development in recovery and resolution plans for systemically important institutions. The AMF is in the process of developing a toolkit to deal with the failure of a PMC.
Principle 33. The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.	FI	There are robust requirements for the authorization of RMs and MTFs, including capital requirements, fit-and-proper, and organizational requirements.
Principle 34. There should be ongoing regulatory supervision of exchanges and trading systems which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.	FI	The AMF and the ACP have established arrangements for the ongoing supervision of operators of both RMs and MTFs. The bulk of resources are dedicated to the supervision of Euronext, given the importance of this market. The college of regulators established for the joint supervision of Euronext by all the relevant authorities appears to be working well.
Principle 35. Regulation should promote transparency of trading.	BI	As in other countries in Europe, market fragmentation has had an effect on pre-trade and post- trade transparency since the implementation of MiFID.

Principle	Grade	Findings
Principle 36. Regulation should be designed to detect and deter manipulation, and other unfair trading practices.	FI	The AMF has established an automated system for market surveillance. It has a good record of investigation. A reasonable number of administrative sanctions in connection with market abuse are imposed every year, although processes are lengthy. For dealing with financial offences, criminal enforcement faces additional challenges, and very few convictions have been secured.
Principle 37. Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.	FI	LCH Clearnet S.A. conducts monitoring of large exposures by clearing members. Positions are monitored on a daily basis and a comprehensive regime of intraday margin has been in place since 2008. Default procedures are clear. The college of LCH Clearnet has developed a crisis management framework that includes periodic simulations. A system of disclosure of short selling is in place.
Principle 38. Securities settlement systems and central counterparties should be subject to regulatory and supervisory requirements that are designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.		Not assessed.
Assessment grades: Fully Implemented (FI), Broadly Implemented (BI), Partly Implemented (PI), Not Implemented (NI), Not Applicable (NA)		

Table 3. France: Recommended Action Plan

Principle	Recommended Action
Principle 1	The French authorities should continue to work toward harmonizing approaches to (a) common institutions engaging in business across sectors; and to (b) commonly offered financial products. The authorities could consider whether the single Ombudsperson used for securities could be extended to financial services more generally.
Principle 2	The French authorities could consider a number of possible changes to their current governance structure: (i) increase the formal distance between the representative of the Ministry of Finance (MoF) while creating more informal mechanisms to ensure the MoF can continue to gather firsthand experience on how the markets function; (ii) restrict membership of Board and sanctions Committee to former members of industry who do no longer have a vested interest; (iii) ensure Boards and sanctions Committee become more balanced by including more members representing retail investors and consumers; and (iv) increase the limitations on the type of topics in which former industry members can participate.

Principle	Recommended Action
Principle 3	<p>The AMF could benefit from increasing the capacity of its inspection unit in order to step up supervision and enforcement at ISP as well as FIAs. The H3C is already planning to increase its capacity in the next two years. If it were possible to speed up this process, the H3C should take the opportunity.</p> <p>The ACP could think of setting up a program redefining its supervisory philosophy and changing the supervisory mindset of the organization to enhance its enforcement orientation.</p>
Principle 6	<p>The AMF should continue on its path of contributing to an effective systemic-risk framework and risk culture for the financial services oversight authorities.</p>
Principle 7	<p>The AMF could determine how the risk processes can be adapted so as to increase their capacity to review sufficiently and systematically the perimeter of regulation.</p>
Principle 8	<p>The AMF could consider whether a further exploration of the risk areas mentioned by the respondents in the assessment would be beneficial.</p>
Principle 12	<p>In addition to the recommendations on Principle 3, the AMF and ACP could think whether and how a lighter version of the sanctions procedure could be designed that includes sufficient safeguards yet requires less man-hours to operate and takes less time to complete. Such a procedure ought to be designed with the smaller/objective infringements in mind and with the full respect of the rights of defense. It could usefully be based on examples observed in practice in certain countries that have proven to develop effective models.</p>
Principle 14	<p>The ACP should establish mechanisms to monitor that cooperation with foreign regulators is provided diligently.</p>
Principle 16 and 17	<p>The assessors encourage the authorities to determine whether additional safeguards are necessary in connection with <i>Marche Libre</i> and <i>Alternativa</i>, for example, by more directly prohibiting access of retail investors to these markets.</p>
Principle 19	<p>The H3C should follow through with its plan to expand its inspection team, accelerating it if possible. All auditors who audit listed companies, whether on a RM or an MTF, should be included in the PIE concept.</p> <p>The H3C should seek to establish cooperation arrangements with the Public Prosecutor in order to ensure that cases are brought diligently to the regional chambers.</p> <p>The H3C should be given more direct enforcement powers</p>
Principle 20	<p>The assessors encourage the authorities to find mechanisms to ensure a similar level of oversight in relation to auditors' selection and independence for issuers admitted to trading in OMTFs as that required for issuers admitted to trading in a RM.</p>
Principle 21	<p>The authorities should consider adoption of the quality control standard of ISA as part of the French auditing standards.</p>
Principle 23	<p>The AMF should consider including remuneration of sell side analysts as part of its supervisory efforts in connection with compensation.</p>

Principle	Recommended Action
Principle 30	The ACP should consider implementing capital adequacy reporting on a more frequent basis, as well as consider whether its onsite inspection program can be made more risk based.
Principle 31	See recommendation on principle 3.
Principle 32	<p>The ACP should determine at specific threshold triggers at which additional reporting (in terms of scope and frequency) to the ACP has to be commenced.</p> <p>In addition, to its current work on recovery and resolution plans for systemically important institutions, the ACP could consider conducting crisis management exercises.</p> <p>The AMF should finalize the development of its crisis management toolkit in connection with PMCs.</p>
Principle 33	The AMF and ACP should continue to take all necessary actions to ensure the information technology reliability of Euronext.
Principle 34	<p>The AMF should continue to monitor that Euronext keeps sufficient resources dedicated to market integrity issues.</p> <p>The AMF should request that Euronext implements a disclosure policy in connection with enforcement actions.</p> <p>The AMF should re-evaluate arrangements and resources dedicated to the oversight of the operators of MTF that are not managed by Euronext in tandem with the increase in activities in such platforms.</p>
Principle 35	The AMF is encouraged to continue to work with other European regulators, in particular via ESMA, with the objective of (i) limiting the negative impact of waivers on pre-trade transparency, and addressing potential imprecisions in definitions to avoid diverging interpretations amongst national regulators; (ii) achieving a single and exhaustive European consolidated tape in the equity markets; and (iii) a consolidating audit trails on orders in the EU allowing national regulators to monitor equity markets.
Principle 36	<ol style="list-style-type: none"> 1) Market abuse provisions should be extended to all MTFs. 2) The AMF is encouraged to work through ESMA in implementing order reporting requirements across Europe. A unique client identification number can also be pursued in the context of the implementation of MiFID2. 3) The AMF and the Public Prosecutors are encouraged to work in address challenges to criminal enforcement, as described in this report.
Principle 37	A large trades report ("commitments of traders"), which includes information on clients' positions, should be implemented in connection with the derivatives markets.

VIII. RESPONSE OF THE AUTHORITIES

42. The French Authorities would like to express their appreciation to the International Monetary Fund and its staff for their thorough analysis of the French financial sector and the very informative exchanges of views within the context of the IOSCO assessment. The Financial Sector Assessment Program remains the key vehicle for an effective implementation of IOSCO international regulatory standards and confirms the added value of the robust IOSCO assessment methodology as reinforced in the aftermath of the financial crisis.

43. The Authorities welcome the IMF's judgment stating that France exhibits a high level of compliance with the IOSCO standards. Since the last FSAP in 2005, France has reinforced its system in several aspects as identified by the IMF. The conclusions of this second FSAP will be beneficial in order to further improve the French regulatory and supervisory approach. The French Authorities also trust that the conclusions will help inform the future development of the European legislative and regulatory framework as the IMF will certainly extend its recommendations to other European countries in the areas where weaknesses have been found which relate to the European legislative or regulatory framework.

44. It should be noted that France has been among the first jurisdictions to be subject to a more thorough FSAP, assessing not only the regulatory framework but also effective supervision. In addition, this evaluation is already based on the revised IOSCO standards which were largely reinforced since France's first assessment in 2005. This explains why certain grades may now be set at a lower level than at the time of the first assessment. This should not in any case be interpreted as a decrease in the level of regulation or supervision in France.

45. However, French Authorities wish to raise one important concern in relation to the IOSCO assessment, which relates to the independence of the AMF. The Authorities believe that the French governance system brings valuable benefits and provides for robust guarantees for the independence of the regulators also in comparison to other examples at the international level. The AMF disposes of full regulatory and supervisory powers and its statutory independence is ensured through its statute as "autorité publique indépendante" defining, among others, also a budgetary independence. Many other market authorities do not benefit from the same safeguards, some of them being placed under the direct supervision of the Ministry of Finance. In addition, the AMF Chairman has a nonrevocable and nonrenewable mandate of five years. There have been no failures identified with the current system that has been place for several years. AMF's decisions are taken in a collegial manner within the AMF Board as well as in the distinct Enforcement Committee. These bodies need specific expertise to fulfill their missions efficiently given the increasing complexity of market activities and the speed of market developments and innovation. This is why, in addition to representatives nominated by institutions that are themselves independent from the executive power, the Board and the Enforcement Committee also benefit from the participation of representatives of the private sector—issuers, investors, and intermediaries—nominated by the Minister of Finance on the basis of their expertise and experience. The composition of the Board and the Enforcement Committee is defined to bring together the views of the public sector (represented by judges, public authorities such as the *Banque de France* or the *Autorité des normes comptables*) as well as those of market intermediaries,

investors and issuers who very often have competing interests, in order to reach a balanced outcome. The role and powers of the representative of the Ministry of Finance are fully set in the law, which gives no membership status in the AMF Board and Enforcement Committee. The only right attributed by law is to ask for a second deliberation in the Board for matters other than sanctions. The request for a second round of deliberations has no effect on the eventual content of the decision but gives the Board an opportunity to review its decision, within a very short space of time, so as to consider all its consequences and to ensure it is reasonably undisputable.

46. Efficient financial regulation requires that all parties involved work together and have efficient exchanges. To that aim, the French authorities believe that this relationship and dialogue need to be clearly defined. To our knowledge it is rarely the case that the relationships between regulators and the Ministries are framed in this formal way and set by the law. It is the preference of France to have clear and formal ways of exchange of views. This provides for transparency about the position of the Ministry of Finance, to the full knowledge of all stakeholders. Finally, the participation of the representative of the ministry in the Board is a way to ensure good coordination and efficient information sharing between authorities on issues related to financial stability, financing of the economy as well as on European and international negotiations. These exchanges undoubtedly allow improving the quality and reactivity of the process of elaboration of financial regulations.

47. The AMF will monitor with great interest future FSAPs so as to learn from other countries' experiences within the context of consistent implementation of international standards.

IX. DETAILED ASSESSMENT

48. **The purpose of the assessment is primarily to ascertain whether the country's legal and regulatory securities market's requirements, and the operations of the securities regulatory authorities, in implementing and enforcing these requirements in practice meet the standards that have been set out in the IOSCO Principles.** The assessment is to be a means of identifying potential gaps, inconsistencies, weaknesses, and areas in which further powers and/or better implementation of the existing framework may be necessary and used as a basis for establishing priorities for improvements to the current regulatory scheme.

49. **The assessment of the country's observance of each individual Principle is made by assigning to it one of the following assessment categories: fully implemented, broadly implemented, partly implemented, not implemented, and not applicable.** The IOSCO assessment methodology provides a set of assessment criteria to be met in respect of each Principle to achieve the designated benchmarks. The methodology recognizes that the means of implementation may vary depending on the domestic context, structure, and stage of development of the country's capital market, and it acknowledges that regulatory authorities may implement the Principles in many different ways.

- A Principle is considered **fully implemented** when all assessment criteria specified for that Principle are generally met without any significant deficiencies.

- A Principle is considered **broadly implemented** when the exceptions to meeting the assessment criteria specified for that Principle are limited to those specified under the broadly implemented benchmark for that Principle, and do not substantially affect the overall adequacy of the regulation that the Principle is intended to address.
- A Principle is considered **partly implemented** when the assessment criteria specified under the partly implemented benchmark for that Principle are generally met without any significant deficiencies.
- A Principle is considered **not implemented** when major shortcomings (as specified in the not implemented benchmark for that Principle) are found in adhering to the assessment criteria specified for that Principle.
- A Principle is considered **not applicable** when it does not apply because of the nature of the country's securities market and relevant structural, legal, and institutional considerations.

Table 4. France: Detailed Assessment of Implementation of the IOSCO Principles

Principles Relating to the Regulator	
Principle 1.	The responsibilities of the regulator should be clear and objectively stated.
Description	<p>Responsibilities</p> <p>The institutional structure for securities markets regulation in France mainly involves two regulatory agencies: the <i>Autorité de Control Prudentiel</i> (ACP) and the <i>Autorité de Marchés Financiers</i> (AMF), under a variation of a twin peaks model. The ACP is primarily in charge for the prudential supervision of investment services providers (ISPs) and market infrastructure providers, including regulated markets (RMs), multilateral trading facilities (MTFs) and central clearing counterparties (CCPs). On the other hand, the AMF is the markets supervisor and is responsible for conduct supervision of all participants in the securities market including ISPs, PMCs, FIAs, and market infrastructure providers, and exercises prudential supervision over PMCs and the funds they administer. A third authority, the <i>Haut Conseil du Commissariat aux Comptes</i> (H3C) is in charge of the oversight of external auditors that conduct audits of public interest entities (including auditors of listed issuers) and nonpublic interest entities. The powers and responsibilities of these authorities are established by law.</p> <p>The AMF was established by the <i>Loi de sécurité financière</i> (LSF) of August 1, 2003. It was formed from the merger of the <i>Commission des Opérations de Bourse</i> (COB), the <i>Conseil des Marchés Financiers</i> (CMF), and the <i>Conseil de discipline de la gestion financière</i> (CDGF). Its responsibilities, powers, and authority are determined by law and orders, mainly in the <i>Code monétaire et financier</i> (COMOFI) (Book VI, Articles L. 621-1 and further) and additionally in the <i>Code de commerce</i> (Commercial Code).</p> <p>The AMF statutory objectives are defined in Article. L. 621-1 of the COMOFI, which states that the AMF's role is to: (i) insure the protection of savings invested in financial instruments and all other investments which give rise to publicly marketed financial products; (ii) oversee the information provided to investors and the proper functioning of the financial instruments markets (and of other assets such as greenhouse gas</p>

emission allowances); (iii) lend its support to the regulation of markets at EU and international level; and (iv) ensure that approved codes of conduct applicable to the relevant professionals are implemented. The *Loi de régulation bancaire et financière* (LRBF) now makes explicit the need for the AMF to take financial stability into consideration when carrying their mandates.

The ACP was established on January 21, 2010 by the Ordinance no.2010-76. Its responsibilities, powers, and authority are determined by law and, in the area of the ISPs, mainly by the COMOFI, its statute in Articles L.621-1 and further. The ACP statutory mission is defined in Article 612-1 et Seq. of the COMOFI, which states that the ACP is responsible for ensuring financial stability and protecting customers, policy holders, members and beneficiaries of the entities subject to its supervision.

From an operational perspective, most of the responsibilities for securities markets regulation and supervision correspond to the AMF, including: (i) issuers (review of prospectus, tender offers documents, as well ongoing and periodic reporting); (ii) collective investment schemes (CIS) (authorization of PMCs as well as of the CIS themselves and their ongoing supervision-both prudential and conduct of business); (iii) market and conduct supervision of ISPs and FIAs; (iv) market surveillance; as well as (v) enforcement actions stemming from these functions.

The authorization of ISPs other than PMCs is a responsibility of the ACP (but with the participation of the AMF) as well as the ongoing prudential supervision of ISPs (other than PMCs) and market infrastructure providers (exchanges and MTFs). The ACP can also take enforcement actions in connection with the functions assigned to it.

Authorization as a regulated market in financial instruments shall be decided by order of the Minister for the Economy on a proposal from the AMF (but with the participation of the ACP).

Capacity to interpret laws and regulations

The AMF is empowered to issue instructions and recommendations to clarify the interpretation of the law and AMF regulations (Article L. 621-6 of the COMOFI). These interpretations constitute what the AMF calls “doctrine.” Different legal instruments are used by the AMF to interpret laws and regulations, including instructions, positions, recommendations, accepted practices, and rulings. In principle, the AMF *doctrine* is subject to consultation; except if there is an issue with deadlines or confidentiality; however, AMF staff stated that this exception has not been used. The AMF makes public its doctrine on the AMF website as well as in the AMF periodical. The AMF is currently improving the access to its doctrine through its website.

The ACP also issues instructions and recommendations, and make them publicly available through its website.

Gaps and consistent requirements (level playing field)

There do not appear to be gaps in the regulation of securities markets.

The AMF and the ACP have shared responsibilities in connection with the supervision of securities markets. Their respective responsibilities are clearly defined by law. In practice, participants commented that there could be cases in which the same topic is covered by both entities but with a different opinion/requirement (for example the compliance function). However the authorities highlighted that perspectives differ due to differences in their responsibilities (conduct vs. prudential concerns).

In addition, the law establishes mechanisms for cooperation and coordination (via consultation) for purposes of the authorization of ISPs and operators of trading venues; also, regular meetings are organized on a monthly basis between the two authorities (*Réunion des Autorités Financières* – the so-called RAF) in order to discuss issues of common concern. There is cooperation at an operational level on a day-to-

day basis on topics such as ongoing supervision of ISPs, prudential supervision of hedge funds managers, Euronext, clearing, and settlement, etc.

Finally, an institutional cooperation mechanism (the *Pôle Commun*) was created by law in 2010 (Article L. 612-47 of the COMOFI) to address (i) the need for coordinated monitoring of all investment vehicles (particularly unit-linked life insurance policies); and (ii) the rise of firms distributing a complete range of banking and insurance products, such as *bancassurance* networks and wealth management advisors.

In this regard, currently the distribution and marketing of “investment-like” products to retail investors is not all subject to the same legal and regulatory framework. For financial products covered by MiFID, stricter disclosure requirements and suitability obligations apply than for example those applicable to investment products wrapped in an insurance product. In addition, certain relevant MiFID requirements have been extended to FIAs in France. FIAs are required to inform clients in a clear and non-misleading way about their services and the products recommended, including information on both advantages and risks of products recommended. Both natural person FIAs and legal entity FIAs must also disclose to clients how they are remunerated for their services, including any inducements received from product providers as well as the names of all product providers with which they have a significant relationship. Banks are subject to equivalent requirements, but individual bank advisors do not need to disclose how they are remunerated, whereas they could receive variable pay linked to the category of products or services they sell. At the same time, they must act honestly, fairly, and professionally—with due skill, care, and diligence—in the best interest of clients.

Thus, the main objective of the *Pôle Commun* has been to ensure a consistent approach. An example in this regard has been the development of a doctrine on highly complex products, which seeks to provide consistent guidance in connection with the distribution of highly complex products. Some market participants have commented on the need to continue work in this area, as will be further described in Principle 26.

Potential overlaps with other authorities

There are a few areas of potential overlap between the AMF, ACP, and two other authorities: (a) the ARPP, which is the agency in France that monitors advertisement (that it is clear and not misleading), and (b) the *Direction générale de la concurrence, de la consommation et de la répression des fraudes* (DGCCRF), which is a division of the *Ministère de l'Économie et des Finances* (MoF), whose mandate includes the economic protection of consumers by combating unfair and misleading marketing practices. In both cases, there is an overlap in connection with the functions of these entities vis-à-vis financial products/services.

Both the AMF and the ACP have started working together with the ARPP to reinforce and complement their respective actions. The AMF provided examples in which it has relied on the ARPP to take actions in connection with a TV advertisement campaign. The ARPP, AMF, and ACP do not necessarily have the same perspective or doctrine on what “fair,” “comprehensive,” and “understandable” means within the context of financial markets. However, the authorities highlighted that, for such a reason, each authority remains fully empowered to take any necessary action from its own perspective and yet also gains from the knowledge of each together. The AMF also indicated that a partner agreement between the AMF and the ARPP was concluded in 2011, which sets out the cooperation between these two regulators regarding the advertising made for financial products.

	<p>In the case of the DGCCRF, the authorities highlighted that cooperation is also taking place. Furthermore Article D. 612-23 of the COMOFI requires the ACP and the DGCCRF to exchange information at least on an annual basis in regard to their roles in consumer protection.</p> <p>Finally, the AMF and the ACP have established arrangements for cooperation with other entities, including the H3C, and the AML authority, which are discussed in Principles 14 and 19. In addition, in the COREFRIS, the MoF, BDF, ACP and AMF coordinate activities to identify possible systemic risks and take action where necessary to mitigate them. Such arrangement is further discussed in Principle 6.</p>
Assessment	Broadly implemented.
Comments	The grade is a result of an evaluation of issues related to maintaining a level playing field.
	<p>The division of responsibilities between the AMF and the ACP is generally clear. In practice there are certain areas of potential overlaps, but these issues do not seem to be critical. Also, the authorities have demonstrated that avenues for coordination and cooperation exist. In this regard recently created mechanisms, such as the <i>Pôle Commun</i> and the COREFRIS are positive developments, although it is still early to assess their full benefits.</p> <p>Level-playing-field issues require more attention. The French authorities are very much focused on achieving a consistent approach to the regulation and supervision of conduct issues in connection with the distribution of financial products. The <i>Pôle Commun</i> has made an effective start, organizing a single point of contact as well as coordinating work such as inspections on the use questionnaires when advising clients both in the life insurance and investment products areas. However, it is still too early to assess the degree to which the result has been achieved. In addition, given the level of integration of the markets, action at the European level might be required to fully address this challenge. PRIPs initiative is a step in such direction.</p> <p>In addition, the topics below should also be reviewed. As they go beyond the IOSCO Principles, they have not been taken into consideration for the grade.</p> <p>First, it is important that differences in the conflict resolution (mediation) framework for banking and insurance intermediaries vis-à-vis the securities intermediaries be addressed. Currently, there is a single Ombudsperson for securities markets, independent from the industry. On the other hand, for banking and insurance mediation is fragmented and structured in a less independent manner, as each intermediary has its own ombudsman service. Some market participants highlighted the existence of incidences in which mediation seemed to have proceeded in an improper manner and in which the mediation consequently seemed to fail in too many cases as a result. They also expressed concerns that this could seriously impact the effectiveness of the securities mediation as well, because if, for example, investors lose their trust in the mediation of banking issues, they could also lose their trust in mediation in general. Financial markets operate increasingly across the borders of banking, insurance, and securities sectors. In product development, at the beginning of the value chain, in distribution and sales practices, at the end of the value chain, and in between. Not having a single Ombudsperson scheme may increasingly hamper the effectiveness of the current patchwork of conflict resolution schemes across the financial markets in France. Furthermore, the concerns identified in the ombudsperson services outside of the securities markets could also have repercussions for securities markets, as investors might lose faith in the resolution framework as a whole. It is not clear whether the current initiative taken by BdF,</p>

	<p>whereby best practices (including in the area of independence) among other things are issued, will suffice to mitigate the risks of this situation. The French regulatory system could probably be improved by consolidating the patchwork of ombudsman schemes. Possibly a single Ombudsperson scheme can be created.</p> <p>Naturally, any consolidated scheme has to be positioned independently from financial institutions as well as supervision activities. This can be done by placing such a consolidated scheme outside supervisory agencies or by positioning such a scheme within an agency, however, separated from supervisory activities by a Chinese Wall (as the AMF has done). As a note to this topic, the French regulatory framework could probably also benefit from some form of collective procedure to efficiently and effectively redress collective complaints.</p> <p>Second, it is important to note the existence of differences in tax treatment between financial products, which might be distorting the behavior of intermediaries in the placements of financial products. This issue has been explained more in detail in the section on Preconditions.</p> <p>Finally, there are also a number of level playing issues at the European level, which however can impact French companies and thus the French financial market. This issue has also been discussed in the Preconditions.</p> <p>As these three issues extend outside of the scope of the Principles, the assessors have not taken them into consideration for the grade.</p>
Principle 2.	The regulator should be operationally independent and accountable in the exercise of its functions and powers.
Description	<p>Legal Nature</p> <p>The legal natures of the AMF and the ACP differ. The AMF is an “independent public authority” (<i>i.e.</i>, a legal person placed outside the regular administrative structures, performing public functions, in accordance with independent processes and having an autonomous budget). The ACP is an “independent administrative authority” (<i>i.e.</i>, institution without legal personality placed outside the regular administrative structures, performing public functions, in accordance with independent processes and having an autonomous budget outside that of the French State), attached to the BdF.</p> <p>Governance</p> <p><i>AMF</i></p> <p>The AMF is governed by a Board, which is in charge of policy decisions and is led by the AMF chairman. Day-to-day affairs are managed by a Secretary General, who heads the staff. A separate Enforcement Committee (<i>Commission des sanctions</i>) is in charge of the imposition of sanctions under the enforcement framework. The distribution of competences between the Chairman, the Secretary General, the Board, and the Enforcement Committee as well as the decisional process (majority rules with a tie breaker for the Chairman) is specified in the law and regulations (Art. L. 621-2 and L. 621-3 II COMOFI).</p> <p>The AMF Board is composed of 16 members (Article L. 621-2 COMOFI), and its members are nominated on the following basis:</p> <p>The AMF Chairman is appointed for a non-renewable five year term by Decree and has the legal power to act for the AMF.</p> <ul style="list-style-type: none"> • Representatives are nominated by institutions that are themselves independent of the executive power; (<i>conseiller d'Etat</i> appointed by the Vice-President of the <i>Conseil d'Etat</i>; a <i>conseiller</i> of the <i>Cour de cassation</i> appointed by the President

of the *Cour de cassation*; a representative of the *Banque de France* appointed by the Governor; three members appointed respectively by the President of the *Sénat*, the President of the *Assemblée nationale*, and the President of the *Conseil économique, social et environnemental* on account of their financial and

- legal expertise and their experience in the fields of public offerings and investment of savings in financial instruments; a Chief Advisor to the *Cour des comptes* (Court of Auditors) appointed by the President of the *Cour des comptes*; the Chairman of the *Autorité des normes comptables* (“ANC,” French Accounting Standard Authority).

Members from the private sector who are appointed in consultation with the trade or professional associations (six members are appointed by the *Ministre de l'Economie et des Finances* on account of their financial and legal expertise and their experience in the fields of public offerings and investment of savings in financial instruments, after consulting the organizations which represent the industrial and commercial companies whose securities are offered to the public or admitted to trading on a regulated market, the management companies of undertakings for collective investment and other investors, investment services providers, market operators, clearing houses, operators of settlement-delivery systems and central custodians; a shareholder-employees' representative appointed by the *Ministre de l'Economie et des Finances* after consulting the representative trade unions).

The term of office of AMF Board Members, except for the representative of the BdF and the Chairman of the ANC, and the Chairman of the Board, is five years, renewable once. One-half the Board is renewed every 30 months. They are not removable except for failure to attend meetings on three or more successive occasions. Members of the Board are subject to ethical and conflict-of-interest rules Article L. 621-4 and Article 111-1 to 111-9 of the RG AMF).

The Enforcement Committee has 12 members (Article L. 621-2 COMOFI) and its Members are nominated on the following basis:

- Representatives nominated by institutions that are themselves independent from the executive power (two *conseillers d'Etat* appointed by the Vice-chairman of the *Conseil d'Etat*; two *conseillers* of the *Cour de cassation* appointed by the President of the *Cour de cassation*).
- Members from the private sector that are appointed in consultation with the trade or professional associations (six members appointed by the *Ministre de l'Economie et des Finances* on account of their financial and legal expertise and their experience in the fields of public offerings and investment of savings in financial instruments, after consulting the organizations which represent the industrial and commercial companies whose securities are offered to the public or admitted to trading on a regulated market, the management companies of undertakings for collective investment and other investors, ISPs, market undertakings, clearing houses, managers of settlement-delivery systems and central custodians; two representatives of the employees of the ISPs, the portfolio management companies of undertakings for collective investment, the market undertakings, the clearing houses, the managers of settlement-delivery systems and the central custodians, appointed by the *Ministre de l'Economie et des Finances* after consulting the representative trade unions).

The Members of the AMF Enforcement Committee also serve a fixed term of five years, renewable once. They are not removable except for failure to attend hearings on three or more successive occasions. One-half of the AMF Enforcement Committee is renewed every 30 months.

The Chairman of the AMF Enforcement Committee, who must be a judge of the *Cour de cassation* or the *Conseil d'Etat* (equivalents of supreme courts), is elected by the other members of the AMF Enforcement Committee.

The Secretary General is appointed by the Chairman after consultation with the Board and subject to the absence of any objection on the part of the *Ministre de l'Economie et des Finances* (Articles L. 621-5-1). No term is specified for the appointment of the Secretary General and the legislation does not require that there be particular reasons for dismissal. Nor is there a requirement for the reasons for dismissal to be publically disclosed.

ACP

The ACP is also governed by a Board, while day to day operations are managed by a Secretary General who heads the staff. Similar to the AMF, there is an Enforcement Committee in charge of the imposition of sanctions.

The ACP Board is composed of 19 members: the Governor of the BdF who chairs the Board; a vice-chairman chosen for its individual expertise in insurance activities; the Chair of the AMF; two members designated due to their financial and law expertise by the Chairman of the deputy chamber and by the Chairman of the Senate, respectively; the chairman of the ANC; a member of the supreme administrative court (*Conseil d'Etat*), a judge of the supreme judicial court (*Cour de Cassation*); a member of the financial court (*Cour des comptes*); two members chosen for their individual expertise in consumer protection and quantitative techniques, or any expertise particularly useful for the ACP; four members chosen for their individual expertise in insurance activities; and four members chosen for their individual expertise in activities related to banking, investment firms, and payment services (COMOFI, Articles L612-5).

The Governor of the BdF, who chairs the Board, is appointed by the Minister of the Economy for a term of six years, renewable once. He may be removed only in case of incapacity to fulfill his duties or gross misconduct, on the requirement of the majority of the Banque's General Council. There is no legislative requirement for the reasons for dismissal to be publically disclosed. While the Governor of the BdF is the Chair of the ACP, in practice his delegate, one of the BdF Deputy Governors, mostly performs this role. Deputy governors are appointed by the minister on the same basis as the governor.

ACP Board members chosen for their individual expertise are appointed for five years (renewable once) by the Minister of Economy (except for those appointed by the Chairmen of the two chambers of the parliament). The vice-chairman is appointed for the same duration by a joint order of the Ministers of Economy and Social Affairs.

Board members can only be removed for due cause and on a majority vote of the other Council members. Reasons for their dismissal do not have to be publically disclosed.

There are two sectoral sub-colleges within the Board:

- a banking sub-college, made up of the Chairman, Vice chairman, the four banking experts and two members appointed by the college from among the other members who are not from the banking and insurance sector; and
- insurance sub-college made up of the chairman, deputy chairman, the four insurance experts, and two members appointed by the college from among the other members who are not from the banking and insurance sectors.

The restricted college is made up of 8 out of the 19 members. It deals with individual issues that have significant impact on either sector or overall financial stability. It also deals with issues related to supervision of financial conglomerates.

The ACP Enforcement Committee is composed of six members: two members of the supreme administrative court (*Conseil d'Etat*), one of whom chairs the Enforcement Committee, a judge of the supreme judicial court (*Cour de Cassation*); and three members chosen for their individual expertise. The members are also appointed for five-year periods and cannot be members of the Board.

The Secretary General is appointed by the MoF on a proposal of the chairman of the ACP. (COMOFI, Articles L. 612-15). No term is specified for the appointment of the Secretary General and the legislation does not require that there be particular reasons for dismissal; nor is there a requirement for the reasons for dismissal to be publically disclosed.

Participation of the MoF at the meetings of the AMF and ACP Boards and the Enforcement Committees

As per the current organizational structure, the *Directeur Général du Trésor* (the head of the treasury in the MoF) or his representative attends the meetings of the AMF and ACP Boards as provided for by law, but is not a member and has no voting right. This means that the representative participates in the discussions on strategy, supervisory policy, drawing up of regulations, defining “doctrines” (interpretation of the law), and budget. The authorities have emphasized that the participation of the representative of the MoF at the meetings ensures good coordination and efficient information sharing on issues related to financial stability, financing of the economy, as well as on European and international negotiations. In addition, in their view, these exchanges improve the quality and responsiveness of the process of elaboration of the financial regulations.

The law provides the representative with the right to request a second deliberation, i.e., a second discussion—in matters except those concerning sanctions. The procedure to be followed is specified in a decree of the *Conseil d'Etat* (Articles L. 621-3 and R. 621-8). The authorities have highlighted that this right has never been exercised. In the case of drawing up regulations, it was also pointed out that such request would not be necessary, given the close cooperation and involvement of regulator and MoF in making the draft, consulting the market participants, and creating the final text.

Pursuant to the current structure, the MoF representative also attends the meetings of the AMF and ACP Enforcement Committees; however, by law, the individual is not a member and does not participate to the deliberations and decisions of these Committees. The practice of the Enforcement Committee of the AMF has been that the representative can express views on the case at hand during the discussion phase of the meeting. These particular proceedings have been public since 2010. AMF staff indicated that, although, in practice, the representative of the MoF is always present, she/he has made use of the right to express his views at most once. After the discussion phase, during the judgment phase, the representative is not present. The regulators as well as the MoF are of the view that their presence allows the MoF to more fully appreciate the effectiveness of the law. Thus, it helps them in improving regulations or negotiating at the European level on European Directives.

Participation of “industry”/“market participants” representatives

Both the supervisory authorities and MoF indicate that the participation of industry representatives in the Board of the AMF and ACP is an important feature of their

system, which enhances the subject matter expertise. Furthermore, the AMF staff emphasized that “industry” representatives are appointed after consultation, which means that the MoF asks for proposals but is not tied by the proposals made by the organizations that propose the candidates. This also contributes to nominating persons because of their expertise and experience, and not as representatives of a given trade association. Some market participants interviewed, however, have expressed concerns about this structure, in particular in the case of the AMF given that some members of the AMF Board are still active in industry.

In the case of the ACP, the COMOFI explicitly forbids that members of the Board or the Enforcement Committee hold office or receive a salary from regulated entities.

Also, the internal rules of the Board prohibit Board members from having shares in a regulated entity. If a Board member holds shares when he is appointed, there is no requirement to divest, but the member cannot buy new shares and cannot sell their shares without authorization of the chairman, who informs the Board member if the transaction planned is possible or not at this time. Regardless of their investments, Board members may participate in a material decision that affects major banks overall or that affects major competitors of the bank in which the Board member has an investment or interest. In discussions with the assessors, it was indicated that tighter restrictions were not put in place in order to ensure that the Board could attract suitable persons with industry experience. Reliance is being placed on the professionalism of the Board members, who are eminent in their field.

In addition, the authorities have highlighted that the current legal and regulatory framework imposes strict rules concerning the obligation for Board members or the Enforcement Committee to inform the Chairman of any interests they have/had or of any activities or functions in relation with the economic or financial sector they have exercised or exercise, and consequently forbids any member to deliberate on cases in which the member is considered by law as in a potential conflict-of-interest situation. The Chairman is required by law to take the appropriate measures to ensure compliance with these requirements. Additionally, a party in a sanction proceeding may ask that a member withdraw if conflicts of interest exist.

AMF staff mentioned that—in the beginning of this structure—two enforcement sanctions were rejected on appeal in court because of apparent conflicts of interest; since then, the regulators, and Board and Committee members have enhanced procedures, and this issue has not repeated itself.

Also, the authorities highlighted that decisions on the Board are made on a collegial basis, which prevents the views of only one Board member from prevailing. Finally, they also highlighted that judges on the Enforcement Committees ensure quality in the proceedings as well as the deliberations.

Participation of investors’ representatives

On both the Board and the Sanctions Committee of the AMF, there seems to be a limited representation of specific experience from the retail investor and consumer community. As stated above, there is a representative of employee shareholders on the AMF Board, who is appointed after consultation with representative labor unions and employee associations. The AMF has highlighted that there are very few retail investor associations, and that it is the *actionnariat salarié* that is best organized; however, market participants commented that there have been candidates who more directly represented retail investors but that the appointing authority has, so far, chosen candidates from the community of banks, insurance companies, ISPs, and PMCs.

The AMF has an advisory Committee devoted to Consumer Protection issues. In this Committee, most of the members come from the retail investor and consumer community. They meet on a monthly basis. This Committee has the remit, on request or on their initiative, to advise the Board on issues concerning investor protection. Its advice may be expressed publicly.

The ACP has also an advisory Committee dealing with Consumer Protection issues. In this Committee most of the members come from banks, insurance companies, and ISPs. There are also retail investor and consumer interests represented, yet these are a minority. This Committee meets three times a year.

Regulation

As will be further discussed in Principle 3, the AMF and ACP have broad licensing, investigation, supervision and enforcement powers in the areas of their respective competencies. In connection with rulemaking powers, the ANF has the power to draft its own regulations, which are subject to "homologation" i.e., stamping by the MoF which the AMF describes as a strictly procedural matter and which is necessary to make any rule binding to third parties. In contrast the ACP does not have the power to develop its own regulations. As a result it has to request the MoF to take up any issue where it deems that regulation is necessary. The MoF, if it decides to take action, would draft the regulation, which would then be discussed in the Law Making Committee.

Continuous and stable source of funding

The AMF has financial autonomy provided for by law (Articles L621-5-2, L621-5-3, L621-5-4, R621-10 sq, and D621-27 to D621-30 COMOFI). It is funded by fees levied on market participants, which the rate of is fixed by the MoF within a range established by law. In France, such levies are considered a tax, and therefore the range must be fixed by law.

Very recently, the law has increased the financial resources of the AMF, and restructured its funding model to improve its sustainability and make it less dependent on market fluctuations by creating two new fees: one based on market capitalization of listed companies, and the other on the amount of capital of investment service providers except asset management companies (law n°2010-1657 of December 29, 2010). The AMF can engage in multi-year planning and has full independence in deciding on the allocation of its budget, which is not subject to any approval or ex- ante oversight from any third party.

The ACP also has an autonomous budget set by its Board. A large part of its resources comes also from the proceeds of a levy on institutions, the rate of which is also fixed by the Minister of Finance within a range (minimum and maximum) fixed by the law. The computation of the levy is defined by law and is based on own funds requirements computed for the capital requirements for banking regulated entities (insurances entities are also subject to the levy which is related to premiums). The BdF has the authority under the legislation to supplement ACP resources, should the ACP budget be more than the proceeds of the levy on institutions.

While the budget of the AMF and ACP are not subject to formal parliamentary control, the French parliament has set headcount restrictions on all independent agencies, and a cap is established annually in the budget law. The AMF indicated that, so far, this restriction has not affected it, as the limit fixed in the budget was the one requested by it.

For ACP the maximum is the planned headcount at end- 2012. ACP staff indicated that to exceed this would require parliamentary approval. To ensure budget

sustainability, ACP has requested an increase in the effective levy rate by the minister to meet its resource plans for 2012 and the following two years.

Discussions that the assessors had with representatives of the MoF indicated that a decision had not been taken at the time of the mission, but that staff was supportive of an increase.

Legal protection

Both the AMF and the ACP operate under French administrative law.

The AMF may be sued for damages under French administrative law, which means that it would be responsible for damages arisen from serious negligence. As the ACP has no legal personality, it cannot incur liability in its own right. Actions against the acts or omissions of the ACP need to be brought against the French state. The State may incur liability by the ACP's acts or omissions, which can be qualified as serious negligence (*Conseil d'Etat*, November 30, 2001, Ministry of Economy vs. Kechichian).

There are general administrative provisions, applicable both to the AMF and the ACP that establish that staff can only be held liable for gross negligence. If the Secretary General and/or the Members of the Boards or enforcement committees and/or the staff are sued (either before the civil or penal courts), the AMF or the ACP, respectively, are responsible for their legal protection and the costs thereof, on condition that the act or decision that is challenged was taken within the course of their function and in good faith.

Since its creation, there have been only three cases in which the AMF has been sued for damages; but the claims were all rejected by the tribunals. No staff has been sued.

Accountability to parliament

AMF

AMF's Annual Reports are to be submitted by the Chairman of the AMF to the legislature and to the President of the Republic (Article. L. 621-19 § 3). They contain a presentation of the evolution of the regulatory framework in the EU regarding financial markets, review the action of AMF each year and present its annual accounts (Article R. 621-15).

As any other public administration, the AMF is subject to the Audit of the *Cour des Comptes* which acts as the French Controller's office (Article R. 621-25 COMOFI). The AMF Annual Report contains information on expenses. It also reproduces the income statement and balance sheet (Article R. 621-15 of the COMOFI), including an "Accounts presentation" consisting of the financial situation, detailed analyzes of the accounts, balance sheet-assets, and balance sheet-liabilities.

The *Cour des Comptes* conducts an audit once every five years approximately. The most recent audit was in 2007/2008.

ACP

In accordance with Article. L. 612-12 of the COMOFI, the ACP draws up each year a report to the president of the republic and to parliament, which is published in the Official Journal of the French republic. This report details the activities of the ACP over the period.

Similar to the AMF, the ACP is subject to the oversight by the *Cour de comptes*.

	<p>Procedural fairness and due process</p> <p>All individual administrative decisions of both the AMF and the ACP must be motivated (supported by reasons) under administrative law (Law n° 79-587 of July 11, 1979, as amended in 2011, Articles 1 and 3). Moreover, concerning the AMF Enforcement Committee's decisions, Article L. 621-15 IV of the COMOFI imposes a requirement of specifically reasoned decisions. The failure of the AMF or ACP to provide reasons partially or wholly gives a party the right to apply to the courts for the decision to be revoked. Accordingly, for example, decisions such as withdrawal or refusal of a license or an authorization must include the reasons that justify it. Affected persons are always permitted to make representations before the decision takes effect. This not only applies to enforcement cases, but also to any decision that affects the person including for example, decisions concerning the authorization of a new entity or withdrawal of authorization.</p> <p>In addition, those decisions are subject to very strict procedural protections (due process) and must comply with the stipulations of Article 6 of the European Convention on Human Rights.</p> <p>Judicial review</p> <p>All AMF individual decisions are subject to judicial review (Articles L. 621-30 and R. 621-45 COMOFI).</p> <p>All individual decisions affecting the professionals mentioned in Article L. 621-9 II of the COMOFI- including the AMF Enforcement Committee decisions- can be appealed before the <i>Conseil d'Etat</i> (Article R621-45 I COMOFI). All the other AMF individual decisions can be appealed before the <i>Cour d'appel de Paris</i> (Article R. 621-45 II COMOFI). The appeal must be lodged in a 10-day period, except for decisions taken by the AMF Enforcement Committee, which can be appealed in a two months period (Article R. 621-44 of the COMOFI). Appeals do not result in a suspension of a sanction unless the court decides otherwise. The court hearing the appeal may order that enforcement of the contested decision be suspended if it is likely to give rise to manifestly excessive consequences (Article L. 621-30 of the COMOFI).</p> <p>The same right to appeal applies to ACP decision (Article L. 612-16 of the COMOFI).</p> <p>Confidentiality</p> <p>See principles 4 and 5.</p>
Assessment	Partly implemented
Comments	<p>Independence is clearly a topic of relevance in France, which became apparent during the conversations with many respondents where this issue was brought up in the introduction regarding the French organization and the choices as they have been made.</p> <p>First, it is important to note that the structure as it currently operates in France is, in general, supported by most respondents to whom the assessors had spoken. Apart from minority positions, most stakeholders do not feel uncomfortable with the structure.</p> <p>However, it is possible, from an outside perspective, to question the presence of market participants on the Boards of the AMF and the ACP as well as on the Enforcement Committee of the AMF. From that perspective, an alternative structure in which these memberships are restricted to former industry participants and are more a distant from the decision making on strategy; supervisory approach; rules; policies; doctrines; and budgets might inspire more confidence in the independence of the structure. Clearly, as the issue was also discussed in the FSAP review of 2005, France has not changed its organization. There is, though, a risk- first of all of</p>

	<p>reputation (which potentially could lead to a political backlash on the current structure) as well as possibly the effectiveness of the system (as the role and responsibilities may become obfuscated especially in periods of stress).</p> <p>Given the choice that the French authorities made, i.e., to maintain the structure of having the institutional interest by virtue of their expertise on the Boards and Sanctions Committees, it seems consequent to critically assess the composition of these Boards and Committees. First of all, some of the Board and Committee members are still active in the industry. In addition, on only one of these Boards and sanctions committees a few members with affinity to the investor and consumer community have been appointed. However, the limited participation of investors' representatives seems incompatible with the chosen structure. Such members would bring expertise and experience currently not found on the Boards and sanctions committees. In addition, the perspectives these members would bring to the Boards and sanctions committees would naturally balance the views of the industry participants currently found on them.</p> <p>In addition, the presence of the representative of the MoF could detract from the independence of the regulators, and to some extent blur roles and responsibilities. On the other hand, the main benefits on this participation, such as the ability of the MoF to get firsthand experience about how the regulatory system as well as financial markets work, and the possibility of efficient and effective concerted action whether on national or European arena, could be achieved through other mechanisms.</p> <p>Finally, the fact that ACP cannot develop its own regulations and that de facto the regulations of the AMF are approved/stamped by the MoF does not contribute to an overall independent setup of the regulatory framework, (in which each participant can play its role and take its responsibility to the fullest extent and thus ultimately for benefit of the system as a whole). However, the assessors acknowledge that the Principles do not require regulatory authorities to directly have such power; thus, this concern has not been taken into consideration for the grade.</p>
Principle 3.	The regulator should have adequate powers, proper resources, and the capacity to perform its functions and exercise its powers.
Description	<p>Adequate powers</p> <p>As indicated in the corresponding principles, the AMF and the ACP have broad licensing, investigation, supervision, and enforcement powers in the areas under their respective competencies. Furthermore, in recent years, the enforcement framework of the AMF and the ACP were strengthened to increase the amount of fines that their respective Enforcement Committees can impose. In addition, the AMF was also provided with settlement powers.</p> <p>The only limitation in powers relate to rulemaking. The AMF has the power to draft its own regulations, which are subject to "homologation" i.e., stamping by the MoF, which the AMF describes as a strictly procedural matter and which is necessary to make any rule binding to third parties. In contrast the ACP does not have the power to develop its own regulations. As a result, it has to request the MOF to take up such topics. The MOF, if they decided to take action on an ACP request, would draft a proposal that would then be discussed in the Law making Committee.</p> <p>Finally, as indicated in Principle 1, the authorization as a regulated market in financial instruments shall be decided by order of the Minister for the Economy on a proposal from the AMF.</p> <p>Issues related to the H3C are discussed under Principle 19.</p>

Financing

The AMF has full financial independence. Acting on a proposal from the Secretary General, the Board approves the budget and any amendments to it in the course of the year. The Secretary General seeks the opinion of the Chairman of the Enforcement Committee regarding the resources to be allocated by the AMF for its operations (Article R. 621-13 of the COMOFI). The Board also approves the general terms for recruiting, employing, and paying personnel; also, the general conditions for using the funds available and investing reserves, as well as for acquisitions, exchange, and disposal of real property, loans, and transactions (Article R. 621-10 of the COMOFI).

The ACP also has budget independence. The approval of the budget is a responsibility of the college, prior recommendation of the ACP Audit Committee. Given that many services are provided to the ACP by the BdF and therefore billed by the BdF to the ACP, the budget of the ACP must be approved by the College before the overall budget of the BdF is presented to its general council. In the case of the ACP, salary scales are not set by the College of the ACP, but by the governing body of the BdF.

As mentioned in Principle 2, some initiatives currently being discussed in parliament to curb government expenditure such as a cap on hiring (*plafonds d'emplois*) are very broad in scope, which means that they could have an incidental impact on the AMF or the ACP and limit their capacity to allocate human resources.

Resources

AMF

As indicated above, the AMF sets its own salary policy. In addition to general increases for the less high salaries, the AMF salary policy allows for individual increases, which depend on individual performance and market competition for the specific position involved as well as for the payment of bonuses for highly qualified specialists and managers (the aim is between 0 percent and 15 percent of their salary for 2012).

As of the end of 2010, the number of staff at the AMF was roughly 400 staff. The number of staff has grown over the years; for example, in 2010, staff recruitments amounted to 68.

The staff dedicated to markets is distributed as follows:

Licensing: 129 employees (*Direction de la Gestion d'Actifs (DGA) and Direction des Emetteurs DE*)

Supervision of intermediaries/market surveillance: 45 employees (*Direction des marchés (DM)*)

Enforcement: 88 employees (*Direction des Enquêtes et des Contrôles (DEC) and Direction de l'Instruction et du Contentieux des Sanctions (DICS)*)

In practice, as will be further described below, there are very limited resources allocated within the AMF to the FIA segment, while it is not evident the risks in that segment are non-existent.

The AMF reserves part of its budget to training. Since 2007, roughly 6 percent of the gross income is dedicated to the training policy. Roughly 98 percent of the staff is trained in a year. In 2010, there were 10,000 training hours- that is, 24.8 hours per employee.

The AMF also has invested in IT for purposes of both supervision of market intermediaries and market surveillance. It has state of the art (SMART) technology

to survey markets (see description in Principle 36). It also has developed databases to support its supervisory program, in particular in the area of CIS, such databases have a critical role in supporting offsite monitoring (see principle 24).

ACP

As indicated above, salary scales are not set by the Board of the ACP but by the governing body of the BdF. The ACP keeps its salaries in line with BdF salaries, though it reported it has a small degree of flexibility in certain cases and some room to recognize degrees and experience in outside hires.

Total employees resources of the ACP amounted to €163 million in 2010. As of mid-2011, there were 974 up from 900 at the creation of the ACP. Human resources are planned to increase to roughly 1,140 at the end of 2012. ACP reports that most of this increase has been result of the new mission of consumer protection together with strengthening the headcount in insurance supervision. Out of such number, roughly 60 staff is directly involved in the prudential supervision of ISPs (25 in onsite inspection, 23 in offsite inspection, and 12 in authorizations).

The staff of the ACP is a mix of central bank staff members hired via competitive exams and contractual staff members. Most of the staff are members of the French civil service. ACP staff is perceived by market participants as highly professional and credible. Turnover was up to 15 percent, and the ACP in the past two years did not meet its hiring objectives; however, ACP staff indicated that the objectives will be achieved at end- 2012, when the number of staff members will reach and exceed 1,000. On average, an ACP staff member has 55 hours of training per year. A junior supervisor's initial training represents up to 140 hours for the first two years. The travel budget (including for supervision and international rule setting) is €4.2 million.

Capacity to perform and proper resources

The appropriate performing of the regulator's function, e.g., effective preventive and corrective measures, depends to some extent on the policies and governance practices of the organization; this includes its strategy and supervisory approach, the staff as well as the way the organization is built (e.g., the primary processes such risk analysis, prioritization, and supervision as well as key management processes such as resource allocation and quality control). A number of facts are relevant for the purposes of this assessment (these concern mostly the AMF, some are relevant for the ACP) and follow below.

The strategic plan of 2009 of the AMF has indicated three key objectives for a period of five years (The strategic plan is updated every two years and created every four to five years): (1) boost the efforts on investor protection; (2) increase a risk based effective supervision by improving market surveillance and the functioning of enforcement; and (3) contribute to making the financial markets serve the real economy. The process of updating the strategic plan helps to guide the AMF in setting supervisory priorities.

Following the Strategic Plan of 2009 (which was created also as a result of the crisis), the AMF is stressing its goal to create a strong risk based approach to supervision. A supervisory approach can be further characterized by five dimensions: institutional versus thematic, rule versus problem oriented; reactive versus proactive; and formal versus informal influencing approach;

Institutional versus thematic: Following the new strategic plan, the organization spends not only time supervising individual institutions but also identifies themes that may involve a series of intervention aimed at a whole market segment. This is, to some extent, a new approach that seems to be developed further by the AMF.

Here are some examples of this new approach:

A clear example is the joint approach of the AMF and ACP on highly complex products, which was initiated in 2010; however, at the same time, there are areas where -from an outside perspective- the focus very much institutional and not necessarily on the biggest risks. The DGA seems to be spending considerable time authorizing a large amount of changes at PMCs (large and small) as well as de facto helping the many small PMCs comply with the regulations. Some respondents have expressed concern that in this area, the AMF should watch not becoming the compliance officer of these small PMCs.

Second example: In July 2011, the AMF started a theme inspection regarding structured investments in Greek debt.

Third example: In 2009, the AMF had tried to reverse engineer the conditions that were conducive to Madoff- type situations. It was subsequently investigated three funds, of which one was found to be deficient in the requirements around fund selection. A file was sent to the Enforcement Committee resulting in a fine of €300.000.

A risk- based approach, which is required initiating thematic work, can be seen to grow within the AMF. In the eyes of market participants, the ACP is more relying on a systematic approach, with some risk- based elements within it. However, that approach (of the ACP) is fully oriented to institutions.

Rule versus problem oriented: The AMF can be seen to move away from a more formal supervisory approach, in which the outlook on supervision is rather legal and the law is taken literally, to a more objective oriented approach. As a result, the AMF is taking less formal stances, for example, interpreting the law in the light of its mission and objectives (a “teleological” perspective on the law). This development can especially be witnessed in some of the new initiatives the AMF is taking in the area of investor protection, such as the highly complex product doctrine. In the opinion of a number of market participants, the ACP is still working in a more formal stance and tends to stick more closely the “letter of the law.”

Reactive versus pro-active: As a result of the developing risk orientation of the AMF, the organization tries more to identify problems before they really materialize; thus, the AMF is becoming more pro-active. While the risk culture is still in development, the AMF is further strengthening its capabilities in this area.

Formal versus informal influencing: The AMF places significant emphasis on continuing and close supervision of entities falling under its supervision, in particular PMCs. All inspections are followed by a formal letter, the so- called “*lettre de suite*.” This letter has a formal tone and weight, and seems to be taken very seriously by most market participants. When breaches are detected as a result of this supervisory work, there is evidence that the AMF exercises its enforcement powers. Nevertheless, the number of sanctions seems to be relatively low given the size of the financial market (see also Principle 12). Next to this formal influencing approach by the AMF, there is- especially with the larger ISPs and the PMCs- frequent contact in which advice is given. Also, the AMF frequently makes use of guidelines and best practices to provide guidance to market participants.

However, the AMF seems not be systematically thinking about how to influence large groups of participants informally (as opposed to influencing individual institutions). This is especially relevant in the area of FIAs, and to some extent also the ISPs and PMCs. For example, enforcement actions seem very well picked up by the compliance officers of the large institutions. In this way, enforcing breaches at one institution has a wider desirable effect on the behavior of a group of institutions.

However, the small regulated entities, which may not even have a dedicated compliance officer, may not pick up the sometimes limited publicity given to sanctions. Consequently, the AMF could think of other ways of ensuring that the publication of a sanction will have a preventative effect on these smaller institutions (e.g., sending them a specific newsletter, organizing workshops). Another example of areas where the AMF could use different influencing approaches is sales and advice practices, which are often supported by Information Technology (IT) systems. These IT systems typically can be improved in such a way that advisors collect all the relevant information, perform the right calculations, i.e., provide a better quality advice. The AMF could directly influence the advice software providers (whether in-house or external), thus very efficiently influencing the quality of the advice. The ACP seems to be relying mostly on informal influencing of individual institutions. As was indicated during the discussions, there used to be a doctrine with the organization that a sanction was to be felt as a failure of supervision. That doctrine is fading and at the same time there is clear preference to use informal measures instead of formal ones. For example, the ACP also sends follow-up letters like those of the AMF. However, the letters of the ACP do not necessarily need to be followed up by a formal letter of the regulated entity. Sometimes a more informal, oral reaction is regarded as sufficient (see also Principle 30).

Organizational structure

The organization is structured along market activities as well along the supervisory process:

The *Direction de la gestion d'actifs et des marchés* involves a department focusing on the PMCs (*Direction de la gestion d'actifs*) and a department on markets (*Direction des marchés*). This latter is composed of a unit on ISPs (*Division suivie des intermediaries de marché*), a market surveillance unit (*Direction surveillance des marchés*), and a market infrastructure unit (*Division infrastructure de marché*). The *Direction des émetteurs et des affaires comptables* together includes a department focusing on the issuers of securities (*Direction des émetteurs*) and a department with focus on accounting and auditing (*Direction des affaires comptables*).

The above departments authorize firms and certain changes the AMF needs to authorize as well as monitor the conduct of ISPs, PMCs, markets, and information that is provided to the market. Together with these monitoring activities, they will engage also on follow-up activities either from their monitoring interventions or from inspections. The control and investigation department (*Direction des enquêtes et des contrôles*) conduct the inspections as well as investigations, which are mostly started after the risk analysis activities or supervisory activities of the other department indicate a possible serious breach of regulation. This structure was chosen also because the type of people conducting inspections- and especially the investigation- have a different culture and employ different methods than those at the ongoing monitoring teams.

Risk processes

There are a number of risk processes, among others:

The AMF has a process focusing on the markets from a broad and macro perspective. This process is actually fed from all departments, including the central unit that has capacity to analyze specific market broad developments and feed the AMF Risk Committee.

Also, the AMF operates a process embodied by the *Comité du suivi* that decides priorities, including which companies to inspect.

In terms of gathering information, the AMF analyzes the anonymous complaints coming from the ombudsman, telephone calls, and emails the *Pôle Commun* receives from customers as well as the data in its own databases, especially SMART VL. It seems the AMF at this point relies more on its own databases with market data than on the complaints and signals that investors and consumers provide.

In the above risk framework, three observations can be made. First, on the operational level, the framework focuses more on individual institutions than on risks overarching individual institutions (although increasingly there are thematic inspections, such as those focusing on commercialization of products or on depositaries). Second, the perspective of investor protection is increasing, primarily as a result of the new investor protection department. Third, perhaps as a result of the advanced market data the AMF has in its databases, there tends to be quite some attention paid to technical issues of small PMCs.

The resource allocation within the AMF is not directly linked to the risk processes. It therefore can happen that, for example, there are hardly any resources allocated within the AMF to the FIA segment, whereas it is certainly not evident the risks in that segment are non-existent.

The staff of the AMF radiates commitment to its mission. They typically come from the private sector. Most of them are accountants, auditors, lawyers, engineers, or financial specialists. The AMF has also hired specialists in the area of, for example, structured products. The AMF so far has not employed people from the social sciences or with experience in organizational change, who could provide new perspectives to effective supervision approaches. Market participants all acknowledge the people of the AMF are knowledgeable of the market. Some indicate as well that they are less experienced as inspector.

Decision style

The decision style of the AMF seems to be dominantly top down. The AMF Board, led by the AMF Chairman, exercises the decision-making power granted by law to the AMF, on the basis of briefing notes prepared by the staff. The decisions of the Board are implemented by the AMF staff, headed by the SG.

The SG manages the staff. He is given specific powers by law as to inspection and investigation.

Inspections and investigations are started, changed where necessary, i.e., for example to adapt the scope of the investigation, or the time period covered, after such a decision by the SG on the proposal of the AMF staff. On the contrary, all follow-up actions are decided by the Board (i.e.; the Board decides to initiate or not sanction proceedings).

The more operational management process- in which information is gathered to decide which companies to inspect and where the progress of the inspections is followed and headed by the head of the relevant department and information- is forwarded to the SG.

Also, the quality control seems to be conducted in a hierarchical way. For example, the quality of the inspections as well as other supervisory activities is monitored weekly, in a meeting where the SG and department heads review specific cases. The AMF indicates that such an approach is necessary to ensure a consistent approach across inspections and other activities. Moreover, it is felt that management should directly exercise control in this area.

	<p>Investor protection</p> <p>The AMF has recently centralized investor protection activities in the <i>Direction des relations avec les épargnants</i> (DREP) created in May 2010. The DREP has set up a permanent hotline, <i>AMF Epargne Info Service</i>, to answer investors' questions. It also prepares, distributes, and makes available on the AMF's website brochures and educational guides (explaining how markets work, giving details on financial products, and setting out the basic rules for managing investments wisely). In addition, it publishes on its website warnings about specific financial products, investment services, or marketing practices which are not authorized or in which the complexity, risk level, or promised outcomes require clarification from the AMF.</p> <p>A single gateway to information on banking, insurance and financial markets is now available as well through <i>Assurance Banque Épargne Info Service</i>, providing guidance and information to the public via a website, a helpline, or by mail.</p> <p>The AMF also participates on investor education initiatives organized by the Institute for Public Financial Education, which was launched in 2006 by the AMF. This institute carries out five main activities: (i) developing a dedicated policy to educate the general public in the fields of saving, investment, and financial economics; (ii) conducting nationwide campaigns to raise public awareness of financial and economic issues; (iii) facilitating academic research and contacts with international organizations in the field of retail; (iv) investor education; and (v) seeking to engage a constructive dialogue with the public authorities, regulators, and all other interested parties.</p> <p>The AMF also relies on studies to better tailor its actions in regard to consumer education. For example, in 2011, the Institute for Public Financial Education- in partnership with the AMF- published a new study conducted by the <i>Crédoc</i> (research centre on living conditions), focused on financial literacy in the French population. The purpose of the study was to gather information on knowledge and practices implemented by French people in managing their budget and making financial investments.</p> <p>Also, the AMF has initiated a program of outreach to consumer organizations whereby the AMF educates key personnel in the regional consumer organizations.</p> <p>Other activities in the areas of consumer protection have been the increased focus on the quality of advice given to the retail public, the highly complex product doctrine that was set completely from a retail- investor perspective, and the continuing focus of the AMF in the area of ETFs, which represent substantial opportunities for retail investors (low cost investing compared to many active funds) as well as threats (as a result of the explosion of different products, safe and unsafe, on the market).</p> <p>ACP</p> <p>ACP mandate includes consumer protection in relation to banking and insurance products. The ACP has a dedicated department to carry out this mandate, the Business Practices Supervision Department. It is in charge of supervising compliance of credit institutions and insurance companies with consumer obligations. It is important to highlight, however, that business conduct obligations stemming from the provision of investment services are a responsibility of the AMF. Therefore, the assessment of this topic has focused on the AMF. Market participants perceive, however, a difference in the attitude and priority to investor protection. They perceive the AMF to be- given its longer tenure- more developed in this area than the ACP, which started only in 2010.</p>
Assessment	Broadly Implemented.

Comments	<p>Resources for inspections at the AMF are the main issue that affects the grade.</p> <p>The AMF has made significant steps since the onset of its Strategic Plan in 2009. It has done so with a staff that radiates commitment. Overall, it is clear the AMF employs competent and dedicated staff.</p> <p>Following the priorities of the Strategic Plan in 2009, and especially in the areas of consumer protection and creating a risk culture within the AMF, visible and commendable steps forward have been taken. Efforts in developing capacity in the area of consumer education are commented below. Efforts in developing capabilities in relation to the identification of risks and the creation of a risk culture will be commented in Principle 6. Also, significant investments have been made and are being made to ensure the market surveillance capabilities of the AMF are sufficiently following the fast market developments, as further described in Principle 36. However, the assessors consider that the level of resources might be affecting core activities of the AMF, in particular supervision (and by implication, enforcement), as will be explained below. Further reflections in the current organizational approach have been made. The latter comments have not been taken into consideration for the grade.</p> <p><i>Consumer protection</i></p> <p>The significant priority that has been given by the AMF to consumer and investor protection deserves credit. The creation of the “<i>Direction des Relations avec les Epargnants</i>” (Retail Investors Department, DREP) as well as the setup of the <i>Pôle Commun</i> seem to have worked well.</p> <p>For example, the mystery shopping campaigns (three full campaigns and one pilot) have greatly enhanced the detailed view of the AMF (and ACP) on the very real business practices directed to retail investors. Also, the thematic inspection approach to assess how questionnaires were used in the advice process of retail investors has both improved the knowledge of the AMF (and ACP) on the quality of advice as well as created a good platform to start later on to influence, formally and informally, the industry (in all three channels: banks, non-bank ISPs, including PMCs and FIAs). The decision to follow through on this work and start a second phase within this theme focusing more on the substance of the advice, shows the commitment and priority of the consumer protection theme.</p> <p><i>Supervision and enforcement capabilities</i></p> <p>The evaluation of Principle 12 shows that when the AMF inspects and investigates it can be and is intrusive and also imposes sanctions where these are necessary. This seems to indicate that the mindset of the staff is adequate and a hands-on culture is present. At the same time, however, the volume of inspections aimed at FIA and to some extent also ISP- and thus the volume of imposed sanctions- is relatively low.</p> <p>In addition, the assessors recognize the priority the AMF has given to strengthen its repressive policy; it is clear that the amount of the sanctions that can be imposed have been raised. Also, the AMF has now the capacity to make settlement except in the area of market abuse. It is also clear that the inspection department has grown to some extent and that investments have been made in the market surveillance area. Nevertheless, the amount of staff- for example in the combined inspection and investigation units- seems to have not increased materially since the last assessment in 2005. On the other hand, the financial market has grown in complexity, and post crisis there is also increased importance on safe and fair markets.</p> <p>Following from this reasoning, it is possible that the investigation and especially the inspection department of the AMF- notwithstanding its recent increase in headcount- are understaffed relative to the size of the French financial markets.</p>
----------	--

For example, the total inspection capacity is much less than current resources allocated to “authorization” functions in connection with PMCs. In the area of PMCs, it seems that effectively roughly 30 people (about 80 percent of 36 people) are working on authorizing and doing the ongoing supervision in relation to marketing materials, changes with PMCs, changes in fund documentations, and new firms as well as answering questions from firms on a range of topics. This capacity exceeds the total inspection capacity of the AMF by one third. Whereas the supervisory strategy to authorize for example marketing material can be and has shown to be effective, the question can also be raised whether this needs to be necessarily done in a comprehensive manner, i.e., all documents of all companies are always reviewed and- where necessary changes- are suggested. Another approach could be to make this process more risk oriented, which undoubtedly creates risks and raises questions on feasibility. Nevertheless, taking a more risk- based approach could potentially free up capacity that might possibly be utilized on other high- priority issues (including issues with ISPs and PMCs). Moreover, the current approach can indeed create the risk that the AMF becomes the compliance officers of the PMCs, especially the smaller ones. This issue was also raised during the interviews, therefore in the end; the authorities would need to assess the pros and cons of different alternatives to bolster the capacity of the inspections unit.

At the ACP, it seems the limited amount of enforcement is more the result of supervisory philosophy or mindset (see also Principles 12 and 30). The ACP seems to have sufficient capacity, however, could potentially benefit from a more risk- based approach, such as the AMF is developing. More- focused inspections could allow the ACP to increase the number of entities visited, to conduct more frequent inspections, or to dedicate resources to areas that deserve additional attention such as consumer protection. In addition, the ACP would benefit from making more use of its enforcement powers, something which the ACP has already indicated they are planning to do this and in following years.

Organization and approach

Regarding the supervisory approach and organization of the AMF, a number of questions may be posed to evaluate areas for further improvement. These comments do not immediately reflect on the rating of this principle, but may serve further thinking of the AMF.

- As indicated, the AMF is moving from a more rule orientation to a problem or objective orientation. The market seems to have recognized this. The AMF will probably want to further strengthen this development and thus increase its effectiveness. The AMF can think of spending some time to determine whether the formal procedures and processes sufficiently stimulate this development. For example, one question that can be asked is: “To what extent can improved risk processes, quality control procedures as well as hiring of specific expertise on influencing approaches and change in management contribute?”
- A perennial difficulty for regulators is to strike the right balance between formal and informal influencing approaches. The AMF can benefit from further exploring the knowledge in this area, also from the academic field, in which for example behavioral economics gives increasingly interesting findings on how to get financial institutions behave in a correct manner. It seems that addressing the question above will also address this area, as both topics are closely linked.
- Is there a necessity for delegating more decisions to a lower level, in this way potentially making even more use of the potential in the organization and thus further stimulating for example the desired risk culture?

Principle 4. The regulator should adopt clear and consistent regulatory processes.	
Description	<p>Consultation</p> <p>In November 2006, the AMF announced its “Better Regulation” approach whereby the AMF commits to follow a set of regulatory principles in connection with its rulemaking process. The AMF is committed to (i) Transparency: to clarifying its processes and the reasons for its decisions and (ii) Dialogue: to involve professionals and investors in the regular decision-making processes</p> <p>On this basis, the following practices were introduced for any modification of the <i>Règlement général</i> (RG) AMF, which are subject to a public consultation:</p> <ul style="list-style-type: none"> • a preliminary analysis procedure based on a consultation paper on key issues or the projected amendment of the rules; • compliance with reasonable timeframes in consultation procedures: usually one month minimum unless the publication of the new rule is subject to particular deadlines. <p>Publication of a consultation summary and the reasons for final decisions with reference to comments provided in the consultation responses.</p> <p>The “Better Regulation” approach also places emphasis on the importance of a cost-benefit type impact assessment. The AMF takes into consideration the internal and external cost of regulation in the design of new regulations, to ensure the regulation is efficient and cost-efficient for the market.</p> <p>Participation of industry members in the definition of policies</p> <p>Pursuant to the COMOFI, the AMF Board has set up five Consultative Commissions: (i) Retail Investors; (ii) Markets and Exchanges; (iii) Clearing, Custody, and Securities Settlement; (iv) Individual and Collective Asset Management; and (v) Disclosures and Corporate Finance. The role of the five permanent Consultative Commissions is to assist the AMF in its deliberations and to help it formulate its positions. Any modification of the RG AMF is presented and discussed in each affected commission, which gives the members representing the different sectors concerned by the modification an opportunity to express their views and provide the AMF Board with their opinion.</p> <p>The ACP has also set up three consultative committees to involve industry professionals in the supervisors’ discussions and planning: (i) a prudential affairs Committee; (ii) an anti-money laundering Committee; and (iii) a business practices Committee.</p> <p>In both cases, the committees are composed of experts (from universities, law firms, issuers, the industry, etc.) appointed by the respective Boards. They are chaired by Board Members, who coordinate the work programs and report to the Board.</p> <p>Transparency</p> <p>Once adopted, all laws and regulations are published in the <i>Journal Officiel</i> and are also available and accessible on the central French Administration website.</p> <p>The formulation and issue process for the modification of the RG AMF have been made public in the Better Regulation document published by the AMF. The formulation and issue process for AMF policy documents also have been made public on the AMF internet website.</p>

The general criteria for granting, denying, or revoking a license are included in laws and regulations and therefore available to the public. The AMF and ACP must inform the public of the withdrawal of a license by inserting notices in newspapers or other publications of its choice (Article 311-5 of the RG AMF).

The AMF and ACP also disclose in their respective websites basic guidelines concerning investigations and inspections as well as guides in connection with mediation services. In the case of the AMF, the AMF Ombudsman presents an annual report to the Board of the AMF, in which his activities are reviewed. This report is also available in the website.

In addition, the AMF publicly discloses on its website, generally in French and English, a large set of information including (i) decisions and financial information in relation to issuers ; (ii) the list of authorized asset managers and information in relation to the CIS and asset management companies; (iii) decisions taken by the AMF Enforcement Committee; (iv) reports of AMF Working Groups; (v) Strategic directions taken, such as the AMF's New Strategy Proposals and the Interim Review and Perspectives for the AMF Strategic Plan, published in June 2011; and (vi) the AMF Annual Report.

The ACP also discloses a large set of information in its website (although less frequently in English) including (i) the list of entities authorized to provide investment services, along with information on them; (ii) decisions taken by the ACP Enforcement Committee; (iii) reports of working groups; and (iv) the ACP Annual Report.

Procedural fairness

There are rules dealing with the regulator which aim at ensuring procedural fairness; in particular, as indicated in Principle 2, the AMF and ACP are required to hear the affected person before a decision is made in connection both with licenses (granting, withdrawal) as well as with enforcement actions. All decisions of the AMF and ACP have to be motivated, that is, the reasons must be given in writing. Enforcement procedures are subject to stricter rules aimed to ensure "due process." Indeed, the existence of a separate enforcement Committee is intended to provide additional protection to the decision-making process by insulating it from the operating programs of the AMF and ACP.

All decisions that affect a person are subject to judicial review as explained in Principle 2.

In addition France's Laws, applicable to AMF and ACP, on the free Access to Administrative Documents (Law No. 78-753 of July 17, 1978) on IT, data files, and civil liberties (Law No.78-17 of January 6, 1978), respectively, give the right of free access (under the conditions they delineate), to administrative documents held by public bodies to any individual or legal entity as well as on personal data to any concerned person; as such, these laws constitute a way to ensure procedural fairness.

Confidentiality

Staffs of both the AMF and the ACP are bound by a professional secrecy obligation, as described in Principle 5. Reports on investigations are covered by professional secrecy rules and cannot be made public. Only sanctions decisions can be made public, pursuant to Article L. 621-15 COMOFI.

Consistency

Transparency of laws, regulations, doctrine and decisions taken as well as the existence of a broad sets of rules on procedural fairness- all explained above- are

	<p>key elements to ensuring a consistent application of the legal and regulatory framework. At the AMF, the internal audit group contributes to ensuring fairness and consistency through the audits it conducts. It has conducted 11 audit missions between 2005 and 2010, which have focused, for example, on the procedure for assessing and monitoring the financial information issuers make public, AMF's compliance with the personal data protection rules, procedures applicable to inspections and investigations by AMF, and appeals before the courts.</p> <p>Finally, the AMF Internal Regulation and the ethical rules as well as the mechanisms to ensure their implementation as explained below (in Principle 5) also contribute to procedural fairness and consistency. Similar mechanisms also exist at the ACP, as described in Principle 5.</p>
Assessment	Fully Implemented
Comments	
Principle 5.	The staff of the regulator should observe the highest professional standards, including appropriate standards of confidentiality.
Description	<p>Conflicts of interest</p> <p>Members of the AMF staff are bound by a large number of very strict legal and regulatory requirements pertaining to the avoidance of conflicts of interest. These requirements are provided in (i) Articles L. 621-5-1 al. 4 and R. 621-11 6° of the COMOFI; (ii) Article 48 of the <i>décret n° 2003-1109 du 21 novembre 2003 relatif à l'Autorité des marchés financiers</i>; (iii) the AMF Internal Regulation and the rules of conduct established by the Board on a proposal of the General Secretary (Articles L. 621-5-1 al. 3 and R. 621-11 6°); (iv) Article 87 of the <i>loi n° 93-122 du 29 janvier 1993 relative à la prévention de la corruption et à la transparence de la vie économique et des procédures publiques</i>; and (vi) Articles 432-12 and 432-13 of the Penal Code.</p> <p>In the case of the ACP, deontology rules were established in 2010 by Decision No. 2010-C-72. Pursuant to such decision, ACP staff is also bound by the Deontology Code of the BdF. These rules are public and available on the website of the Authority (http://www.acp.banque-france.fr/fileadmin/user_upload/acp/publications/registre-officiel/Decision-2010-C-72-de-l-autorite-de-contrôle-prudentiel.pdf).</p> <p>Avoidance of conflicts of interests during the course of function</p> <p>The AMF Internal Regulation and the ethical rules require employees to inform their manager of any close personal relationship likely to present an apparent conflict of interest. The manager assesses the situation, from which he draws the operational consequences.</p> <p>Similar provisions apply to the ACP (Decision No. 2010-C-72, § 2, p. 3 and Article 4 of the Financial Deontology Code).</p> <p>Specific rules apply to inspectors. AMF inspectors cannot participate in an investigation or an inspection concerning a legal entity in which they have exercised a professional activity or which they have audited or advised, as legal counsel, auditors, accountants, judicial experts or experts in studies and counsel in financial matters, during the past three years. Prior to appointing an inspector for an engagement, the Secretary General must ensure that there are no possible conflicts of interest and make sure that the inspector has not had, in the past 3 years, any professional relations with the legal entity subject to the investigation or the inspection (Article R. 621-33 of the COMOFI). Similar provisions apply also to the ACP (<i>Charte de conduite d'une mission de contrôle sur place dans le secteur de la banque, des services de paiement et des services d'investissement</i>).</p>

Avoidance of conflicts of interests when staff members leave AMF/ACP

An employee wishing to leave the AMF or the ACP is subject to the ethical rules applicable to the exercise of private activities by civil servants and staff of public administrations (cf. Law No. 93-122 of January 29, 1993, and the implementing circular of October 31, 2007). In practice, there is a cooling-off period of three years for taking on any business or financial participation in an entity to the extent that the employee participated in its control or supervision or in its selection for a contract with the AMF or the ACP.

The Boards of the AMF or the ACP, respectively, are consulted on each case in which an employee intends to conduct activities in the private sector and they issue an opinion on the compatibility of the future activities envisaged with the former functions performed by the employee at the AMF or ACP. The Boards may express reservations regarding the professional relationship that a former employee will be allowed to have with some or all of the AMF or ACP divisions while conducting his/her new activities.

In addition, cases that involve an employee who has been in charge of controlling or supervising a firm or has participated in the selection process of a firm which had a contract with the AMF or ACP must also be brought before the *Commission nationale de déontologie*. The AMF or ACP Board must submit the case, along with its opinion. The Commission's own opinion is binding if the activities envisaged are considered incompatible with the former activities of the employee at the AMF or ACP.

Since the AMF was created, the *Commission nationale de déontologie* has never had to issue a negative opinion on the cases presented by AMF.

Any infringement of these legal and regulatory requirements is subject to criminal penalties: a two years' imprisonment and a fine of €30,000 (Article 432-13 of the Penal Code).

Transactions in securities

Transactions in securities are regulated in Annex 1 of the AMF Internal Regulation. First, all AMF staff are required to declare their assets in financial instruments in writing to the compliance officer, and supply all necessary documents- including where relevant, the power of attorney or mandate- for information and control (Articles 4 and 5.5 of Annex I to the AMF Internal Regulation). Then, any modification of the situation must also be declared within a three-month period, and each year, the AMF staff must provide the compliance officer with an annual statement of their portfolio of assets on December 31st of the previous year.

In addition, there are restrictions on the holding and trading of financial instruments. While employed by the AMF, the staff cannot purchase financial instruments other than negotiable government debt securities or units in collective investment schemes, issued through a public offering, except in very strict and rare situations (Article 5-4 of annex I to the AMF Internal Regulation).

The only derogations concern (i) the acquisitions resulting from the payment of dividends or interest in securities or financial operations by the issuers of the securities held, such as merger, public offer or increase in capital at no cost and in the absence of any transaction by the employee; and (ii) the exercise of subscription or purchase stock options held by employees prior to their employment, outside the periods during which the AMF possesses inside information, and after being authorized by the compliance officer.

To ensure that ethical rules are complied with, the AMF compliance officer is empowered to (i) decide on any action toward informing the staff of his obligations; (ii) provide advice on any question raised by an employee and decide on the

interpretation of the rules; and (iii) monitor and supervise the implementation of the applicable rules by employees, and inform the Secretary General of any infringement.

Restrictions also apply to ACP staff; in particular, they are prohibited from acquiring securities of supervised entities. In order to ensure that such obligation is fulfilled, the staff must provide the ethics Committee access to their securities account.

Use of information

Any employee is subject to professional duties of discretion, reserve, and loyalty, even after he has left the AMF or ACP. Information obtained by an employee in the course of the exercise of powers and the discharge of duties must not be used for any other purpose. Moreover the confidential information obtained is covered by professional secrecy (Article L. 621-4 of the COMOFI) and subject to criminal penalties of Article 226-13 of the Penal Code (one year's imprisonment and a fine of €15,000).

In the case of the AMF, more specific rules are detailed in the AMF Internal Regulation and its annexes; in particular, any AMF staff member or former staff member is forbidden to use and take advantage for himself, or have other persons use or take advantage of, inside information relating to financial instruments which he might have obtained in the performance of his functions (Article 3 of Annex I to the AMF Internal Regulation). Staff is also required to be very cautious in preventing any information leak or misuse, for example, by being very careful with documents, files, and computers used outside the AMF. Similar obligations apply to ACP staff (Decision No. 2010-C-72, § 2.1.2, p. 3). These rules do not prevent the exchange of useful information among a number of authorities and bodies listed by law, with strict professional secrecy conditions, the information exchanged being subject to the professional secrecy rules applicable to both the provider and the recipient (Article L. 631-1 of the COMOFI). Secrecy cannot be invoked against the judicial authorities acting within the scope of criminal proceedings or in connection with judicial liquidation proceedings (Article L. 621-4 II of the COMOFI). Refusal to disclose information requested by the judicial authorities for criminal investigation purposes constitutes a criminal offense – Articles 60-1, 77-1-1 and 99-3 of the Criminal Code. Moreover, personal data are protected by the provisions of the Law No. 78-17 of January 6, 1978, relating to the protection of individuals with regard to the processing of personal data. Pursuant to this law, any processing of personal data by the staff of AMF or the ACP has been declared and authorized by the *Commission nationale de l'informatique et des libertés* (an independent administrative authority responsible for ensuring that IT remains at the service of citizens, and does not jeopardize human identity or breach human rights, including privacy as well as individual or public liberties).

Procedural fairness

Procedural fairness is ensured by the legal and regulatory provisions applicable to the functioning of the AMF and the ACP as described under Principle 4.

Compliance with ethical standards

The Secretary General (SG) of the AMF and the ACP, respectively, are responsible for the implementation of the above standards. In case of allegation of violations, s/he can exercise disciplinary power over any member of the staff. In this responsibility, the SG of the AMF is supported by the compliance officer, who is directly in charge of overseeing respect of ethical rules by employees of the AMF. Employees must answer questions without delay. The SG must be informed of any violation. Similar arrangements exist at the ACP, where the SG is supported by the "deontology delegate" (Decision No. 2010-C-72, § 3, p. 5).

	<p>Any failing to adhere to these standards is subject to legal, judicial, criminal or administrative sanctions.</p> <p>Judicial sanctions: In the course of a judicial review, decisions made by the AMF or the ACP will be revoked in case of infringement of these standards, for instance, in case of breach of procedural fairness.</p> <p>Criminal sanctions: the disclosure by any staff member of information covered by professional secrecy is, under the Penal Code, punishable by one year's imprisonment and a fine of €15,000 (Article 226-13 of the Penal Code). Any infringement of the legal provisions that relate to the avoidance of conflicts of interest is also subject to criminal penalties.</p> <p>Administrative sanctions: Apart from the administrative sanctions applicable in cases of market abuse, members of the staff are subject to disciplinary sanctions if they fail to adhere to the above standards. In the case of the AMF, the AMF Internal Regulation, in its Title 4, describes the disciplinary procedures and sanctions available, which range from a written observation to a dismissal and include warnings and suspensions.</p> <p>In addition, in case of infringement of the provisions that relate to the protection of personal data, administrative sanctions may be imposed by the <i>Commission nationale de l'informatique et des libertés</i>, including warnings, injunctions, financial sanctions up to €300,000, and orders to stop processing operations.</p>
Assessment	Fully Implemented
Comments	
<p>Principle 6. The Regulator should have or contribute to a process to monitor, mitigate, and manage systemic risk, as is appropriate to its mandate.</p>	
Description	<p>From a legal perspective, the <i>Loi de la régulation bancaire et financière</i> (LRBF), approved in 2010 now requires the AMF to consider financial stability objectives when accomplishing its mission. From an operational perspective, since its Strategic Plan of 2009, the AMF has included monitoring and prevention of risk as one of its strategic priorities. Furthermore, the AMF has a number of processes in place that contribute to the monitoring, mitigation, and management of risk including systemic risk. Key components of these processes are the AMF Risk Committee, the annual risk mapping exercise, the <i>Pôle Commun</i> and the Follow-up Committee or <i>Comité de Suivi</i>. Of particular importance for the identification of systemic risk is the Risk Committee. At the ACP, the risk assessment process is a key tool to identify risks at individual ISPs, which feeds bi-annual reports, and there is also a team dedicated to macro prudential analysis. Coordination on systemic risk issues takes places through the COREFRIS. At the international level both the AMF and the ACP are members of the ESRB, together with the BdF.</p> <p>AMF Risk Committee</p> <p>The AMF Risk Committee (<i>Comité des risques de l'AMF</i>) was created in 2010, with two main objectives: (i) to develop insights from the combination of macroeconomic analysis and aggregated/industry data with observations at the operational level, thereby leveraging institutional knowledge and ensuring appropriate sharing of information and confrontation of views; and (ii) to identify potential risks at an earlier stage and develop pro-active mitigating actions. Other objectives include the development of a risk culture within the AMF, as well as the development of tools for the monitoring of risks.</p>

The Committee is chaired by the AMF's Secretary General and is composed of the most senior executives of the AMF in charge of regulation, authorizations, supervision, compliance and enforcement. Two representatives of the AMF's Board are also members of the Committee. To effectively support the work on the AMF Risk Committee, the AMF has created the position of Senior Executive Officer Risk Policy.

The Committee brings together the experience from (i) operational supervision; (ii) the academic sphere; as well as (iii) broader macroeconomic and financial stability perspectives within the jurisdiction. The Committee met for the first time in 2010. It meets at least three times a year and has a written charter. There are minutes of the meetings and at each meeting, the Committee is kept informed of the implementation of the proposed actions on earlier identified risks, as well as of other initiatives taking place at the AMF related to the AMF's risks policy.

The risks as identified by the Committee are typically the more macro or generic market risks. This is consistent with the charter of the Committee. Through the Committee, the AMF has for example identified potential risks arising from high frequency trading and ETFs, including risks to financial stability; structural changes in the commodities markets that could raise stability issues; and regulation of money market funds in Europe and related run risk, in the context of the discussions taking place in the United States and at the FSB. Most of the actions taken are policy initiatives, but the Committee may also decide on other actions (external communication, co-operation with other authorities, development of new monitoring tools and risk indicators, further analysis, inspections, etc.). The way the work of the AMF Risk Committee links to the setting of operational priorities is not yet explicit. Also, how decisions of the Risk Committee feed into the budget process is not made explicit.

According to the AMF, this is explained by the fact that the Committee mostly reviews emerging and/or potential risks.

Initially the Committee identified a long list of risks. Now, after two years of operation, the discussions are higher level. The authorities highlighted that this reflects the fact that other Committees and processes are now operational (*Pôle Commun*, *Comité de suivi*, Advertising Committee) and that the risk culture has permeated the organization. AMF staff also highlighted that the approach is still evolving and is also strongly contributing to stimulating a risk culture within the AMF.

Retail investor protection topics seem to be less prominent on the agenda of the AMF Risk Committee. The AMF indicated that the current focus of the Risk Committee on financial stability topics also reflects the deteriorating situation in the European financial markets over the last two years and the increase in potential systemic risks. Furthermore, they also highlighted that retail investor protection topics are dealt with by specific divisions within the AMF, notably the DREP and the DGA, and are discussed in other instances such as the *Pôle Commun*, the Advertising Committee and at regular "Regulation" meetings.

Risk measurements and indicators

As indicated, one of the objectives of the AMF's Risk Committee is to identify the needs of the AMF in terms of risk monitoring and to propose new tools. A first effort undertaken in this area was to develop internal risk indicators based on AMF's market surveillance data. These indicators helped the analysis of the trends taking place in equity markets and the assessment of the potential risks (including risks for financial stability) and improved AMF's supervision. Work is still ongoing to improve tools in this area and to extend to other (non-equity) markets. The effort to develop internal risk indicators is now being extended to other areas within the AMF's scope

(e.g., asset management, supervision of intermediaries and market infrastructures, supervision of issuers, identification of trends in savings, etc.), with the objective to develop a more comprehensive set of risk indicators using AMF internal data. Preliminary results have been presented to the AMF's Risks Committee in December 2011, and work is continuing in 2012.

The AMF is also developing its capabilities in risk analysis, including for instance scenario analysis (see for example work on the potential effects of rebalancing leveraged and inverse ETFs on the underlying equity market).

The AMF has also developed new alert tools for the supervision of investment funds and is developing a scoring system for its inspection program. Starting in 2013, the reporting by alternative investment funds requested by the Alternative Investment Fund Manager Directive will allow the AMF to develop new tools and indicators covering the hedge fund industry (notably on leverage). In addition, the AMF's automated supervision system will continue to be extended progressively to all markets (with a view, in time, of integrating the data held by the central trade repositories) and to be adapted to take account of the emergence of new trading techniques.

Risk mapping

The AMF Risk Committee also contributes to the AMF's annual Risks Mapping, initiated in 2007. In addition to reviewing the most significant trends in France and globally, the report outlines AMF's assessment of the most important risks in four areas: (i) financial stability; (ii) business financing; (iii) price formation and financial intermediation; and (iv) innovation in savings markets and investor protection. The authorities highlighted that the production of this report imposes a strict internal discipline in terms of risk assessment, as risks identified have to be reviewed and updated. There is also a significant communication effort within and outside the AMF regarding the results, so therefore the report serves as a very useful tool to alert investors, market participants, and/or other sectoral regulators/authorities about potential risks.

ACP

The risk assessment system (RAS) called *Organization et Renforcement de l'Action Preventive* (ORAP2) is a key tool for the identification of the nature, importance and scope of the risks to which individual ISPs are exposed. This system is described in more detail in Principle 30. The outcome of this analysis is used to prioritize supervisory work. ORAP summary reports are provided to senior management in ACP and to the College as it reviews the supervisory findings and potential interventions.

In addition, there is a department dedicated to macro prudential analysis. It is composed of 11 staff. It produces a monthly publication that is provided to all directors, and which therefore feed into the analysis of individual firms.

Trends, developments, and risks for the French financial system at large are monitored, summarized in a bi-annual report, and input to offsite analysis carried out for individual firms.

BdF

There is a dedicated direction at the BdF in charge of financial stability analysis. It is composed of roughly 40 staff. Bi-annually the BdF produces the Banque de France Financial Risk Assessment, to which the ACP contributes.

	<p>Coordination</p> <p><i>Domestic</i></p> <p>The COREFRIS is a Committee created in the (LRBF) approved in 2010. It has the aim to identify possible systemic risks and to address them. In the Committee the (MoF) the regulators (AMF and ACP), the <i>BdF</i> and the accounting body, <i>Autorité des normes comptables</i> (ANC) meet. This Committee is fed by all its participants as well as links to the work done in the ESRB. The COREFRIS does not have formal decision power. It is intended to coordinate action on systemic issues as agreed on by each individual participant who maintain its own responsibility. This Committee is relatively new as it just started in early 2011; It will issue an annual report, and the first report is expected in 2012.</p> <p>An example in which the COREFRIS has proven useful is in regard to mortgages. Mortgages in France are relatively safe because most of them are fixed- rates or variable rate with narrow caps. It seemed to the regulators that credit was growing too fast, so the ACP (and BdF) wanted a soft landing. Moreover, the business seemed no longer very solid for banks as result of decreasing margins. The ACP took action in August and put in more restrictions. The action was discussed and prepared in the COREFRIS.</p> <p>In addition to this newly established body, other institutional mechanisms facilitate the communication and information sharing between supervisors. Notably, the Deputy Governor of the <i>BdF</i> is a member of the Board of the AMF and the Chairman of the AMF attends the Board of the ACP.</p> <p>At the operational level, the AMF and the <i>BdF</i> have significantly increased their co-operation and exchange of information in matters relating to financial stability. The <i>BdF</i> is also regularly invited to participate to the meetings of the AMF's Risks Committee (For example, in July 2011 and March 2012).</p> <p>Co-operation between the AMF and the ACP was also significantly facilitated by the establishment of the <i>Pôle Commun</i>, which will be further discussed in Principle 7.</p> <p><i>International Fora</i></p> <p>ESRB: The ESRB is also a forum where systemic risks within Europe are being discussed. The BdF, the ACP, and the AMF are members of the ESRB and participate in various expert groups.</p> <p>ESMA: The AMF participates in the elaboration of ESMA's Risks, Trends, and Vulnerabilities Reports prepared by ESMA's Committee on Economic and Market Analysis (CEMA). The AMF is also a member of the newly established ESMA's Financial Innovation Standing Committee (FISC), which is charged to ensure co-ordination and provide advice regarding financial innovation.</p> <p>IOSCO: The AMF is a member of the new IOSCO Standing Committee on Risk and Research. The AMF is also member of the Joint Forum, as well as of the CPSS-IOSCO.</p> <p>FSB: The AMF follows closely work taking place at the Financial Stability Board and is actively involved in several work streams led by the FSB (see below).</p>
Assessment	Fully Implemented
Comments	The Risk Committee and the Risk Mapping and Trend Report demonstrate that the AMF has developed arrangements for the identification of systemic risk and for risk in general.

	<p>The Risk Committee is clearly not only about analysis but also about ensuring an effective risk discipline, establishing priorities, and following through on decisions made. Also, the Risk and Trend Mapping documents that the AMF regularly produces have increased in quality and consistency, making an important contribution to both the discussions and the risk culture (as well as an important communication tool externally). The work done inside the AMF that feeds into these documents as well the Risk Committee is generally of high quality.</p> <p>In the case of the ACP, the OREP is a robust tool for the identification of risk at the individual firm level. Participation of both authorities, along with the BdF in the COREFRIS ensures that their findings are analyzed from a cross-sectoral perspective and integrated into a wholesome view of the financial sector.</p> <p>The Risk Committee is still at an early stage and therefore evolving, and the ACP is a new organization still in process of consolidations. From that perspective additional comments have been provided in Principle 7 (as the scope of such principle extends beyond systemic risk) with a view to further improve the system.</p>
Principle 7.	The Regulator should have or contribute to a process to review the perimeter of regulation regularly.
Description	<p>AMF</p> <p>The Risk Committee described in Principle 6 serves the objectives of both identifying emerging and systemic risk; as such, it is the main mechanism in place to review issues connected with the perimeter of regulation. The <i>Pôle Commun</i> and <i>Comité de Suivi</i> can be seen as playing a complementary role.</p> <p>Pôle Commun</p> <p>As mentioned in Principle 1, the <i>Pole Commun</i> was created by law in 2010 with three objectives:</p> <ul style="list-style-type: none"> To coordinate proposed priorities for supervision of regulated professionals with respect to their obligations towards their customers and to analyze both authorities' supervisory findings in order to present the Secretaries General with the findings and lessons to be learned in accordance with each Authority's powers; To coordinate monitoring of all customer transactions and services and supervision of marketing campaigns for financial products; To provide a single point of contact for customer queries: the <i>Assurance Banque Épargne Info Service</i> hotline (<i>Assurance Banque Épargne Info Service</i>). <p>Follow-Up Committee</p> <p>The Follow-up Committee (<i>Comité de Suivi</i>) is focusing on inspections. In this Committee, which meets two times a year, the inspection program is discussed as well as the most relevant findings of past inspections. Priorities can be set, including selecting the names of the companies where the AMF wants to conduct inspections. Also, progress is discussed of the program as defined by the priority decisions in earlier meetings of the Committee.</p> <p>Coordination among these committees</p> <p>There is no formal process to determine how priorities set and work done in the AMF Risk Committee, the <i>Pôle Commun</i>, and Follow-up Committee is coordinated or linked. For example, the work done on the quality of advice as coordinated by the <i>Pôle Commun</i> is not on the agenda of the AMF Risk Committee, although it is an important priority for the AMF. Another example regard to the ETFs, on which topic a lot of different risks come together. How these risks are consistently</p>

captured on the level of the AMF Risk Committee, the *Pôle Commun* and the Follow-up Committee is not clear. The authorities highlighted that this is the result of different scope and objectives of the different components. Notably, the AMF Risks Committee will discuss emerging and/or potential risks and will reflect on the AMF Risks policy (e.g., development of new tools, links with COREFRIS/ESRB/FSB, etc.). The *Pôle Commun* focuses on topics of mutual interest for the AMF and the ACP. The *Comité de suivi* focuses on the AMF Inspections Program. In addition, they highlighted that the co-ordination between the AMF Risks Committee and the *Pôle Commun* is ensured by the participation of the Director of the DREP to both committees.

ACP

From the ACP perspective, the OREP process is key for identification of emerging risks at regulated entities.

Cross-sectoral analysis

At the domestic level, the COREFRIS facilitates cooperation between supervisory authorities and monitoring of transfers of risk among sectors and potential accumulation of risk **outside** the regulated sector.

At the European level, the AMF participates in the ESMA's Financial Innovation Standing Committee and several other committees relevant to keeping the "perimeter" of regulation under review. It also has actively contributed to similar work at the level of IOSCO.

Review of previous regulatory decisions

Based on the findings and analysis carried out by the AMF Risk Committee as well as its operational departments, the AMF has revisited the supervisory approach in a number of areas. For example, in 2010, the AMF noted a growth in the distribution of highly complex structured products distributed to retail investors (structured funds and complex debt securities such as (EMTN). In November 2010, together with the ACP, the AMF issued a statement reminding distributors of their obligations and warning investors about some products' complexity; in particular, the AMF requested that marketing documents for products with a high mis-selling risk should carry the following warning: "the AMF considers this product too complex to be marketed to retail investors and has therefore not examined the marketing documents."

The AMF has recently revisited its approach to the program of operations required of PMCs, by refocusing on the elements that are essential to the regulator's analysis, i.e., organization, resources, marketing, and the control system. This will help the Authority to better assess the risks and take into consideration trends during the authorization process.

Identification of risk arising from unregulated entities

At the domestic level, for example, the AMF also recently noted the regulatory issues raised by products such as Forex CfDs, as their legal nature could allow them to avoid the regulations governing other financial products. In order to clarify when these transactions were within the perimeter of the regulatory framework, together with the ACP, the AMF adopted a position in May 2011 which outlined the legal framework to be applied to rolling spot foreign exchange (forex) transactions. This joint position made clear that forex contracts with end-of-day settlement are financial instruments when they provide for- or actually give rise to- rolling positions, which in turn implies clear obligations under existing law for the service providers.

	<p>At the international level, in the context of the discussions regarding the MiFID II, the AMF stressed the need to extend the boundaries of current regulation to include all relevant participants, in light of the challenges arising from high frequency proprietary trading activities.</p> <p><i>Legal changes to its jurisdiction</i></p> <p>Based on its analysis of risks, the AMF may decide to change its own regulation (see above) and/or, if needed, seek legislative changes. For example, the LRBF adopted in 2010 has significantly expanded the perimeter of regulation at AMF's request. The LRBF gives AMF new powers regarding the supervision of the carbon market (Chapter II), credit rating agencies (Chapter III), and the derivatives markets and short selling (Chapter V). With regard to derivatives markets, the LRBF gives the AMF powers to promote and maintain orderly financial markets (e.g. prevention of insider trading, market manipulation, false information, etc.).</p> <p>At the European level, for example, the AMF has actively contributed to the development of CESR's guidelines for money market funds, which aimed to address the failures identified during the summer of 2007 with the so-called "enhanced money market funds" and continues to participate in several committees related to keeping abreast of financial innovation.</p>
Assessment	Fully Implemented
Comments	<p>AMF</p> <p>As indicated in Principle 6, the Risk Committee has been a key mechanism for identification and monitoring of risk. In addition, important risk processes are also employed by the <i>Pôle Commun</i> and the <i>Comité de Suivi</i>. In the <i>Pôle Commun</i>, the priorities from the point of view of investor protection are discussed among the two regulators. Each retains their own responsibility in deciding on priorities and resources. The <i>Comité de Suivi</i> seems to perform a pivotal role in deciding on the priorities of the inspections.</p> <p>The investor relation department (DREP) is also developing an important risk identification and analysis function from the perspective of investor protection, using insights from the AMF Epargne Info Service, mystery shopping, advertising monitoring, as well as the establishment of the Savings Observatory (<i>Observatoire de l'Epargne</i>). This input is fed into the work of the different committees, and has started to be reflected in the AMF annual risk mapping (in 2011 and in the coming 2012 report).</p> <p>All of these arrangements have been helping in improving the risk culture of the AMF. These processes are also supported by the strategic reviews that the organization conducts every four years. All together, they help the AMF to identify risks and address problems related to the perimeter of regulation. The AMF provided several examples that show that actions are being taken to address risk identified, including through changing the perimeter of regulation. It is not clear whether the AMF systematically reviews past important policy or regulatory decisions, although several incidental examples of changes have been identified.</p> <p>One example provided was the joint effort of the AMF and ACP to issue a doctrine to tackle the issue of the highly complex products since, effectively, the AMF and ACP are taking a role in supervising the issuance and marketing of new products in this specific area and clearly communicating their expectations to the product providers. A systematic review could perhaps indicate that the AMF could also think whether it would want to be able to set guidelines for the existence and requirements on Product Approval Processes at financial institutions. Efforts are also being made regarding the distribution of highly speculative products over the internet (CFDs, binary options, etc.).</p>

	<p>Therefore, at this moment all these arrangements are considered satisfactory vis-a-vis the IOSCO Principles; consequently, the fully implemented grade. As best practices emerge, the authorities might also wish to further improve current arrangements. In such context, a number of observations can be made:</p> <p>The risk processes are still evolving and therefore to some extent the analysis or findings from them may not necessarily be fully integrated into one comprehensive view (for example, there is not one overview of the more macro risk issues/ actions and the more operational risk issues/ actions, which would enable better prioritization of decisions).</p> <p>Further illustrating the above, it seems there is the tendency of the AMF to look more into the market risks of products than, for example, at cost levels in products (or inducements). Notwithstanding the importance of market risks, high cost levels can easily lead to major disappointments with clients and potentially to systemic risk.</p> <p>It is not clear to what extent the risk approaches of, for example, the ongoing monitoring of PMCs are linked into the AMF risk process. Furthermore, a significant amount of the authorization work is currently done “on demand” i.e., is driven by what regulated entities send to the AMF. It is not clear to what extent this approach fits with the risk orientation of the AMF. The Authorities highlighted that coming changes in the Division of Asset Management should contribute to further progress in this area.</p> <p>Addressing a number of questions effectively could well help AMF move further along:</p> <ul style="list-style-type: none"> • Is there scope for further coordination among all these arrangements (i.e., Risk Committee, <i>Pôle Commun</i>, and <i>Comité de Suivi</i>) to achieve a consistent risk approach across the AMF? • What place should the significant amount of time devoted to ongoing monitoring of PMCs and ISPs get in the overall approach, and how can it be connected to the risk approach? • How can resource allocation decisions be made to ensure consistency with an overall AMF risk approach, including the macro and micro risks (e.g., risk within individual institutions)? • Should a different balance be achieved in regard to resources allocated to institution based work versus thematic work? And how can the choice of such a balance be derived from the overall risk approach? <p>ACP</p> <p>Many of the examples provided by the authorities stem from work conducted by the AMF, although some of them resulted in joint work, in particular in the context of the <i>Pole Commun</i>. This might be justified on the fact that the ACP has a more limited jurisdiction in securities markets, and is also relatively new.</p>
Principle 8.	The Regulator should seek to ensure that conflicts of interest and misalignment of incentives are avoided, eliminated, disclosed or otherwise managed.
Description	<p>Regulated entities</p> <p>The current regulatory framework requires regulated entities to put in place mechanisms to identify, monitor, and mitigate conflicts of interest. The regulatory framework for each type of entity is described in full under the corresponding sectoral Principle (31 for ISPs, 24 for PMCs, 19 for auditors, 22 for CRAs, 23 for sell side analysts and other information providers, and 33 for market operators).</p>

	<p>The approach to mitigation is mixed; in some cases, certain activities are banned to prevent the conflict. Examples of this approach are the limitations on non-audit services for audit firms and credit rating agencies. In others, robust controls are required, for example, for the separation of certain activities. In others, disclosure to investors- rather than elimination of the conflict- is required. Examples of this approach are the disclosure of remuneration for sell-side analysts based on a firm's investment banking activities. More generally, as indicated in Principle 23, all ISPs are required to make public a conflict-of-interest policy. Monitoring compliance with these obligations is mainly carried out through supervisory programs in place for each type of regulated entity (described in the corresponding sectoral Principles), and through the onsite inspections programs in particular.</p> <p>Such monitoring could trigger enforcement actions vis-à-vis individual entities. For example, in 2008, the AMF sanctioned a bank for failing to put in place an adequate conflict- of-interest procedure, especially considering the size of the bank. The AMF alleged that the clients were impacted by this lack of proper procedure and the Enforcement Committee imposed a fine of €300 000. In 2011, the AMF imposed a sanction against a PMC for not complying with its obligation to disclose the payments received from the issuer of an EMTN sold to a client.</p> <p>They may also trigger additional guidance as to how the AMF expects regulated entities to comply with conflict of interest obligations. For example, the professional associations have developed principles in regard to remuneration of PMCs that are now part of the business conduct codes.</p> <p>Conversations with market participants have highlighted certain areas of conflict of interest, in which the authorities might wish to conduct further work to determine whether additional regulatory action is warranted. One of particular importance vis-à-vis the IOSCO Principles is inducements paid to ISPs and FIAs. Further detail is provided in the comments below.</p> <p>Issuers</p> <p>In the case of issuers, misalignment of incentives is mostly addressed through disclosure. The obligation for issuers to provide adequate disclosure is monitored through the review of prospectuses and the ongoing and periodic obligations described in Principle 16.</p> <p>In this case also, actions could be taken at an individual level; but misalignment of incentives could also trigger changes in regulation. An example of the latter has been the requirement for independent evaluations in connection with take-over bids and the instructions that the AMF developed in connection with such evaluations as described in Principle 23.</p> <p>Particularly in connection with securitization, retention requirements have been imposed in an indirect way via investors; for credit institutions, such obligations stem from the CRD; for insurance companies, from Solvency II, and for fund managers, from the AIMF Directive.</p> <p>Securitized products that are offered to the public are subject to disclosure obligations as described in Principle 16.</p>
Assessment	Fully Implemented
Comments	During the conversations with market participants some concerns were raised about issues that could potentially deserve additional attention from the supervisory authorities. Also, further analysis in these risk areas can possibly lead to new priorities in the area of consumer education, for example, helping

customers to better assess the difference in quality between investment products on the counts of return, risk, and costs.

First, participants raised concerns about the inducements that FIAs and ISPs receive from funds. Some thought the conflicts of interest resulting from these inducements were sufficiently addressed by the industry after the introduction of the inducement rules in MiFID, since limitations have been placed in these type of incentives, and transparency is now required. Other respondents thought these conflicts were not yet properly managed; they thought better transparency of the existence and amount of these inducements required. All respondents indicated that banning retro-cessions would not necessarily have the desired impact, because all respondents saw the risk that-as a result of such a measure- banks would be induced to sell their own products only, whether savings accounts, structured products, or their own investment products. Effectively, they indicated such a measure would create substantial other conflicts of interests. In addition, some respondents indicate that the retro-cessions when properly used are to cover the costs the distributor makes for advising the products to its clients. They indicated these costs are substantially different in an execution-only channel, possibly created incentives going against the interest of clients. Yet, at the same time, they thought in these channels mostly ETFs were sold which do not pay retro-cessions to the distributors. The AMF has acknowledged that issues prevail in the area of fund distribution. Overall, the assessors consider that the assumption (that inducements in general do not necessarily hamper the advisor to act in the interest of its clients) may possibly no longer hold true, if the mystery-shopping campaigns continue to show that apparently it is not the profile of the client that mostly determines the investment advice. In addition, further analysis could be considered in order to assess whether the notion that the inducements represent a fair price for the advice received.

Second, concerns were also raised in connection to banking practices in the area of advice. The assessors acknowledge that these concerns have a broader scope, yet still are important to mention as it is difficult to segregate advice in connection with investment products from other type of advice.

In this context, one concern relates to the effects of Basel 3 capital requirements on bank practices. Some participants mentioned that, as a result of these requirements, banks are now actively stimulating their customers to direct their savings to (short term) deposits instead of the usual longer-term investments in life insurance funds. This underlines a more general concern about the quality of the advice given by banks. In this regard, the mystery-shopping campaigns conducted by the AMF consistently show- so far- that, whatever a client asks from its bank or whatever his or her financial objectives, position, and risk appetite might be, the bank advisor tends to advise an insurance investment product. This supports the decision of the AMF to continue with the mystery-shopping campaigns, in order to reveal possible shifts in behavior on the shop floor of banks. It also raises the question whether this approach in the eyes of AMF and ACP is sufficient for this specific development.

In addition, concerns were raised in regard to the remuneration of advisors employed by banks. Market participants indicated that these advisors are typically remunerated with a material part of their salary dependent on the volume of products that they sell. These respondents saw in this way an incentive being created that possibly could go against the interest of the customers of these advisors. They did not know of research done in this area to analyze whether the quality of advice indeed would suffer from this possible conflict of interest. In this regard, the authorities highlighted the existence of suitability obligations. In addition, even if the bonus is a material part of the salary, 50 percent of French

	banks and assurance companies are mutualist networks (“réseaux mutualistes”) that put a ceiling to the bonus of employees (and there is no indexation to the sales).
Principles for Self-Regulation	
<p>Principle 9. Where the regulatory system makes use of self-regulatory organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, such SROs should be subject to the oversight of the Regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.</p>	
Description	<p>Professional associations</p> <p>Pursuant to the COMOFI (Articles L. 531-8, L. 511-29, and L. 541-4), membership in a professional association is mandatory for credit institutions (511-29); investment firms, market operators, and clearing houses (531-8); and financial investment advisers (541-4).</p> <p>The main function of these associations is to represent the interests of their members vis-à-vis third parties, including the AMF. In addition, the associations may develop codes of conduct, which the association can ask the AMF to grant the “status” of professional standards. Pursuant to Article 314-2 and Article 325-16, the AMF must verify whether such codes are consistent with the applicable laws and regulations. When the AMF approves a code, implementation of the code becomes mandatory for the members and a breach could lead to an enforcement action by the AMF. The decision of the AMF to grant the status of professional standards must be published on the AMF website. In the case of the associations of investment advisers or FIAs, the development of a code of conduct is mandatory.</p> <p>Pursuant to the COMOFI (Article 621-9-2 (3)), the AMF may “delegate” the performance of specific supervisory actions to external supervisory bodies (such as auditors and other types of entities, including experts). However, in the French context, such delegation is only to carry out specific tasks (such as, for example, inspections), under the strict guidelines of the AMF and subject to their review; thus such delegation does not amount to delegation of the supervisory function. Even in the event that an inspection of a financial advisor is delegated to an association, the report needs to be first sent to the AMF for comments, and it is to the AMF the entity that would respond, including in respect to enforcement actions. However, so far, the AMF has not made use of such power to delegate inspections on these associations.</p> <p>As in any association placed under the law, these professional associations can expel members in case of non-compliance with payment of fees and as for associations of FIAs the law provides that they may also expel members in case of non-compliance with their codes of conduct. However, the law does not prevent an advisor from joining another association, as the number of associations is not limited. Only the AMF, through an enforcement action, could revoke the authorization of a financial advisor or impose enforcement actions on it.</p> <p>Associations with legal backing</p> <p>Pursuant to such provisions, there are currently two types of industry associations:</p> <p>Trade associations: which are members of the <i>Association Française des Établissements de Crédit et des Entreprises d'Investissement</i> (AFCEI) (see Article L. 531-8 and Article L. 511-29 of the COMOFI). Vis-à-vis securities markets, the following trade associations must be highlighted:</p> <p>The <i>Association Française de la Gestion Financière</i> (AFG): roughly 95 percent of asset managers belong to this association (there are two others associations, one</p>

specialized in private equity (AFIC) and the other in real state (ASPIM)). In addition to a code of conduct, the AFG has also developed guidance in connection with a few topics including corporate governance, and remuneration practices.

The *Association Française des Marchés Financiers* (AMAFI): all ISPs and the large banks belong to it. In addition to a code of conduct, the association has developed guidance for its members on a few topics, such as in regard to liquidity contracts. Currently, it is developing guidance in connection with grey markets.

the *Fédération bancaire française* (FBF)

Associations created for the representation of FIAs (see also Principle 12): these are also trade associations and their status is provided for by Article L 541-4 of the COMOFI. There are currently six associations of FIAs, but two of them concentrate the bulk of FIAs. Currently the following associations have been created:

Association nationale des conseils financiers (ANACOFI-CIF)

Chambre des indépendants du patrimoine (CIP)

Chambre nationale des conseillers en investissements financiers (CNCIF): It has roughly 1,450 member organizations and 2009 individuals,

Compagnie des CGPI,

Association des analystes conseillers en investissements financiers (AACIF),

Compagnie des conseillers en investissements, finance et transmission d'entreprise (CCIFte)

As part of the authorization of these associations, the AMF has required the submission of a program of operations. Overall, the program comprises two main areas of involvement with members: training, and a control of compliance with the code of conduct, which includes onsite inspections. The programs are accompanied by a description of the resources available, as well as an estimation of the target membership. There have not been formal denials of authorization for associations, but one entity withdrew its application after the AMF expressed concerns about lack of resources and a very limited target population. On an annual basis, the associations are required to send to the AMF a report on the performance of their program of operations.

In practice, the main function that these associations carry out is the training of members, as a way to elevate their professional standing. The AMF sees the control program associated to the code of conduct as one more element to elevate the professional level of the financial advisors. The control exercised by the associations does not constitute a critical element of AMF's supervisory approach; rather it constitutes an additional "alert" used by the AMF, such as for example, the complaints that the AMF receives from investors. In addition, AMF staff emphasize that the AMF cannot share information derived from its supervisory activities with these associations, as such authority has not been given by law.

Other associations with no legal backing

There are also trade associations representing the interests of issuers, such as the *Mouvement des entreprises de France* (MEDEF) and the *Association Française des Entreprises Privées* (AFEP) which represents the large listed companies. Such associations do not have a legal basis, and membership in them is not mandatory. Their main function is also to represent the interests of their members vis-à-vis third parties, including the regulatory authorities.

	<p>AFEP, for example, appears to be very active in such role. In addition, it reviews compliance of their members with the code of corporate governance. To do that, it reviews the reports of the companies and asks for clarifications, if necessary; then it publishes a report with statistics on compliance.</p> <p>Finally, there are also associations to represent the interests of investors (<i>UFC Que Choisir</i>, <i>Eurofinuse</i>, and <i>Euroinvestors</i>, <i>FAIDER</i>). Their role also is to represent the interest of investors vis-à-vis third parties, including the regulatory authorities—particularly the AMF.</p> <p>RMs and MTFs</p> <p>As will be further explained in Principles 34 and 36, under the current framework, RMs and MTFs have a market surveillance role focused on ensuring orderly trading (real time surveillance). At the same time, organized RMs and organized MTFs have a complimentary role: that of the AMF in market surveillance for purposes of detecting market abuse. In addition, as explained in Principle 14, RMs and organized MTFs have a role in ensuring compliance by issuers with their listing obligations, which include disclosure obligations. In connection with the latter, their role, however, is mostly focused on timely submission of information, while the AMF has a broader role on ensuring that such disclosure is adequate.</p>
Assessment	Not applicable
Comments	<p>Professional associations</p> <p>The mandatory membership in an association required by the legal framework for ISPs, PMCs, and FIAs, and the fact that the associations' codes of conduct can be approved by the AMF as professional standards, the compliance with which is mandatory for members raises the question of whether such professional associations should be considered SROs. In practice, only the associations of FIAs exercise a role that can be seen as supportive of the supervisory mandate of the AMF, as they conduct onsite inspections to members in connection with their conduct obligations. However, while an FIA association can suspend a member, the member could join another association, and only the AMF could take an enforcement action that would penalize that member or impact the member's license. Therefore, for purposes of French law they are not considered SROs.</p> <p>RMs and Organized MTFs</p> <p>Given their limited self-regulatory role, vis-à-vis the mandate of the AMF, the assessors do not consider that RMs and OMTFs are SROs for the purpose of their assessment against this Principle. However, in carrying out their services and functions, they are subject to oversight by the AMF/ACP. Such oversight framework is discussed in Principles 33 and 34.</p>
Principles for the Enforcement of Securities Regulation	
Principle 10.	The regulator should have comprehensive inspection, investigation and surveillance powers.
Description	<p>Supervision powers over ISPs</p> <p>Article L. 621-10 of the COMOFI and Article 143-1 of the RG AMF authorizes the <i>Direction des enquêtes</i> and the <i>Direction des contrôles</i> of the AMF to access any regulated entity's premises. The practice of the AMF is to give notice of an inspection; however, this is not a legal requirement. Thus, when a specific risk has been identified, the inspection is carried out without giving prior notice.</p> <p>In addition, the AMF has access to all relevant documents, including books and all records in whichever format they exist (Article. L. 621-10 of the COMOFI; Article. 143-2, 1° of the RG AMF), routinely and as part of a specific inquiry. Information may</p>

not be withheld from investigations on grounds of professional secrecy, except by “*auxiliaires de justice*” (mainly attorneys and bailiffs, Article L. 621-9-3 of the COMOFI).

Similar powers are granted by the COMOFI to the ACP. Article L. 612-2 provides the ACP with the power to supervise (“control”), i.e., take any administrative measure and impose sanctions on regulated entities. Pursuant to Article 612-24, the ACP can exercise both off and onsite supervision over regulated entities. Pursuant to Article L. 612-28, the ACP can extend onsite inspections to other entities “affiliated” to the entity under its supervision; in addition, it can request from regulated entities any information necessary to carry out its functions.

Power to conduct surveillance of trading platforms

The AMF has the authority to conduct surveillance of trading activity on RMs and MTFs (Article L. 621-9 of the COMOFI)

Record keeping obligations

Pursuant to Article L. 533-10 of the COMOFI, ISPs must keep records of all services and transactions undertaken by them that are sufficient to enable the AMF to monitor compliance with its professional obligations, and in particular to ascertain that the investment firm has complied with all obligations with respect to clients or potential clients. Article 313-49 of the RG AMF provides that the data mentioned in Articles L. 533-8 and L. 533-10 of the COMOFI have to be kept for at least five years.

Article L. 561-12 of the COMOFI clarifies that ISPs must retain clients’ account information for five years after the closing of clients’ accounts or the termination of business relations with them. Pursuant to this Article, ISPs are also to retain documents related to these clients’ transactions for five years from the date of completion.

French regulation stipulates that phone conversations of staff identified in RG AMF, such as traders on financial instruments or people, other than traders, who are involved in relationships with clients have to be recorded in order to ensure that transactions are lawful and comply with the clients’ instructions (Articles 313-51 and 313-52 RG AMF). It also provides that recording of traders’ telephone conversations have to be kept for at least six months, and no longer than five years.

Identity of clients

Article L. 561-5 of the COMOFI requires that, before entering into a business relationship, the ISPs undertake customer due diligence to identify the beneficial owner of the business relation through any appropriate process and verify this identification data through any submitted valid written document. Article R. 561-5 of the COMOFI lists the types of information to collect from natural and legal persons.

During an inspection, AMF inspectors have access to the identity of the clients of the ISP. In addition, when an inspection is carried out, inspectors can ask any third party to provide information about the clients of an ISP being investigated to verify the information provided by the ISP without asking the ISP directly. For example, the AMF may require from a bank the accounts that the clients hold in France either dormant or active, in relation with an inspection. Information may not be withheld from investigators on the grounds of professional secrecy.

Delegation/Outsourcing

Pursuant to Articles R. 621-31 and R. 621-32 of the COMOFI for the AMF, and R. 612-24 for the ACP, both supervisory authorities can use outside parties (another regulator or an expert) to carry out inspections or investigations.

	<p>In practice, the AMF has done so. Experts have been used in connection with “routine” inspections carried out on newly regulated entities, or when there is a very specific issue to check (for example, in connection with compliance of a FIA with AML regulation). Before outsourcing an inspection to a third party, the AMF organizes a public tender and checks that the third party does not have a conflict of interest with the regulated entity. In addition, the AMF appoints a inspector from its staff to supervise the work of that expert, and the expert is given a specific rulebook. Compliance with the rulebook is part of the contract between the AMF and the third party. If the AMF sees room for improvement in the third party’s processes, the AMF will impose the necessary changes to these processes. The third party is subject to the same disclosure and confidentiality requirements than those applicable to the AMF.</p> <p>The AMF has delegated some inspections of ISPs to the ACP, and of FIAs to the BdF. In such circumstances, regular meetings take place between the two authorities during the inspection. It may also be decided that the inspection be co-headed.</p> <table border="1" data-bbox="423 709 1325 995"> <thead> <tr> <th></th> <th>2008</th> <th>2009</th> <th>2010</th> </tr> </thead> <tbody> <tr> <td>Onsite inspections outsourced to third parties</td> <td>28</td> <td>60</td> <td>53</td> </tr> <tr> <td>Experts</td> <td>19</td> <td>20</td> <td>21</td> </tr> <tr> <td><i>Commission bancaire/ ACP</i></td> <td>9</td> <td>8</td> <td>12</td> </tr> <tr> <td><i>Banque de France</i></td> <td></td> <td>32</td> <td>9</td> </tr> <tr> <td>L’Institut d’Émission des Départements d’Outre-mer (IEDOM)</td> <td></td> <td></td> <td>11</td> </tr> </tbody> </table> <p>The AMF reviews the files of these third-party inspections. This can lead the AMF to reconsider its delegation policies. Where appropriate, the AMF trains third-party inspectors; for example, the AMF has trained inspectors at the BdF before they conducted conduct of business issues on FIAs. Given the increased importance of retail investor protection within the strategy of the AMF, it is expected the AMF will delegate less inspections to its peer regulators in these areas.</p>		2008	2009	2010	Onsite inspections outsourced to third parties	28	60	53	Experts	19	20	21	<i>Commission bancaire/ ACP</i>	9	8	12	<i>Banque de France</i>		32	9	L’Institut d’Émission des Départements d’Outre-mer (IEDOM)			11
	2008	2009	2010																						
Onsite inspections outsourced to third parties	28	60	53																						
Experts	19	20	21																						
<i>Commission bancaire/ ACP</i>	9	8	12																						
<i>Banque de France</i>		32	9																						
L’Institut d’Émission des Départements d’Outre-mer (IEDOM)			11																						
Assessment	Fully Implemented																								
Comments																									
Principle 11. The regulator should have comprehensive enforcement powers.																									
Description	<p>Investigation powers</p> <p>The AMF has broad investigation powers. The general powers in relation with investigations are stated in Articles L. 621-9, L. 621-9-1, L. 621-9-2, and L. 621-9-3 of the COMOFI. The AMF investigation powers apply to all natural and legal persons, and are not limited to licensed professionals, although added specific rules and regulations apply to them. Investigations are officially opened by the AMF’s Secretary General, or the Managing Director specifically delegated for this purpose, on the basis of notes provided, mainly by the <i>Division de la surveillance des marchés</i>, but also by other divisions.</p> <p>Pursuant to Article L. 621-10 of the COMOFI, the AMF has the power to:</p> <ul style="list-style-type: none"> - require any relevant information (data, information, documents, records) from any person involved in an investigation or who may have relevant information in relation to this investigation, whether regulated or not (Article L. 621-10 of the COMOFI). This includes data kept and processed by telecommunication operators and internet service providers. It also includes records of all funds and assets transferred into and out of bank, and brokerage accounts related to those transactions. 																								

- take statements from any person who may have relevant information in relation to this investigation. This includes, but is not limited to, the person(s) subject to an investigation.
- have access to business premises. They cannot access private homes, except with the prior authorization of a judge. The AMF can obtain, with a motivated request, a search warrant from a judge (Article L. 621-12 of the COMOFI) if there is a suspicion of insider trading, price manipulation, or dissemination of false information, as well as if the investigators need to search premises (homes and business premises) and seize documents.

Professional secrecy, including banking secrecy, cannot be opposed to the AMF investigators (or the entities which may assist the AMF in its investigations), except by attorneys and bailiffs (Article L. 621-9-3 § 1 of the COMOFI). Auditors cannot oppose professional secrecy to the AMF (Articles L. 621-9-3 § 2 and L. 621-22 of the COMOFI).

According to Article L. 642-2 of COMOFI, any person who obstructs an inspection or investigation carried out by the AMF may incur a criminal penalty of up to two years imprisonment and a fine of up to €300,000. The case is brought by the AMF to the competent Public Prosecutor. The AMF has actually used this right twice: in one case in which a regulated entity destroyed the traders recording tapes; and in another case in which a financial firm's manager unlawfully forged a document.

Measures that can be requested to the courts

Pursuant to Articles L. 621-13 and 14 of the COMOFI, the AMF can request the *Tribunal de grande instance* (civil Tribunal) to issue the following types of orders: (i) to freeze assets; (ii) to deposit a sum of money; (iii) to comply with laws and regulations (which can include both "negative" orders, i.e., cease and desist orders, as well as "positive" orders, i.e., to conform with the legal framework); and (iv) to prescribe a temporary ban from professional activities. The decision comes into force immediately as a provisional measure. The President of the Tribunal can take, even on his own initiative, all protective measures and impose a daily fine to be paid to the treasury in order to ensure the execution of the order. Civil orders can be entered with respect to a person who is subject to an AMF inspection or enforcement procedure.

Administrative sanctions

The AMF has the power to impose administrative sanctions according to Article L. 621-15 of the COMOFI. The enforcement procedure and the applicable sanctions are described in Article L. 621-15 and Article L. 621-17 of the COMOFI on specific sanctions for financial investment advisors. Facts that are more than three years old cannot be referred to the AMF Enforcement Committee if during this period of time no action has been taken in relation to their research, finding, or sanctioning (Article L. 621-15-I §2 of the COMOFI).

In case of an emergency, the AMF Board can suspend the activities of the intermediaries and market professionals against which sanction procedures have been initiated (Article L. 621-15-I §5 of the COMOFI).

Regulated entities

For any breach of their professional duties defined by the existing laws, regulations, and professional rules approved by the AMF, the sanctions are:

A warning, a reprimand, a temporary or permanent ban from performing all or parts of the services provided and, if applicable, the striking from the register mentioned in Article L 546-1 of the COMOFI (which lists among other professionals the FIAs) .

The AMF Enforcement Committee may decide, either instead of or in addition to those sanctions, to impose a fine whose amount cannot be higher than €100 million or 10 times the profit made, if any. This amount is sent to the guarantee fund of the person condemned or to the Public treasury.

The AMF Enforcement Committee may also ban a PMC from the list of approved PMCs, according to Article L. 532-12 of the COMOFI.

Natural persons placed under the authority or acting on behalf of one of the persons mentioned above

For any breach of their professional duties defined by the existing laws, regulations, and professional rules approved by the AMF, the sanctions are :

A warning, a reprimand, the temporary or permanent withdrawal of the professional card, and if applicable, a temporary or permanent ban from practicing all or parts of the services provided.

The AMF Enforcement Committee may decide, either instead of or in addition to those sanctions, to impose a fine which amount cannot exceed €15 million, or 10 times the profit made in case of insider trading, market manipulation, dissemination of false information, or any other violations mentioned in §1 Article L. 621-14 I of the COMOFI; or €300.000 or five times the profits made, in other cases.

For any other person

For any breach of a market abuse regulation (insider trading, price manipulation, dissemination of financial information), the AMF can impose a fine whose amount cannot be higher than €100 million or 10 times the profits made, if any.

General principles on the amount of the fine

Under the terms of the COMOFI, the amount of the administrative sanction must be commensurate with the seriousness of the breaches committed, and related to any advantages or profits derived from those breaches (principle of proportionality). In addition, when setting the administrative pecuniary sanction, the AMF Enforcement Committee must also abide by the principle that penalties must be individualized. When implementing this approach, the AMF Enforcement Committee must detail the grounds that determine the amount of the sanctions.

Sanctioning Procedure

Investigations are officially opened by the AMF's Secretary General, or one of the Managing Directors specifically delegated for this purpose, on the basis of internal report sent to him, mainly by the *Division de la surveillance des marchés*, but also by other divisions. Based on the findings of such investigation, the AMF Board decides whether to initiate a sanctions procedure. This decision is taken by one of the three *Commissions Spécialisées* of the Board. If the AMF decides to do so, such decision-with specific mention of the wrongdoings-is notified to the firm or individual. The investigation report and its annexes are also sent with this notification. After this, the chair of the Enforcement Committee will appoint a "Rapporteur" who prepares the case. This Rapporteur could be any of the members of the Enforcement Committee.

Following this appointment, the instruction period starts. All the documents gathered during the investigation phase and all the materials gathered during the Enforcement Committee phase are available to all the parties involved. The Rapporteur's work is independent from the Enforcement Committee, including its Chair. This is an important principle of the process, because the instruction phase and the judgment phase have to be completely separated. The instruction phase ends with a session of the Committee where the Rapporteur presents the case. Since the implementation of

the LRBF in October of 2010, these sessions are-in principle-public (except for reasons of public order, when the publicity given may jeopardize important business secrets or other secrets protected by law, as stated in Article R. 621-40 of the COMOFI).

The dates and times of the public meetings of the Enforcement Committee are on the Internet, yet without the names and topics of the cases. On the eve of a public proceeding of the Enforcement Committee, however, the names and cases can be seen on the front door of the AMF. Nevertheless, a number of cases including the name of individuals have hardly made the press because the published outcomes were anonymous, and also because the press did not find these cases to be significant.

During the public session the Rapporteur, the members of the Enforcement Committee, the representative of the treasury, a representative of the AMF Board, the firms or individuals suspected of wrongdoings, and their lawyers are all present. The names of firms or individuals suspected of wrongdoings are made public the day before the session at the entrance of the AMF's building. The Rapporteur presents his report orally, but it also has to be sent in written form at least one month in advance to the members of the meeting and the parties. After the presentation by the Rapporteur, the representative of the treasury may submit observations. The Board representative may also submit observations in support of the complaints made against the respondent. The respondent and his lawyer, if he has one, then present the arguments in defense. The Chairman of the Committee can hear any person he deems necessary. The respondent and his advisor are entitled to have the last word. The Secretary for the hearing draws up a short and very factual report (Art. R. 621-40 of the COMOFI), which is signed by the Chairman of the Committee (or the division), the Rapporteur, and the Secretary before being forwarded to Enforcement Committee members and treasury representative.

After this session has been closed, the judgment phase- which is not public-takes place. Only the members of the Enforcement Committee and an AMF employee, acting as Secretary for the hearing, are present; the Rapporteur and the representative of the treasury leave the room.

Since the new law (LRBF), the principle is that decisions of the Enforcement Committee are made public. In practice, prior to this law, the Enforcement Committee asked for publication in 90 percent of the cases. As in other European jurisdictions, the Enforcement Committee can decide not to make a sanction public, only in case the publication would have disproportional detrimental consequences on the markets, institution, or individuals concerned. It is very unusual that decisions are not public. Regularly, however, decisions are made anonymous to ensure the protection of the privacy of individuals. For the persons who have been sanctioned, the publication of the sanction is not anonymous, except in very special circumstances. For the persons who finally have not been sanctioned, the publication is mostly anonymous for natural persons and is possible for legal persons. For natural third parties, the anonymous publication is the principle.

In each decision, the sanctions Committee has to explain the rules, why the Committee has imposed a sanction, and the manner in which the rules have to be complied. The Enforcement Committee takes its educational mission seriously, since the Committee thinks it is important both for markets as a whole as well as individual ISPs to assure that the sanctioning process has a deterrent effect. It is their view that the industry and the public ought to understand why a sanction was imposed and how they can be compliant with the rules. According to the Enforcement Committee, compliance officers find these publications beneficial as they can point to them to support the substance of their internal guidelines, policies and procedures. The

Enforcement Committee may issue a press release with its decision in which it explains the decisions in a simple and straightforward way. The expectation is that, as a result, there will be fewer infringements of the rules.

Settlement powers

Since the LRBF was enacted on October 22, 2010, and came into force in September 2011, the Board of the AMF now also has the possibility to engage in a settlement procedure ("*composition administrative*"). The procedure is described in detail in Articles L. 621-14-1 and R. 621-37-1 to R. 621-37-4 of the COMOFI. It is only foreseen for breaches of professional rules and not for market abuse cases. Under a settlement procedure there is no acknowledgment of misconduct. According to this settlement process, the person charged commits to pay to the Public treasury a sum of money whose maximum amount is the maximum possible for the suspected violation. This agreement has to be accepted by the Board, and then homologated by the AMF Enforcement Committee. Once it has been homologated, the settlement agreement must be made public and puts an end to the procedure (Article L. 621-14-1 of the COMOFI). As of the time of the assessment, one settlement case had been signed between the Secretary General and a regulated entity, and homologation from the Enforcement Committee was pending. Five additional cases were being negotiated.

Referral to criminal authorities

Pursuant to the COMOFI, the AMF must inform the Public Prosecutor of any crime or misdemeanor that it discovers in the course of its functions, and transmit all information, acts, and statements in its possession in relation with it (Article L. 621-20-1 § 1 of the COMOFI). In cases where after an inspection or investigation has been carried out, and one of the charges notified to a person constitutes insider trading, price manipulation, or dissemination of false information, the AMF Board must immediately transmit the investigation or control report to the Paris Public Prosecutor (Article 621-15 of the COMOFI). Any Public Prosecutor may also obtain from the AMF the transmission of all information that the AMF may possess within the scope of its competence, the professional secrecy being not opposable to him (Article L. 621-20-1 § 1 of the COMOFI), with the exception of the documents obtained from foreign regulators, which can be transmitted only with the approval of this foreign regulator and for the purposes mentioned in this approval (Article L. 632-16 and Article L. 632-7 III of the COMOFI).

When criminal proceedings have been initiated on insider trading, price manipulation, or dissemination of false information, the AMF may exercise the rights of the plaintiff/complaining witness in the criminal proceeding. However, it cannot exercise at the same time the powers of sanction conferred by the COMOFI and the rights of the plaintiff, against the same person and for the same facts (Article L. 621-16-1 of the COMOFI).

Suspension of trading

The AMF has the power to order: (i) general suspensions of trading in a regulated market (Article L. 421-16-I of the COMOFI); (ii) Specific Suspension of Trading on a regulated System (Article L. 421-16-II of the COMOFI) for example, the decision to ban short selling of financial instruments was based on these powers; and (iii) Suspension of Trading on a Specific Financial Instrument (Article L. 421-15-I §2 of the COMOFI). In addition, it can request the market undertaking to de-list a specific financial instrument (Article L. 421-15-II §2 of the COMOFI).

Other measures

The AMF can also use the general powers of Article L. 621-14 of the COMOFI, and order a legal entity or an individual to put an end to practices contrary to laws and

regulations, and oblige that party to comply with laws and regulations (cease and desist orders).

ACP

Investigative powers

The ACP also has broad investigative powers (Article 612-24 of the COMOFI). It can:

- request any regulated entity to provide all the information and clarifications that it deems necessary to carry out its functions. It can request the submission of reports from the external auditors, as well as any accounting information.
- Summon any regulated entity to give testimony, as well as any other person whose attendance is necessary for the exercise of its functions.

Administrative measures

The ACP also has the power to impose a broad set of administrative measures on regulated entities, pursuant to Articles 612-30 to 612-37 of the COMOFI. Such measures may be:

- a warning, in order to prevent any breaches related to the best practice applicable in the financial sector;
- a formal notice, in order to require the ISP to remedy in an appropriate timeframe all breaches of obligations;
- a remedial action program, in order to restore or bolster the financial situation, improve the management methods, or ensure that the organization is suitable for the business or development plans of the ISP;

protective measures (placing under special supervision; restriction or temporary ban on executing certain operations; suspension, restriction, or temporary ban on the free disposal of all or part of the assets of the entity under supervision; order to suspend or limit the payment of surrender values or contract advances; restriction or ban on paying a dividend to shareholders or any other remuneration of company shares; suspension of one or more executive managers); or appointment of a provisional administrator. Such measures must be imposed under an “adversarial” procedure. However, Article 612-35 authorizes the ACP to take precautionary measures (which could be any of the protective measures described above) in emergency situations.

Sanctions

The ACP can also initiate a sanctions procedure. This may lead to any of the following: warning; reprimand; prohibition on certain transactions; temporary suspension of one or several managers; compulsory dismissal of one or several managers; partial withdrawal of authorization or approval; total withdrawal of authorization or approval or striking from the list of authorized persons (with or without appointment of a provisional administrator); or an administrative fine of up to €100 million. Following recent changes in the operation of the ACP Enforcement Committee, the procedures that lead to the imposition of a sanction at the AMF and the ACP are largely the same. Thus the description above applies broadly to the ACP.

Referral to the criminal authorities

As is the case for the AMF, the ACP must refer to the criminal authorities any findings that can constitute a criminal offense (Article 612-28 of the COMOFI).

	<p>Private remedies</p> <p>According to the general principles of civil and criminal law, private persons have the right to seek their own remedies through judicial procedures for misconduct relating to the securities laws-whether that is in criminal or civil matters-and obtain compensation from the Tribunals for the damages they allege that they have suffered. According to Article L. 621-16 I of the COMOFI, when a prosecution is instituted pursuant to Articles L. 465-1 and L. 465-2, the AMF may bring an independent action for damages. However, the AMF cannot in regard to the same person and the same facts, concurrently exercise the sanctioning powers it holds by virtue of the COMOFI and the right to take a civil damages action.</p> <p>Other systems of compensation exist. The <i>action en représentation conjointe</i>, described in the <i>Code de la Consommation</i> (Articles L. 422-1, L. 422-2 and L. 422-3) is an action which will be carried out by a recognized and approved consumer association in front of the appropriate courts and tribunals (civil or criminal) on behalf of several consumers, when their alleged prejudices have the same origin and are related to the same professional.</p> <p>More specifically, in the financial sector, two types of associations may bring legal action before the relevant courts on behalf of collective and-under certain conditions-individual interests of all or a category of their members having suffered direct or indirect injury (Articles L.452-1 and L.452-2 of the COMOFI). These associations are the associations for the defense of shareholders of listed companies (Article L.225-120 of the <i>Code de commerce</i>), which gather shareholders owning at least 5 percent of the issuer's capital and the associations for the protection of investors in securities and financial instruments. Furthermore, private persons may also refer to the AMF Ombudsman (Article L.621-19 of the COMOFI).</p>
Assessment	Fully Implemented
Comments	
Principle 12.	The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance, and enforcement powers and implementation of an effective compliance program.
Description	<p>Entities subject to supervision by the AMF and/or the ACP</p> <p>The chart below provides a quick summary of the type and number of regulated entities under the supervision of the AMF and the ACP (see Principle 1 for description of responsibilities).</p> <p>AMF</p> <p><i>Ongoing monitoring</i></p> <p>At the AMF, two departments are involved in ongoing supervision (not covering the onsite inspections): the <i>Division prestataires de services d'investissement</i> (DPSI); and the <i>Division produits et commercialization</i> (DPC). Together they comprise 36 people (16 and 20, respectively). Together they are involved in the reviewing of the alerts, the authorization of new funds, companies as well as new or changed documents (including marketing materials), and management teams, among others. Some of these staff are also involved in supervisory visits (i.e., visits within the context of supervision, not being part of the formal onsite inspections). These staff spends most of their time on ongoing supervision, such as authorizations and guiding companies where necessary, or on topics where they ask questions. At least 80 percent of their time is spent on this activity. For the FIAs, they are followed by the team of the <i>Division expertise juridique, doctrine opérationnelle et gestion complexe</i>.</p>

Products	
Listed companies	586 (Eurolist), 167 (Alternext)
CIS	12,182 €1,474 billion in AUM
Intermediaries	
ISPs	368 (roughly 100 IFs)
PMCs	590
FIAs	4,000
Trading venues	
RM	Euronext, Matif, Monep, BlueNext
MTFs	Alternext Paris, NYSE BondMatch, Marche Libre, Galaxy, MTS France, Powernext Derivatives, Alternativa

In particular, in the area of PMCs, the AMF operates a database with all the NAVs and other information regarding the roughly 10,000 funds that are offered by French PMCs, which allows it to closely monitor this sector, as described in Principle 24.

In addition, the ongoing supervision team conducts supervisory visits. These visits serve the purpose of following both the financial health of the PMCs as well as their compliance with conduct obligations. They can lead to a decision to reinforce supervision of a particular PMC. They usually do not lead to sanctioning procedures.

The topics for these visits are either selected based on themes that are given priority or signals that the AMF has received. The AMF is seen in the market to be strict on a range of topics (relatively to other countries, see also Principle 1): The use of front and back books in facilitation; the equal treatment of clients; investment advice to institutional clients; and product approval (especially in the area of highly complex products).

Supervisory Visits Conducted by the AMF on PMCs				
	2008	2009	2010	2011
Number of visits	56	80	84	100

Finally, as part of ongoing supervision also marketing materials from PMCs and ISPs are reviewed.

Inspections and market surveillance

From the FSAP of 2005, it follows that 46 people were engaged in inspection and investigation of both market conduct as well as business conduct. Of these, 30 were investigators and 16 inspectors. In market surveillance, there were 15 people active.

In the current organization of the AMF, there are about 25 investigators and about 20 inspectors, together 45 people. In the market surveillance there are now about 20 people engaged.

Inspections

The *Direction des contrôles* carries out both offsite reviews (called also inspections by the AMF) as well as onsite inspections.

The AMF conducts inspections (reviews and onsite inspections) on a risk basis. The AMF uses different sources of information to determine the entities to inspect.

Internally, it uses the incident database, which allows input from different divisions, including sanctions. External information includes the reports from regulated entities, as well as complaints. In the case of PMCs, the AMF develop a risk-scoring system, which is further described in Principle 24. For ISPs, a risk-scoring system is in the process of being developed, and the AMF expected that it will be implemented in 2012.

Based on the risk analysis the *DGAM* prepares an inspections proposal to the *Direction de contrôles*, which is in charge of conducting the inspections. The *Direction de contrôles* prepares an inspection work program, which summarizes the risks and the methods for the inspection, whether off-or onsite. The choice for carrying out and inspection offsite or onsite depends on the risks associated with the inspection, the type and number of documents requested for the inspection, and the type of inspection that is carried out. The number of inspections carried out over the past three years is as follows:

(In 2010, the offsite control team was 100 percent devoted to implement: (1) a new methodology on transactions reporting (in accordance with the AMF strategic plan); and (2) UCITS supervision.)

The table below provides a breakdown of the number of onsite inspections conducted on regulated entities by type of intermediary, as well as the number of post-inspections reports sent by the AMF. As indicated under Principle 9, the AMF has delegated many of these inspections to the BdF, the ACP and sometimes also outside experts.

Reviews and inspections conducted by the AMF			
	2008	2009	2010
Offsite reviews	108	76	n/a*
Onsite Inspections	64	77	69

Supervision of FIAs is still in development and not yet systematically set up. There is one person employed in the *Direction des enquêtes et des contrôles* and two persons since February 1, 2012 to conduct onsite inspections. The AMF did not conduct onsite inspections on this group until 2009, although the regulations date from 2005 and the first authorizations (*agrément*s) from end 2005. The current number of onsite inspections conducted is still very limited, especially when compared with the size of the population (roughly 4,000 FIAs). The AMF has delegated these inspections to the BdF (after having trained BdF supervisors on the conduct of business themes that were to be addressed). For the FIAs' inspections carried out by the AMF, a risk-based approach is used during the inspection (mainly based on complaints). A standard work program has been put together so that it can be applied to any FIAs' inspection. A frame of reference for each regulatory theme (financial analysis, selling of financial products, etc.) is used in order to carry out the FIAs inspections in a fast and efficient manner.

Onsite Inspections Conducted by the AMF								
	2008		2009		2010		2011	
	Insp ecti ons	Rep orts	Insp ecti ons	Rep orts	Insp ecti ons	Rep orts	Insp ecti ons	Rep orts
ISPs (other than PMCs)	29	35	21	17	35	24	8	23
PMCs	34	27	27	27	20	15	30	29
FIAAs	1	1	29	17	14	24	11	23
Total	64	66	77	80	69	58	49	63
Outsou rced	28		60		53			

(Inspections launched in a year will not necessarily lead to a report in the same year.)

On the other hand, current work by the professional associations is also very limited. While onsite visits are conducted by them (for example, CIP, the main professional association, conducts roughly 300 onsite visits a year); these control activities, however, do not have a formal status, as, for example, these associations do not have the powers to enforce the relevant professional rules.

Thematic work

Also, as described in Principle 31, following the new strategic plan the organization is also dedicating time to the identification of themes that may involve a series of intervention aimed at a whole market segment. This is, to some extent, a new approach that seems to be developed further by the AMF.

A clear example is the joint approach of the AMF and ACP on highly complex products, which was initiated in 2010. Another example is the theme inspection regarding structured investments in Greek debt that the AMF initiated in July 2011. Finally, in 2009, the AMF has tried to reverse engineer the conditions that were conducive to Madoff type situations. It has subsequently investigated three funds, of which one was found to be deficient in the requirements around fund selection. A file was sent to the *Commission spécialisée* resulting in a fine of €300.000.

Market surveillance

As further described in Principle 36, the AMF developed an automated alert system that identifies unusual transactions mainly in equity, listed derivatives, bonds (to some extent) on RMs and MTFs, but also OTC. The *Division surveillance des marchés* analyzes every year around 50,000 alerts resulting from the detection system and 150 suspicious transaction reports leading to supplementary investigations regarding around 215 cases and about 40 proposals for opening an investigation. The table below summarizes the information on investigations opened. It also includes information on investigations opened at the request of foreign authorities.

Compliance systems

The AMF requires ISPs to put adequate procedures and measures in place to prevent among other things, securities laws violation (Articles 313-1 and 313-2 of the RG AMF). Articles 313-6 and 313-7 of the RG AMF states that the corporate executive(s) periodically checks out if the procedures and measures in place are adequate within the regulated entities. Such compliance procedures are checked via onsite inspections.

Investigations Opened by the AMF				
	2007	2008	2009	2010
Investigations opened	92	97	76	73
Investigations closed*	96	95	80	73
Of which cases referred to the AMF Enforcement Committee	26	22	20	14
Nature of opened investigations 1/				
Market manipulation	2	4	4	6
Insider trading	38	30	24	25
Misrepresentation of material information	17	21	14	14
Others				3
International cooperation	50	55	40	36

1/ Investigations launched in a year will not necessarily be closed in the same year. In addition, one investigation can concern more than one type of breach.)

Investors' complaints

There are systems in place to receive and respond to customers complaints (see Principle 3).

In 2010, 1,400 requests were directed at the AMF Ombudsman, 3,600 requests were made to the ACP; and 15,000 phone calls were made to the information service of the *Pôle Commun*, of which 7,500 were directed at the AMF.

Enforcement of obligations by regulated entities

The AMF uses a combination of tools for enforcement.

On the formal side, the main mechanisms used are the *lettre de suite* and sanctions.

All onsite inspections are followed by a formal letter, the so called "*lettre de suite*." In 2011, there were 60 such letters from the AMF, 84 in 2010, and 64 in 2009. These letters-and the required follow-up by the regulated entity as well as the follow-up that the AMF provides-make both the letter and the process formal. In these letters, the AMF requests the entity to take certain actions to correct breaches and/or prevent future irregularities, within a specified timeframe. This letter has a formal tone and weight, and seems to be taken very seriously by most market participants. The AMF expects that appropriate follow-up is given by the regulated entity.

As for sanctions, there is evidence that the AMF is sanctioning the breaches that they have detected through their supervisory work. Nevertheless, the number of pecuniary sanctions seems to be relatively low given the size of the financial market (38 in 2009, 44 in 2010, and 43 in 2011).

(As a decision can concern different persons, there may be several sanctions therein. In addition, a sanction can be pronounced on the basis of different breaches which can include market abuse as well as other offences. When this was the case, the decision has been counted twice, i.e., under both categories).

Given that the number of sanctions altogether appears low, the number of sanctions on regulated entities is also low. AMF staff highlighted that AMF's approach is to allow time for ISPs to fully implement MiFID. However, the AMF provided some examples of sanctions for these types of breaches. For example, in one case the Enforcement Committee concluded that a firm had not performed due diligence on their "Madoff" investments. It was fined for €300,000 in 2011. Another example concerns a case in which a PMC had insufficient risk management practices and was not valuing the fund properly. For both counts, the firm received a fine of €300,000. In

both cases, the sanction procedure took about two years (i.e., in addition to the time required to start, conduct, and finalize the inspection).

Files Reviewed by the AMF Enforcement Committee			
	2009	2010	2011
Resulting from investigations (usually market abuse related)	24	20	24
Resulting from inspections	6	7	19

Decisions in which a sanction was imposed by the AMF Enforcement Committee			
	2009	2010	2011
Market-abuse related	15	14	9
Others	15	15	15

In regard to informal mechanisms for influencing behavior, especially with the larger ISPs and PMCs, the AMF keeps frequent contact with those to which advice is given. Also, the AMF frequently makes use of guidelines and best practices to provide guidance to market participants. However, the AMF seems not be systematically thinking about how to informally influence large groups of participants. This is especially relevant in the area of FIAs, and to some extent also the ISPs and PMCs, as was further explained in Principle 3.

Number of Sanctions Imposed by the AMF Enforcement Committee				
	2007	2008	2009	2010
Number of sanctions pronounced	65	84	45	50
Number of persons sanctioned	65	84	39	50
Reprimand	4	4	3	1
Warnings	3	4	4	5
Ban	2			
Fines	60	80	38	44
Fines in Euros	19, 894, 000	24, 715, 000	6, 345, 100	6, 936, 600

Enforcement in connection with issuers disclosure obligations

The AMF relies almost exclusively on injunctions to enforce compliance with timely submission of disclosure obligations, as described in Principle 16. In 2010, 18 petitions were sent to court for lack of dissemination of the financial annual report on time and 9 for the half-yearly report.

In connection with accounting standards, the AMF uses mainly recommendations and orders to disclose information to the public; thus, it is difficult to impose a sanction. In 2010, the AMF took the following enforcement actions:

- 11 issuers were asked to disclose additional notes to their financial statements;
- 137 messages were sent to issuers without requiring corrective action; and
- the *Division des affaires comptables* sent one request for investigation based on the identification of material mistakes in the application of IFRS.

In addition, since 2009, the AMF has issued general guidance/recommendations applicable to all issuers in connection with disclosures about financial instruments and the main estimates made by management.

ACP

As is the case in the AMF, the supervisory program for ISPs entails both ongoing monitoring as well as onsite inspections.

In the *Service des Entreprises d'Investissement*, there are 23 people working on offsite ongoing monitoring. In the *Délégation au Contrôle sur place des Etablissements de Crédit et des Entreprises D'investissement*, there are roughly 25 people working each on onsite inspection at ISPs.

Ongoing monitoring

As further described in Principle 30, the ACP has developed a risk assessment tool for purposes of ongoing monitoring of ISPs.

Onsite inspections

The ACP conducts inspections on ISPs, whether IFs or credit institutions authorized to provide investment services. The ACP aims to inspect each firm once every five to six years. Since they inspect the biggest firms more often, this objective may not be reached with all of the firms all of the time. The inspections are "systematic" ("full-fledged") in the sense that they cover the comprehensive issues at an ISP. At the same time, additional attention is paid to specific topics defined beforehand. The inspections of larger institutions are conducted on a consolidated basis, which means that the inspection covers all the subsidiaries and branches of the entity. The table below summarizes the number of inspections conducted on ISPs.

The number of actual entities inspected could be higher as inspections are conducted on a consolidated basis.

The impression from market participants is that the approach of the ACP is first of all more systematic, and to a lesser extent risk based.

Number of Onsite Inspections by the ACP			
	2009	2010	2011
IFs	11	12	9
Credit institutions authorized to provide investment services	12	11	5
Total	23	23	14

Enforcement

The ACP also sends "*lettres de suite*" to ISPs, as a result of onsite inspections. However, the letters of the ACP do not need to be followed up by a formal letter of the regulated entity. Sanctions are not usually applied.

The ACP has used its formal power three times on ISPs in the past few years. Once it has appointed once a provisional administrator; and twice it issued an instruction.

Moreover, as the ACP has explained they rely on a supervisory approach based on informal contacts and thus less on formal actions. At the ACP, the thought can still be heard that a sanction is a kind of failure of supervision. Nevertheless, recently they have imposed a fine for €0.8 million on a bank, and a warning in connection with deficiencies in internal controls related to AML.

	<p>Criminal enforcement</p> <p>As indicated under Principle 36, the violation of market abuse provisions also constitutes a criminal offense. However, the fines that the criminal courts can impose are actually lower than those that can be imposed by the AMF, as the new law (LRBF) has increased the maximum fine tenfold to €100 million, or 10 times the profits for the sanctions imposed by the AMF. The fines under criminal law are still limited to €1.5 million or €150,000 (depending on the cases), or 10 times the profits made. The result is that actually the Public Prosecutor may well impose a sanction that is less than the amount that the AMF could impose.</p> <p>The French legal framework allows for parallel proceedings, that is, it does not consider a violation of the nonbis in idem, the existence of both administrative proceedings and criminal proceedings on the same facts. However, according to a decision of the Constitutional Council, the maximum of both fines cannot be higher than the maximum of the fines applicable for each wrongdoing.</p> <p>Every year, the AMF sends an important number of reports to the public prosecutor of the “<i>Tribunal de Grande Instance de Paris</i>,” effectively the specialized unit dedicated to financial matters. In this regard, for example, the AMF sent 15 cases in 2011, 22 cases in 2010, 21 cases in 2009, and 21 in 2008.</p> <p>In practice, the criminal authorities usually wait until the administrative investigation has taken place to start their own investigation. As a result, such cases can take a long time. Furthermore, the number of convictions is very limited: 2 in 2010; 3 in 2009; and 6 in 2008. None of the persons convicted have been imprisoned (suspended sentences were given). In a few additional cases, convictions have taken place through broader statutes such as embezzlement, with cases leading to imprisonment. That is, for example the way the criminal authorities have handled a recent case that is currently on appeal. Limited resources and the complexity of the criminal offenses linked to the level of evidence necessary to convict (demonstration of intention) has affected criminal enforcement; however, authorities expect that criminal convictions will increase over time. The assessors acknowledge that such challenges exist in many jurisdictions.</p> <p>H3C</p> <p>There are roughly 600 PIE auditor firms in France. Of these, 180 PIE auditor firms were inspected in 2010. The H3C conducted 60 of those inspections, including 2 of the big 6 auditing firms. The remaining inspections were conducted by the CNCC, and they aimed at small-and mid-sized audit firms.</p> <p>In seven cases, the H3C has referred the results of the inspections to the public prosecutor, as the H3C cannot itself, impose fines. These cases are still under way. From earlier inspections done by the CNCC and CRCC, 28 cases were brought to a sanction in the regional disciplinary chambers in France; in 14 of these cases, an appeal was brought.</p>
Assessment	Partly implemented
Comments	<p>The grade stems from a number of challenges. First, the coverage of onsite inspections at the AMF, in particular, in connection with ISPs and FIAs. Logically, the coverage of the supervisory program for ISPs and FIAs has had an impact of the number of enforcement measures. The grade also takes into consideration the need for the ACP to move towards the use of more-formal enforcement mechanisms. Challenges in criminal enforcement have also been taken into consideration for the grade. All these issues will be further discussed below. Issues related to the H3C are also discussed under this Principle to provide a complete view of key challenges.</p>

AMF

At the AMF, the output in terms of inspections and enforcement cases aimed at ISPs and especially FIAs is relatively low. From the review of some of the files, it seems that inspections are of high quality and do get followed through to enforcement and sanctions. There is certainly a culture within the AMF showing willingness to pursue sanctions where appropriate. The driver of the relatively low amount of sanctions on conduct of business issues (as opposed to market conduct issues) seems to be resource related or perhaps priority (see also Principle 3). It is difficult to compare in detail the inspection and investigation capacity at the AMF in 2005 to 2011. Nevertheless, it seems the capacity has not really increased. Looking at the output from this perspective, the AMF could decide further to increase its capacity especially in the area of inspections (aimed at ISPs as well as FIAs).

In particular, the AMF should give more attention to the supervision of FIAs; while this group has been regulated since 2005 (according to a law adopted in 2003), there have been very few inspections on them. Based on the conversations with the authorities, it can be concluded that it is not really an option to rely solely on the self-regulatory force of the professional associations, because these organization do not have investigative and sanctioning powers. Moreover, AMF staff has made clear that the organization does not want that as either. The implication then is that the AMF has to quickly build up its own capability of supervising this heterogeneous group (see also Principle 31). This option should indeed be pursued with some priority, given the importance of the FIA distribution channel (according to respondents interviewed, roughly 30 percent of investments) and the need for a cross-distribution consistent approach in monitoring and improving the quality of the distribution channels. Early findings from, for example, the AMF mystery shopping efforts indicate that, in addition to differences, there are also a number of important common themes that require improvement in the bank and FIA channel. Moreover, the heterogeneous nature of the FIA population will require creative and smart influencing approaches, which probably can be more easily developed at the AMF (and subsequently used on other populations as well).

Finally, the enforcement process of the AMF is well designed with an extensive range of safeguards to protect the rights of individuals and institutions. It is therefore a very costly procedure. Thus, the newly acquired possibility to settle cases is welcome. Two issues probably deserve to be monitored as the AMF progresses on this path:

First, in other jurisdictions differentiated procedures exists for the enforcement of minor infringements vis-à-vis more serious infringements, as the latter require more extensive safeguards. While keeping in mind the full respect of the rights of defense, this idea may deserve some attention. Such reflections could usefully be based on examples observed in practice in certain countries that have proven to develop effective models.

Secondly, the Enforcement Committee of the AMF makes about one quarter of its sanctions anonymous before making them public. This practice is understandable from the point of view of the individual or regulated entity concerned; however, it suffers potentially from a drawback. For example, in one anonymous example, the press did not seem to pick up that there was insider trading by an individual. At least, the coverage of the case on the internet seemed both factual and limited. Perhaps, the AMF could try to find more ways to communicate its enforcements efforts and results in such ways that the preventive effect can be further increased. There are many ways of doing so, from using press releases, speeches by the Chairman, radio

	<p>or television interviews in which each time the timing, tone, and content are the critical variables to get right. Typically, regulators tend to be very careful in this area or even shy away from it; however, from an effectiveness point of view, using media can deliver measurable results.</p> <p>ACP</p> <p>As already noted under Principle 3, the issue of the low enforcement output at ACP is not so much their capacity, as having in total about 60 people working on ISPs should suffice. Historically, based on an ongoing and constructive dialogue, the approach and philosophy of the ACP so far seems to have been different from the one at AMF. Indeed, a preference to preventive actions is given by the ACP. Such choice, which is justified regarding the scope of its missions (i.e., prudential supervision and ensuring financial stability), explains the lack of visibility of the enforcement area. However, taking into account the post-crisis environment, the ACP could consider a shift towards formal influencing also using sanctions. In addition, as indicated in Principle 3, the ACP would benefit from reviewing its risk-based approach particularly in connection with its inspection program.</p> <p>H3C</p> <p>The assessors are concerned about the limited resources of the H3C and the impact that they might have on the effectiveness of its supervisory program. In 2011, having to conduct directly around 60 PIE auditor firms' inspections-of which 2 were large, internationally operating firms-with a team of 14 inspectors plus their director was a daunting task. Now that the H3C has set itself the understandable objective of each year inspecting the big six auditing firms, it seems its current capacity needs to be increased fairly quickly and significantly. For inspections at the big six to be effective requires at least 2,000 man hours or more.</p> <p>Finally, the assessors are concerned about the fact that-unlike the other regulators-the H3C does not have a sanctions procedure and Committee. The fact that the H3C has to go through the public prosecutor to, for example, fine an auditor firm-seems at odds with the possibilities the other regulators have, and probably will seriously hamper-even after increasing its staff-the capacity of the H3C to enforce its regulations (see also Principle 19).</p>
Principles for Cooperation in Regulation	
Principle 13. The regulator should have authority to share both public and non-public information with domestic and foreign counterparts.	
Description	<p>Domestic cooperation</p> <p><i>Legal foundation</i></p> <p>The COMOFI provides the legal foundation for domestic cooperation. Different provisions authorize the exchange of information between the supervisory authorities, supervisory authorities, and financial intelligence unit, and between the supervisory authorities and judicial authorities.</p> <p>Cooperation between the supervisory authorities and similar authorities: Article L. 631-1 of the COMOFI requires the BdF, the ACP, and the AMF to cooperate, and to provide to each other the necessary information to fulfill; their respective mandates. It also authorizes the ACP, the AMF, and the H3C to disclose to each other the information necessary to exercise their mandates. Finally, it authorizes the BdF, the ACP and AMF to cooperate with other entities that have functions in</p>

connection with securities markets, including deposit guarantee funds, market undertakings, and the clearing houses.

Cooperation with the financial intelligence unit: Pursuant to Article L. 561-30, the supervisory authorities must cooperate with the financial intelligence unit competent for money laundering activities, called "TRACFIN."

Cooperation with the judicial authorities: Pursuant to Article 621-20 of the COMOFI, the AMF must inform the Public Prosecutor about any crime or misdemeanor in the area of its competencies and provide all the information, acts and statements in relation thereof (Article L. 621-20-1 § 1 of the COMOFI). In addition, if after an inspection or investigation one of the charges constitutes insider trading, price manipulation or dissemination of false information, the AMF Board must provide the Paris Public Prosecutor with the investigation or control report. The AMF Board may decide if this transmission must be made public (Article L. 621-15-1 of the COMOFI) If the Paris Public Prosecutor decides to prosecute, the AMF must be informed without delay. The Paris Public Prosecutor may transmit to the AMF, with or without its prior request, the copy of any document of a procedure in relation with the facts transmitted. Finally, any public prosecutor may also obtain from the AMF all information that it may possess within the scope of its competence, as professional secrecy may not be asserted against the prosecutor (Article L. 621-20-1 § 2 of the COMOFI).

Cooperation with the CRE: The LRBF of 22 October 2010 entrusted the AMF, in cooperation with the CRE, with the task of supervising and monitoring the CO2 emissions markets.

Scope of cooperation

None of the provisions stated above require any external approval for the provision of information.

In particular, in connection with cooperation between financial supervisors, Article 631-1 does not limit the type of information that the authorities can share, as long as it is necessary to accomplish their respective mandates. Therefore, the supervisory authorities can share information in all the matters required by IOSCO, including matters of investigation, enforcement, surveillance, and issuers and identification of persons who own nonnatural persons in the jurisdiction. In addition, pursuant to the same provisions, the supervisory authorities can share information and records identifying the person or persons beneficially owning or controlling bank accounts related to securities and derivatives transactions and brokerage accounts as well as the necessary information to reconstruct a transaction, including bank records.

Confidentiality

Pursuant to subsection II of Article L. 621-4 II of the COMOFI, the members and staff of the AMF and ACP are bound by professional secrecy concerning all facts, actions, and information brought to their attention in the course of executing their professional duties. The violation of professional secrecy constitutes a criminal offense punishable by one year's imprisonment and a fine of €15,000. (Article L. 642-1 of the COMOFI and Article 226- 13 of the Penal Code).

Article L. 631-1 III of the COMOFI specifies that all information shared between the relevant domestic authorities is covered by professional secrecy (under the rules of the authority that provided the information). However, professional secrecy obligations cannot be asserted against the judiciary authorities acting in a criminal procedure or in a judiciary liquidation of one of the persons mentioned in Article L.

621-9 (Article L. 621-4 II §2). Nevertheless, pursuant to Article L. 632-16 of the COMOFI, in the case that the information was initially transmitted by another foreign authority, the requesting authority can only transmit it to the judiciary authorities with the explicit agreement of the competent authorities which transmitted them and, if need be, only for the purposes for which these authorities have given their agreement.

International cooperation

Legal foundation

The COMOFI sets the framework for international cooperation. There are differentiated provisions for European Community (EC) or European Economy Area (EEA) member states versus non-EC or non-EEA members.

The EC or EEA Member States: The AMF and the ACP are required to cooperate with an authority (Articles L. 632-1 and L.632-16 of the COMOFI): exercising similar missions to the ones carried out by the AMF and the ACP; and under the conditions that the foreign Authority is subject to professional secrecy rules similar to those applicable to the AMF.

Authorities which are not from European Community or are not EEA Member States: The AMF and the ACP can sign agreements for cooperation and exchange of information with a foreign authority (Article L. 632-7 and Article L. 632-16§2 of the COMOFI), if the following conditions are met:

- the requesting authority carries out similar duties;
- the professional secrecy rules applicable to the foreign regulator are similar to those applicable to the AMF or ACP, respectively; and
- there is reciprocity.

Refusal to cooperate

Pursuant to Articles L. 632-5 and L. 632-16§3 of the COMOFI, the AMF and the ACP may refuse to satisfy any requests for information made:

- if satisfying, the request might lead to an actual breach of the sovereignty, the security, the essential economic interests, or the public order in France;
- if criminal proceedings have been undertaken in France on the basis of the same facts and against the same persons; and/or
- when those persons have already been condemned by a final judgment on the basis of the same facts.

Scope of cooperation

The provisions described above do not require any external approval for the AMF and the ACP to be able to cooperate with foreign regulators. For cooperation with EC or EEA member states, Article L. 632-6 §1 of the COMOFI explicitly establishes that cooperation cannot be refused if the alleged conduct does not constitute a breach within France. There is no similar provision for cooperation with other foreign authorities; however, AMF staff consider that the provision for grounds for refusal stated above would apply (pursuant to Articles L. 632-5 and L. 632-16§3 of the COMOFI). Moreover, the AMF is a signatory to the IOSCO (MMOU) (since 2002), which explicitly states (Article 7c) that “assistance will not be denied based on the fact that the type of conduct under investigation would not be a violation of the Laws and Regulations of the Requesting Authority.”

Finally, the provisions stated above do not impose limitations on the type of information that can be shared, and therefore can include all the matters required by

	<p>IOSCO, including matters of investigation and enforcement, surveillance, and issuers and identification of persons who owns nonnatural persons in the jurisdiction. In addition, pursuant to the same provisions, the supervisory authorities can share information and records identifying the person or persons beneficially owning or controlling bank accounts related to securities and derivatives transactions and brokerage accounts as well as the necessary information to reconstruct a transaction, including bank records. Furthermore, in the French legal framework, there is no legal obligation for the financial institutions to notify the owner of the account (whether a legal or natural person) of such request of information. Furthermore, in practice, in some highly sensitive cases, the AMF would include a warning to the financial institution prohibiting it from disclosing such request.</p> <p><i>Confidentiality</i></p> <p>Information sharing with foreign regulators is bound by the same confidentiality provisions as domestic cooperation.</p>
Assessment	Fully implemented
Comments	
Principle 14.	Regulators should establish information sharing mechanisms that set out when and how they will share both public and non-public information with their domestic and foreign counterparts.
Description	<p>Information sharing arrangements</p> <p><i>Domestic cooperation</i></p> <p><i>Legal foundation</i></p> <p>Cooperation among the financial supervisors is mainly governed by Article L. 632-1-1 of the COMOFI, which requires them to cooperate for purposes of carrying out their mandates. There is no explicit reference to information-sharing arrangements; however, AMF staff considers that the broad terms of such provisions provide the foundations for such arrangements.</p> <p><i>Practice</i></p> <p>In practice, several bilateral agreements have been signed between the AMF and the ACP with other domestic authorities.</p> <p>The AMF and H3C signed an agreement on January 11, 2010, concerning periodic inspections of statutory auditors. The agreement sets out practical arrangements for the AMF's assistance in periodic inspections and establishes the terms for information-sharing by the two authorities when discharging their respective duties. An agreement was signed between the ACP and the H3C in April 2011 to set the terms of the exchange of information between the two institutions.</p> <p>Under an agreement signed in 2005, the regional directors of the BdF are also the regional representatives of the AMF and can take part in AMF missions within the limits of the activities that the AMF is entitled to delegate to them. Moreover, under the terms of a memorandum of understanding with the BdF, the AMF can call on the BdF regional divisions to carry out supervisory missions. The AMF Chairman can also ask the regional delegates of the BdF to represent him at regional events relating to financial markets. Annual meetings are organized with regional delegates to review AMF/BdF cooperation and the events of the past year, and raise awareness about major regulatory developments. In the course of these meetings, the regional delegates are briefed by the heads of AMF divisions.</p> <p>The AMF and the ACP signed an agreement on April 30, 2010, governing the operation of the Joint Unit (<i>Pôle Commun</i>) that the two authorities have set up to enhance the oversight of financial product marketing. The objective of such</p>

mechanisms is to work towards a harmonized approach in connection with the distribution and marketing of products with an investment content. The scope of this cooperation is further discussed in Principle 1.

Based on Article L. 621-21 of the COMOFI, an agreement has been signed between the AMF and the CRE on December 10, 2010 concerning information sharing, control and surveillance of markets for greenhouse gas emissions quotas, electricity, and natural gas and their derivatives.

A partner agreement has been concluded between the AMF and the ARPP on May 18, 2011. This agreement sets out the cooperation between these two regulators regarding the advertising made for financial products. This agreement establishes cooperation, regular meetings, and information exchange between the two authorities.

An agreement was signed between the AMF and the CRE which covers the supervision of greenhouse gas emission allowances, electricity, and natural gas and their derivatives. This agreement allows both regulators to share their respective information and expertise to identify the risks factors on these markets.

Cooperation with foreign regulators

Legal foundation

Article L. 632-1 of the COMOFI explicitly defines the AMF or the ACP able to cooperate with EC or EEA member states. In the case of non-EC or non-EEA member states, Article L. 632-7 I and Article L. 632-16 §4 of the COMOFI explicitly authorize the AMF and ACP to enter into information-sharing arrangements. No external approval is needed for such arrangements to become effective. In such case, before signing an information-sharing agreement, the AMF or the ACP would review that the confidentiality provisions to which the foreign authority is bound are consistent with the French legal requirements.

As of November 2011, the AMF has signed 47 bilateral agreements, 1 European agreement (the CESR/ESMA MMOU) and 1 international multilateral agreement (the IOSCO MMOU). At the present time, about 80 regulators are also signatories of the IOSCO MMOU.

As of November 2011, the ACP had signed 22 bilateral agreements, 1 international multilateral agreement (IAIS MMOU) and 2 European MoUs specifically dedicated to crisis management situations. The first one was signed on March 2003 between the banking supervisors and the central banks of the EU. The second one was signed on April 2005 between the financial supervisory authorities, central banks, and financial ministries of the EU (the revised version of this latter MoU was agreed at the informal ECOFIN of April 4, 2010). One of its aims is to establish a set of common principles in the management of cross-border crises after the crisis exercise carried out in

April 2006 highlighted the difficulty in burden-sharing issues and systemic assessments (see the report to the EFC of September 2006).

Practice

Domestic cooperation

Formal arrangements for cooperation between the AMF and the ACP are discussed in Principle 1. Formal arrangements for cooperation between the H3C and the financial authorities are discussed in Principle 19. In regard to ISPs and MTFs, the law establishes one formal mechanism of coordination, in the form of a consultation process at the moment of authorization. There are no formal arrangements for the exchange of information in regard to ISP supervision, during which the authorities have shared competencies; but, in practice, informal arrangements exist in the form of meetings and regular exchange of information. Furthermore as explained in Principle 10, in practice until recently, the AMF delegated a significant part of its onsite

inspection plan to the ACP. There are no formal arrangements for cooperation among the AMF and the ACP in regard to supervision of market infrastructure; but-as in the case of ISPs-informal mechanisms do exist, including regular meetings among the AMF and the ACP, and ongoing sharing of reports submitted by the regulated entities as well as reports prepared by the supervisory authorities. Such mechanisms are further discussed in Principle 34.

International cooperation

The AMF is the point of contact for securities regulators for matters under its competence. If a request for information is on a matter which falls outside the AMF scope of competence, the foreign regulator would need to channel it to the ACP; but, in the event that the AMF receives such a request (for example, on prudential information of an ISP), the AMF can intermediate and does it (c.f. recently with FINRA), and would try to help the foreign regulator as much as it can. AMF staff explained that these situations occur rarely. If a foreign securities regulator wants to obtain information on prudential matters, it cannot use the IOSCO MMOU, as the ACP is not a signatory to this agreement, and the foreign regulator would need to send its request directly to the ACP.

The AMF has a dedicated team within the *Cellule internationale of the Direction des enquêtes et des contrôles* in charge of dealing with international requests (three staff). All requests are channeled through the department. If the information requested is in the files of the AMF, it is sent directly to the foreign requesting authority. If the information is not in the files and relates to issues that would require the information to be obtained from third parties -such as requests in connection with market abuse-, the AMF would need to open an investigation in order to have the legal powers to request information from these third parties. The AMF is authorized by law (Article 632 ss of the COMOFI) to conduct such type of investigations on behalf of foreign regulators, regardless of the existence of an independent interest in the matter. In this context, the investigators would have the same powers as for any domestic investigation. Therefore, it is possible to ask for any type of documents, and to take statements of any person. If the information requested by the foreign regulator is more specifically related to rules of conduct, the AMF can conduct an onsite inspection on behalf of the foreign regulator.

In 2008, the AMF received 182 requests from foreign counterparts, 138 requests in 2009, 128 requests in 2010, and 168 in 2011. The AMF informed the assessors that no requests for information have been denied.

The chart below summarizes request concerning information already in the files of the AMF. Most of these requests concern fit and proper information.

	Number of requests for information on intermediaries	Processing time (in number of working days)
2008	96	23
2009	72	19
2010	65	18
2011	99	16

ACP

The ACP does not have a centralized unit to deal with requests for information; therefore, the ACP does not keep statistics on the number of requests received. In practice, the foreign regulators usually channel their requests directly to the control

	<p>departments who address them directly. The ACP provided examples of request for information received from foreign regulators and the way it dealt with such requests. In addition, the ACP highlighted that many times such requests are part of a fluid relationship, for example, as part of the colleges of supervisors for the major bank groups. Such type of cooperation is analyzed in the BCP assessment.</p> <p>Cooperation in the context of Euronext and LCH Clearnet</p> <p>Colleges of supervisors have been created for these two infrastructure providers. They are discussed in more detail in Principles 34 and 37. Colleges in connection with banking groups are discussed in the BCP assessment.</p>
Assessment	Fully implemented
Comments	<p>Mechanisms of cooperation and coordination between the AMF and the ACP appear to be working well. Furthermore, as indicated in Principle 1, there has been additional progress since the initial assessment towards achieving a consistent approach for the regulation and supervision of distributors and marketing of investment like products—although more is still needed. The MOU between the AMF/ACP and the H3C provides a robust framework for cooperation, including a sensible approach for AMF/ACP's assistance in connection with the quality review of auditors of listed companies.</p> <p>At the international level, the statistics and examples provided by the AMF lead the assessors to conclude that the AMF has actively cooperated with other regulators, within reasonable timeframes. The need to open an investigation for the provision of information not currently in the files, does not appear to have created any obstacle for cooperation either, as inferred by the number of investigations concluded on behalf of foreign regulators (see Principle 15). In the case of the ACP, the conversations with the authorities lead to conclude that they have been responsive to requests for information; however, it would be beneficial if the ACP establish some control mechanism that allows it to monitor whether that cooperation is being provided on a timely manner.</p> <p>The colleges for Euronext and LCH Clearnet appear to be working well—however the evaluation of the latter arrangement within this assessment was limited.</p>
Principle 15.	The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.
Description	<p>Article L. 632-1 <i>et seq.</i> of the COMOFI, explicitly authorizes the AMF and the ACP to conduct surveillance, monitoring and investigations at the request of foreign authorities who have similar powers. In the case that the request comes from a non-EEA member state, reciprocity is also required (see Article L 632-16, for the AMF, and Article L. 632-7 <i>et seq.</i> for the ACP).</p> <p>Pursuant to, respectively, Article L. 621-10 and L. 612-24 of the COMOFI, the AMF or ACP investigators- who carry out investigations on behalf of foreign regulators-have the same powers and may obtain the same kind of information as they can do domestically, which means that they can request any document, regardless of its form, including bank records, telephone records, and the data held and processed by telecommunications operators and internet services providers. They can obtain information related to financial conglomerates. They can also obtain testimony from third parties, although not under oath. The AMF can also obtain court orders on behalf of foreign counterparts. (Article L. 621-13 of the COMOFI describes the types of court orders that the AMF can request) which includes freezes).</p>

	<p>Practice</p> <p>The following table summarizes requests for information in connection with market surveillance, which required the opening of an investigation by the AMF.</p> <p>There has been only one request for freeze of assets. In 2011, the AMF-at the request of a foreign regulator- obtained a freezing injunction, in order to freeze the assets held in France by an individual who was under investigation by the foreign regulator. There have not been requests for other type of court orders.</p> <p>As indicated above certain requests for information are channeled directly by the ACP. The ACP provided evidence that it has responded to such requests.</p> <table border="1" data-bbox="440 583 1320 835"> <thead> <tr> <th></th> <th>Number of investigations opened on behalf of foreign regulators</th> <th>Processing time (in number of working days)</th> </tr> </thead> <tbody> <tr> <td>2008</td> <td>55</td> <td>37</td> </tr> <tr> <td>2009</td> <td>40</td> <td>39</td> </tr> <tr> <td>2010</td> <td>36</td> <td>24</td> </tr> <tr> <td>2011</td> <td>41</td> <td>30</td> </tr> </tbody> </table> <p>The table below summarizes requests for testimony.</p> <table border="1" data-bbox="453 915 1317 1146"> <thead> <tr> <th></th> <th>Number of interviews conducted by the AMF on behalf of foreign regulators</th> </tr> </thead> <tbody> <tr> <td>2008</td> <td>1</td> </tr> <tr> <td>2009</td> <td>3</td> </tr> <tr> <td>2010</td> <td>4</td> </tr> <tr> <td>2011</td> <td>10</td> </tr> </tbody> </table>		Number of investigations opened on behalf of foreign regulators	Processing time (in number of working days)	2008	55	37	2009	40	39	2010	36	24	2011	41	30		Number of interviews conducted by the AMF on behalf of foreign regulators	2008	1	2009	3	2010	4	2011	10
	Number of investigations opened on behalf of foreign regulators	Processing time (in number of working days)																								
2008	55	37																								
2009	40	39																								
2010	36	24																								
2011	41	30																								
	Number of interviews conducted by the AMF on behalf of foreign regulators																									
2008	1																									
2009	3																									
2010	4																									
2011	10																									
Assessment	Fully implemented																									
Comments	<p>The powers granted to the AMF and ACP are in line with the IOSCO principles. Furthermore, in some areas they exceed the requirements of IOSCO, for example, in connection with the freeze of assets. In practice, it appears that the bulk of assisted cooperation takes place at the level of the AMF—where the statistics evidenced that the AMF has actively and effectively assisted foreign regulators. However, as indicated in the previous principle, it is important that the ACP puts in place mechanisms to monitor whether cooperation is taking place effectively and on a timely basis.</p>																									
Principles for Issuers																										
Principle 16.	There should be full, accurate, and timely disclosure of financial results, risk, and other information that is material to investors' decisions.																									
Description	<p>Introduction</p> <p>As in other countries in Europe, disclosure requirements for the issuers of public offerings or publicly traded and the role of the AMF in the review of compliance with such obligations vary depending on the type of market that the issuer is admitted to:</p> <p>Issuers admitted to trading in a RM: these issuers are subject to the most stringent disclosure obligations. Verification of compliance with such obligations is mainly the responsibility of the AMF. Currently, there is one regulated cash market: Euronext. As at December 31, 2010, there were 617 companies listed on NYSE Euronext-Paris (574 French companies and 43 foreign companies).</p>																									

Issuers admitted to trading on an OMTF: these issuers are subject to the same disclosure obligations as the first tier at the moment of the offering, but have less stringent periodic obligations. The level of the involvement of the AMF in regard to compliance of the companies' disclosure obligations is roughly similar to that in the first case. Currently, there is one OMTF where equities are traded, which was created in 2005: Alternext. As at October 2011, there were 169 companies admitted to Alternext.

Issuers admitted to trading on a MTF: In this case, these issuers are only subject to the prospectus requirement if they initially conducted a public offering. Periodic obligations and ongoing obligations are not prescribed by the legal framework, and would stem only from the "listing" contract with the MTF. The AMF is not involved in ensuring compliance with such requirements; this obligation is the sole responsibility of the MTF. Currently there are three non-organized cash MTFs: *Marche Libre*, *Alternativa*, and *MTS*. *Marche Libre* has roughly 250 issuers and *Alternativa* has 30; *MTS* has only a handful of non-sovereign bond issuers. Very few companies have made a public offer on the *Marche Libre* since late-2006. During this period there were three IPO public offers and four other public transactions opened to shareholders.

Disclosure obligations at the moment of the offering

Equity and debt issuers of public offering or admitted to trading on a RM or Organized MTF

Pursuant to Article 412-1 of the COMOFI, any issuer of public offering or whose securities are admitted to trading in a RM must prepare a prospectus. Such a prospectus is subject to pre-approval by the AMF. In addition, pursuant to Article 212-38-1 of the RG AMF, the AMF also reviews the prospectus of offerings of mutual and cooperative banks (about 80 approvals in 2011) although they are not covered by the Prospectus Directive, as they are not considered financial instruments.

Pursuant to the RG AMF an offering of financial instruments does not constitute a public offering if one of the following characteristics is present: (i) the total amount is less than €100,000 or the foreign currency equivalent; (ii) the total amount is between €100,000 and €2.5 million or the equivalent, and the transactions concerns financial securities accounting for not more than 50 percent of the capital of the issuers; (iii) the transaction is intended for investors acquiring at least €50,000 worth or equivalent, per investor, per transactions; and (iv) the transactions concerns securities with a minimum denomination of at least €50,000.

Article 212-7 of the RGAMF establishes that the prospectus must contain all information that is necessary, depending on the nature of the issuer and of the financial securities being offered to the public, to enable investors to make an informed assessment of the financial position of the issuer as well as of the rights of the securities being offered and the conditions in which they are offered. The format of the prospectus must comply with the schedules and building blocks referred to in European Regulation 809/2004 of April 29, 2004, implemented directly into French law on July 1, 2005. This means that the prospectus must include all the information requested by the Principles, in particular: information about the issuer and its business, substantial holdings, management, and related party transactions; risk factors; as well as financial information, including financial statements. The AMF developed Instruction 2005-11 of December 13, 2005, to provide additional guidance on the content of the prospectus and documents that must be filed with the AMF. In addition, ESMA's predecessor (CESR) produced a series of questions and answers (Q&A), which reflect common positions agreed by ESMA Members. CESR published its first Prospectus Q&As in July 2006 and the last update is from April 2011.

The prospectus must include a summary note (Article 212-8 of the RG AMF). The summary note must convey-in a brief manner and in non-technical language-the essential characteristics and main risks associated with the issuer, the guarantors, (if any), and the financial securities being offered to the public or for which admission to trading on a regulated market is sought. The AMF developed a recommendation on how to draft a summary note in 2007.

Securitization funds whose securities are offered to the public or admitted to trading a RM or OMTF

Chapter I bis (Articles 421-17-1 to 421-17-18) of the RG AMF, Book IV, Title II details disclosure requirements for securitization funds whose securities are offered to the public or admitted to trading on a regulated market or an OMTF. Pursuant to such provisions, securitization funds are subject to the obligations stated in Articles 223-1 A to 223-10-1 of the RGAMF, which-for the purposes of this section-means that securitization funds that are offered to the public or admitted to trading are subject to the prospectus requirement.

The AMF has published Instruction No. 2011-01 of January 11, 2011, which provides additional guidance in connection with the content and dissemination terms of the prospectus and of the periodic reports applicable to these funds. Finally, AMF has published a series of Q&As from the AMF on securitization funds (AMF Position No. 2011-02 of January 11, 2011).

Approval process

Pursuant to Article 212-20 of the RG AMF the draft prospectus must be submitted for approval by the AMF; within the approval process, the AMF can ask questions or clarifications, and even ask that additional information be incorporated (Article 212-21). Pursuant to Article 212-20, it is authorized to ask for additional information from the statutory auditors or ask that an audit be carried out by an external specialist if it considers that the statutory auditor has not fulfilled its obligations. For first-time issuers, approval once the documents are complete must take place within 20 trading days (10 for other issuers).

Supplement to the prospectus

Pursuant to Article 212-25 of the RG AMF, an issuer must submit to the approval of the AMF a supplement to the prospectus in relation to any significant new factor, material mistake, or inaccuracy relating to the information included in the prospectus that could materially affect the assessment of the financial securities and arises or is noted between the time that approval is obtained and the closing of the offer or the start of trading on a regulated market, as the case may be. The summary note, and any translation thereof, shall also be supplemented if necessary to take into account the new information included in the supplement. The AMF shall issue its approval within seven trading days, as specified in Articles 212-20 to 212-23 (RG AMF). The document shall be published and disseminated in the same way as the initial prospectus.

For debt issues, if the final terms of the offer are not included in either the base prospectus or supplemental note, the final terms shall be provided to investors and filed with the AMF for transaction, as soon as practicable and-if possible-before the offer is launched (Article 212-32). In such cases, the provisions of Point 1° of Article 212-17 are applicable. Such provision states that "where the final offer price and the final quantity of financial securities being offered cannot be included in the prospectus, the issuer shall mention in the prospectus: the criteria or the conditions in accordance with which the above elements will be established." However, if there is a significant new disclosure, a supplement has to be drafted and filed with the AMF and; if ever, the offer has been launched, "investors must be entitled to

withdraw their acceptance of the acquisition or subscription terms for the securities during at least two trading days following the publication of the final price and quantity of the securities concerned (Article 211-2 RG AMF).”

Distribution of the prospectus

The prospectus must be posted on the AMF’s website. The prospectus must be distributed in one of the following formats: (i) published in the print media (“nationally distributed or widely distributed publication”); (ii) available free of charge at the issuer’s registered office or from the market operator; or (iii) posted on the issuer’s website, the website of the regulated market, or the websites of the financial intermediaries that are placing or dealing the financial instruments in question. If the prospectus is made available free of charge or web-posted, the issuer must also publish a summary in the print media or issue a press release explaining how the prospectus may be obtained. If the prospectus is published in the print media or made available free of charge, it must also be posted online on the issuer’s website (all issuers listed on a regulated market shall have a website), if such a site exists.

Responsibility for the prospectus

Directors, statutory auditors, and underwriters are liable for the content of disclosures in the prospectus.

Issuers: Persons responsible for the prospectus must be identified and sign a declaration confirming that, to the best of their knowledge, the information contained therein is true and there are no material omissions (Article 212-14 of the RG AMF). There is a regime of strict liability for issuers.

Statutory auditors: Must give an opinion on whether the financial statements give a true and fair view of the issuer (Article 212-15 of the RG AMF). In addition, they are required to review the prospectus in accordance with a standard issued by the CNCC, of the National Institute of Statutory Auditors.

ISPs: For the first three years after the initial admission to trading, they are required to certify to the AMF that they have exercised customary professional diligence and found no inaccuracies or material omissions likely to mislead investors or affect their judgment. After three years, the ISP(s) must certify only the details of the offer or admission and the characteristics of the relevant securities, as described in the prospectus or the securities note (Article 212-16 of the RG AMF).

Periodic disclosure obligations

For French companies issuing shares or debt securities on a RM

According to Article 212-13 of the RG AMF, all issuers of financial instruments admitted for trading on a regulated market or on an OMTF may prepare a registration document every year, as specified in an AMF instruction. This registration document can take the form of an annual report to shareholders. In addition, the law describes the quarterly, half-yearly and annual disclosure requirements of the issuers (Article L. 451-1-2 of the COMOFI).

Book II of the RG AMF provides further details on the content of those reports (described in Article 222-3 of the RG AMF).

Registration document: The registration document is part of a prospectus. The AMF has issued a Guide for Compiling Registration Documents, which was updated in December 10, 2009. The registration document shall be filed with the AMF. If the issuer has not previously submitted three consecutive registration documents, then

it must be registered by the AMF before it is published. The registration document shall be made available to the public free of charge on the day after filing, or registration where such is the case. The document must also be available at the registered office of the issuer or the offices of the paying agent. A copy of the document must be sent free of charge to any person who requests one. The electronic version of the registration document shall be sent to the AMF for posting on its website.

Annual Report: Issuers must publish and file with the AMF an annual financial report within four months of the close of their accounting period. The report must be made available to the public for five years. It includes the annual accounts, the consolidated accounts (where applicable), a management report, a declaration from the natural persons assuming responsibility for those documents, and the auditors' report on the financial statements.

Half-yearly report: Issuers must publish and file with the AMF a half-yearly financial report within two months of the end of the first half-year of their accounting period. Such report must include summary accounts for the half-year, presented in consolidated form (where applicable), a half-yearly activities report, a declaration from the natural persons assuming responsibility from those documents and the report on the limited examination of the financial statements from the auditors.

Quarterly report: Issuers must also publish and file with the AMF a quarterly financial statement within 45 days of the first and third quarters of their accounting period. Such report must include (i) an explanation of the major transactions and events that took place and their impact on the financial situation of the issuer and the entities it controls; (ii) a general description of the financial situation and results of the issuer and the entities it controls; and (iii) information on turnover.

Others: The AMF has added the publication of other regulated information: (i) the report on internal control and corporate governance; (ii) the news release on the fees paid to the statutory auditors; (iii) monthly disclosures about the total number of voting rights and shares making up the company's share capital; (iv) the description of share buyback programs; (v) news releases that issuers publish under the ongoing information requirements; (vi) the news release specifying the procedures for obtaining the prospectus; (vii) the news release specifying the procedures for obtaining or consulting on the documents prepared for the general meeting; (viii) monthly news releases summarizing the weekly reports on share buybacks; and (ix) any changes in the rights attaching to financial instruments issues or any new debt issues.

Securitization schemes whose financial securities are admitted to trading on an RM

Annual: No later than four months after the close of the financial year, the securitization company or the management company must prepare and publish an activity report for the year, under the oversight of the depository, and after verification of the statutory auditor (Article 421-14 of the RGAMF).

Half-yearly: No later than three months after the close of the first half of the financial year, the securitization company or the management company must prepare and publish a half-yearly activity report for the first half, under the supervision of the depository of the securitization entity and after verification by the statutory auditor (Article 421-14 of the RGAMF).

Other disclosures: the fund manager must make periodic disclosures on the assets and liabilities (annual and half-yearly activity reports, financial accounts,

management reports, and all events that could affect the financial securities issued by the securitization company).

Such reports must be sent free of charge to the holders of the financial securities who so request. Investors can obtain these activity reports upon publication and free of charge, from the securitization company, or the management company and the depository.

Companies listed on an OMTF (currently only one traded, i.e., ALTERNEXT)

Registration document: on a voluntary basis, in the same terms required for an issuer admitted to trading on a regulated market.

Annual report: Within four months of its financial year's end, the issuer must publish its annual financial statements and, where applicable, consolidated financial statements and the group management discussion and analysis, as well as the reports of the statutory auditors on the aforementioned financial statements.

Half-yearly report: Within four months of the end of the second quarter, the issuer must publish a semi-annual report covering the first six months of the year. The half-yearly report shall comprise the half-yearly financial statements, consolidated where such is the case, possibly in condensed form and not necessarily audited, as well as an operations report covering the period under consideration.

Companies listed in the Marché Libre

There are no periodic obligations on issuers listed in this market. Any requirements would stem from the *Code de commerce* (applicable to any company). Accordingly, these companies are only required to submit an annual report for shareholder consideration. Such annual report would include audited financial statements. Those companies are not required to submit any additional report nor to communicate material events.

Issuers of public offerings not listed or admitted to trading in any platform

AMF staff indicated that only a few issues are related to companies not listed on a market. They are essentially equity issues linked to:

Tax incentive issues for wealthy tax payers linked to a new tax law (TEPA law; 10 in 2011, and approximately 20 in 2010, with a unit amount of less than €10 million and an average amount of €3 million);

LBO Employees schemes (3 in 2011, each under €30 million); and/or

Other public offers (2 in 2011, with a unit amount of approximately €5 million).

Ongoing obligations (Material events)

Every issuer admitted to trading in a RM or an OMTF must disclose to the public as soon as possible any privileged (material, non-public) information, as defined in Article 621-1 of the RG AMF that directly concerns that issuer (Article 223-2 of the AMF Regulation). Securitization schemes whose financial securities are admitted to trading on a RM or an OMTF are also subject to such ongoing obligation. In respect to OMTFs, the French regulatory framework is more stringent than the European framework.

Advertisement

According to Article 212-28 of the RG AMF, any advertisement that relates to a public offer or an admission to trading on a RM must be communicated to the AMF before being disseminated. Such advertisements must: (i) state that a prospectus has been or will be published and indicate where investors are or will be able to obtain it; (ii) be clearly recognizable as advertisements; (iii) contain no false or misleading statements; (iv) contain information that is consistent with the information in the prospectus, if already published, or with information required to be in the prospectus, if the prospectus is to be published at a later time; (v) contain a notice drawing the reader's attention to the section of the prospectus on risk factors; (vi) where applicable, and at the request of the AMF, contain a warning about certain exceptional characteristics of the issuer or the guarantors, if any, or the securities being offered to the public or admitted to trading on a RM. Moreover, all information about a public offer or admission of financial securities to trading on a regulated market that is disclosed in oral or written form shall be consistent with the information in the prospectus (Article 212-29).

Mechanisms to check compliance with periodic and ongoing reporting requirements

As indicated in the introduction, the AMF is responsible for verifying issuers' compliance with periodic reporting requirements in the cases of issuers admitted to trading on a RM and an OMTF. Such responsibility has been charged to the *Direction des émetteurs* (Directorate of Issuers; which has 51 staff), with the support of the *Direction des affaires comptables* (Directorate of Accounting and Auditing Issues; which has 11 staff). Two divisions are in charge of such review (each one with a portfolio of specific types of issuers). Each division has roughly 20-22 staff (including auditors and financial analysts). Each person has a portfolio of roughly 40-50 issuers, for which they are responsible for all information. A third division is in charge of the review of tender offers and a fourth division provides support, including ensuring that information is provided on time.

The *Direction des affaires comptables* has 10 staff; most of them are auditors with previous experience in an audit firm. This division is in charge of the review of financial statements. Financial statements are reviewed based on a combination of a rotation/cycle approach (developed by CESR) and a risk-based approach. Such program will be described in more detail in Principle 18.

Prospectuses

In 2010, the AMF issued 444 approvals for public offers, 10 for initial public offerings in Euronext and 7 on Alternext; 71 for debt offerings and 8 for securitization funds.

In practice, the quality of prospectus varies depending on the nature of the issuance; for example, a straightforward equity issuance versus a highly structured product, and whether the issuer is a seasoned issuer or a first timer. In this regard, for example, an IPO of SME requires a more thorough review and more requests for clarification to the issuer. For the CAC 40, prospectus quality is very high. In connection with securitization funds, since 2010 the AMF has required information at the loan level. Files reviewed show that, in practice the AMF has been diligent in the review of prospectuses and they have requested clarifications that go beyond formal matters.

Timely reporting

Overall, large companies comply in time with their periodic obligations. On SMEs, the level of late reporting is higher (roughly 10 percent according to AMF staff calculations). In the case of non-compliance, the AMF publishes a list in the website with the names of the issuers that have not submitted filings (the most recent list was issued in June 2011). In addition to such publication, the AMF may seek an injunction from the President of the Court of First Instance ordering the issuer to publish the information in question (subject to a money penalty). The AMF may also open an administrative proceeding and impose money penalties to the issuer. However, in practice, the AMF has relied almost exclusively on injunctions because this procedure has proven to be efficient and effective. Usually judges grant the order in two weeks' time, and once an order is issued issuers comply immediately. The AMF goes twice a year to the judges to ask for this type of orders in connection with issuers who failed to submit information after a third letter from the AMF requesting compliance (usually within a two months from the moment that the submission was due). In 2010, 18 petitions were sent to court for lack of dissemination of the financial annual report on time and 9 for the half-yearly report. By the end of the year, only one company in the first case and two companies in the second still had to publish their reports.

Euronext also has a role in ensuring timely reporting, as disclosure obligations are part of the rulebook. In particular in the case of Alternext, the rulebook provides Euronext with the power to impose disciplinary measures on issuers who breach any of the obligations set forth in the rulebook which range from a warning, a money penalty of € 5,000 per each month the issuer does not comply to delisting, to a suspension, or even delisting. In recent years, for example, Alternext issued four warning letters ordering the relevant issuers to take certain corrective measures in order to publish their annual reports ended in 2010. Alternext also sends a letter twice a year to the AMF indicating the list of companies that have not complied with disclosure requirements, or have not regularized their situation vis-à-vis warnings issued by it. On receipt of this letter the AMF may ask Alternext or the listing sponsor to arrange the publication of information or engage discussion with the issuer. In case the requirements are not met, the AMF can open an investigation.

Review of periodic reports

On a yearly basis, the AMF reviews a significant number of periodic reports. It uses a risk-based approach to decide which documents to review, whereby a significant proportion of reviews correspond to documents filed by the large companies. For example, in 2010, the AMF reviewed 926 periodic documents concerning turnover and results for the companies having a market capitalization higher than €150 million.

The review of registration statements may lead to request for clarifications from issuers. Review of files as well as conversations with market participants show that the AMF has been active in the review of such information and has requested clarifications that go beyond formal matters. As per conversations with market participants, the same applies to material events.

Advertisement

The *Direction des émetteurs* has been active in the review of advertisement. For IPOs, advertisements are reviewed along with the prospectus. No formal authorization ("visa") exists in connection with advertisement, but the AMF can say

that the advertisement is not MiFID compliant (“balanced”). In practice it has done so, recently in connection with a corporate bond issuance.

In recent years, the *Direction* has placed emphasis on the review of advertisements for bond issuances, as well as complex financial products. For example, in 2010, 328 documents concerning advertisement of complex financial instruments were reviewed. Furthermore, a doctrine (further explained in Principle 1) was issued in connection with the distribution of complex financial products. The goal was to ensure that promotional materials for a complex financial instrument include key information, such as whether it offers a capital guarantee. In addition, under a “comply or explain” approach, such materials must explicitly mention non-compliance with standards for secondary market liquidity, the eligibility of the underlying instrument, the nature of the issuer, and the conditions for exercising the terms of the product. The doctrine from the AMF also required that distributors systematically verify that products are properly suited to investors’ needs.

Financial statements

Measures in connection with financial statements will be discussed under Principle 18.

Derogations

Pursuant to Article 212-18 of the RG AMF, some disclosures can be omitted from the prospectus in cases where they could be detrimental to the issuer and their omission is not likely to mislead or materially affect the assessment of investors.

Pursuant to Article 223-2 of the RG AMF, an issuer may defer publication of some privileged disclosures in order to protect his legitimate interests, provided that such non-disclosure is unlikely to mislead the public, and the issuer is in a position to ensure confidentiality by controlling access to that information. The legitimate interests mentioned above may concern—among others—negotiations in progress, and decisions taken or contracts approved by an issuer’s executive body that require approval by another of the issuer’s governing bodies to become effective.

Suspension of trading

According to Article L. 421-15 of the COMOFI, the suspension of trading can be required for a limited period of time by the issuer if time is needed to provide for the relevant disclosure, by NYSE Euronext or by the AMF.

The AMF can also suspend admission to trading when it has reasonable grounds to suspect that the offer would contravene applicable laws and regulations (Article 213-1 of the RG AMF)

Insiders

Article 622-1 of the RG AMF requires persons having access to inside information to refrain from (i) using it; (ii) disclosing it to other persons other than in the normal course of his employment, profession, or duties, or for a purpose other than that for which the information was disclosed to them; and (iii) advising other persons to buy or sell on the basis of inside information. Any of the persons having access to inside information would be committing insider misconduct if they were to use inside information in their possession in order to acquire or sell securities (e.g., purchasing shares ahead of a takeover bid in order to sell them later at a profit) or if they divulge the information to a third party. AMF Recommendation 2010-07 of November 2010 deals with ways to prevent insider misconduct. In 2010, 14

	<p>individuals and legal entities were sanctioned for breaches to insider dealing regulations, 9 in 2009, and 30 in 2008. See also Principle 36.</p> <p>Cross-border offerings</p> <p>According to Article 212-36 of the RG AMF, issuers having their registered office in a state not party to the EEA agreement may draw up a prospectus meeting the standards of the International Organization of Securities Commissions for International Securities Offers and containing information equivalent to that required under Title “Offer of securities to the public or admission of securities to trading on a regulated market.” In addition, in March 2011, ESMA adopted a framework for third country prospectuses under Article 20 of the Prospectus Directive. This framework is designed to ensure a uniform application of the Directive. The framework allows prospectuses from non-EU countries, drawn up in accordance with third country legislation, to have a “wrap” added, so that the resulting document meets the requirements of the EU Directive.</p> <p>There have not been many foreign issuers for which the wrap was needed. One example was an issuer from Russia.</p>
Assessment	Fully implemented
Comments	<p>The IOSCO Principles use both the concept of “public offering” and “publicly traded” issuers, and requires that the obligations set for in Principle 16 be assessed against issuers that fall into those categories. Therefore, under the current Principles, any issuer whose securities are offered to the public or are traded in a market that is open to the public (i.e., retail investors) should be subject to the minimum level of disclosure requirements set forth by the Principles. These obligations are: an offering document at the moment of issuance; periodic reports (at least semi-annual and annual, audited as per the methodology), and notification of material events to the market. The Principles do not provide guidance on the deadlines for submission of reports, thus the assessors have made a judgment based on what is considered minimum acceptable practices in this area.</p> <p>As indicated in the description, there are extremely few public offers that are not related to a company that is also listed on a RM or OMTF. As for requirements for listed issuers, in the opinion of the assessors, current disclosure obligations in Euronext are robust and comply with the IOSCO Principles especially given the “continuous disclosure” obligation, although the deadline for the submission of the annual report is long vis-à-vis international best practices. However, the authorities highlighted that in practice large issuers, mainly those in Compartment A, submit their statements within a shorter timeframe. Current disclosure obligations on Alternext also comply with the IOSCO Principles. Nevertheless, the requirements are not either at the level of international best practices, due to the lack of quarterly reports and the deadline for the submission of the semiannual report --although the authorities highlighted that in practice the majority of issuers submit their reports within three months. The authorities have also highlighted that these differences in requirements have sought to achieve a balance between investors’ protection and the costs of disclosure for SMEs. Furthermore, they highlighted the existence of a proposal by the EC for a proportionate regime specifically designed for SME markets. The assessors encourage the authorities to bring the issue of tailored made frameworks for SMEs to the attention of IOSCO.</p> <p>The situation is different for Marché Libre. As indicated in the description, in the case of the Marché Libre, there are no periodic or ongoing disclosure requirements other than the annual shareholders’ report required by the <i>Code de commerce</i> and the communications of very limited material events. The number of companies in</p>

this market, roughly 250, is significant. As such, at the outset it is a source of concern. The authorities have highlighted, however, that in practice this market operates as a market for institutional and professional investors. First, the authorities have indicated that most of the companies in *Marché Libre* were admitted to this market through a private placement and that since late-2006, there have only been seven approvals: three for new IPOs, and four rights issues. In addition, these securities are not widely held and the level of activity is very limited. For example, total transactions volumes for 2011 amounted to €106.5 million compared to €1,879 million for *Alternext*, and €115 million for *Euronext*. Furthermore, transactions volumes are decreasing overtime (€106.5 in 2011 compared to €113 in 2010, and €120 in 2009). Finally, securities listed in MTFs only are classified as complex financial instruments for purposes of their commercialization. This classification has several consequences: first, ISPs must refrain from targeting retail investors through marketing, particularly through advertising or direct marketing; and second, when providing a service related to these securities, the ISP is obliged to determine whether the product is suitable for the client (if advice is provided) or at least whether the product is appropriate, which means that the client must have the necessary experience and knowledge to understand the risks involved. Execution only services are not permitted for this type of instruments. In practice, in the event that an investor requests an execution service, the ISP is required by regulation to make sure the client has the necessary experience and knowledge, and in case the client would not give the necessary information, to warn the client or potential client that such a decision will not allow the firm to determine whether the service or product envisaged is appropriate for him.

There is also a new MTF-*Alternativa*, with 30 companies-for which periodic disclosure requirements do not apply either. Given that these instruments classified also as complex instruments, the considerations explained above in regard to their commercialization apply also to this market. In addition, the authorities have indicated that, until now, the AMF has not been asked to approve any prospectus for a public offer in *Alternativa*. Financial operations are therefore only open to a few investors, as securities are sold through private placements. In addition, volumes are mainly in the primary market, as the bulk of investors in *Alternativa* want the benefit offered by the TEPA law on tax exemption. To benefit from such exemption investors must keep the shares over a period of five years.

The AMF does not have in place a separate arrangement to supervise that these obligations are complied with in the context of *Marché Libre* or *Alternativa*. However, this issue can be picked up as part of the regular supervisory program. In this regard, AMF staff highlighted that AMF has sent several letters to *Alternativa* to remind it of its obligations, among others on the application of Article 533-16 of the COMOFI, related to the classification of clients as professional.

The information provided does support the statement of the authorities that these two markets in practice are not open to retail investors, and that the companies that trade in them are not widely held; therefore the final grade given to this Principle. However, the assessors encourage the authorities to determine whether additional safeguards are necessary, for example, by more directly prohibiting access of retail investors to these markets.

A second point to raise is the need for the AMF to keep active monitoring on *Euronext*, in regard to its obligation to ensure actively that listed issuers are in compliance with their periodic obligations. From the conversations that the assessors had, it seemed that *Euronext* could be more active in this area. This is an issue that the authorities should follow with the exchanges, but has not been taken into consideration for the grade.

Principle 17.	Holders of securities in a company should be treated in a fair and equitable manner.
Description	<p>The Company Law provides the basic framework for shareholder protection. As such it is applicable to all companies. Some of the obligations in the Company Law have been strengthened in connection with companies listed on a regulated market, such as for example obligations in connection with proxy voting.</p> <p>In addition, certain obligations exist only in connection with issuers admitted to trading in RMs or OMTFs: those relate mainly to tender offers and notification of insider and substantial holdings, although differentiated thresholds apply for tender offers and substantial holdings.</p> <p>Shareholders' participation</p> <p>The <i>Code de commerce</i> provides the framework for shareholders participation on important company decisions, including:</p> <p>Election of directors: According to Article L225-18 of the <i>Code de commerce</i>, the directors shall be appointed by the constitutive shareholders' meeting or by the routine shareholders' meeting (in that case the decision is taken on a majority vote of the members present or represented).</p> <p>Any change to the Articles of association, which includes changes to rules, terms, and conditions applicable to securities, as well as significant corporate changes. According to Article L. 225-96 of the <i>Code de commerce</i>, only an extraordinary General Meeting is authorized to amend any provision of the Articles of association (decisions committed to an extraordinary General Meeting rules must be approved by a majority of two-thirds of the votes held by the shareholders present or represented.)</p> <p>Dividends: Pursuant to Article L. 232-12 of the French <i>Code de commerce</i>, the shareholders meeting decides the amount attributable to shareholders as dividends after having approved the statutory financial statements and acknowledged the existence of distributable earnings. Generally each share carries a right of ownership of the company's assets and liquidation surplus, in a proportion equal to the portion of the share capital it represents.</p> <p>Liquidation: Article 1844 of the French Civil Code provides that any shareholder has the right to participate in collective decisions. Profits and losses must be distributed in proportion to capital contributions, and-in the event of a winding up-shareholders must participate in proportion to their stake (see Article 1844-9 of the Civil Code).</p> <p>Notice to shareholders</p> <p>Pursuant to Article R. 225-73 I of <i>Code de commerce</i>, notice of meetings must be given 35 days in advance of convening the meeting. Documents must be provided at least 15 days in advance Article R. 225-89 of <i>Code de commerce</i>). In addition, companies whose shares are traded on a RM must publish on their website, within 15 days of the meeting of the General Meeting, a result of the vote (Article R. 225-106-1 created by Decree No. 2010-684 of June 23, 2010).</p> <p>The AMF issued recommendations in 2007 on shareholders participation in General Meetings. The AMF set up a working group on issues related to listed companies in May 2011. The working group, composed of experts from diverse backgrounds, focused on three major topics: dialogue between shareholders and issuers at general meetings; functioning of general meetings; and voting on regulated agreements. The working group presented its conclusions at the beginning of February 2012.</p>

Proxy votes

The *Code de commerce* provides that any shareholder may vote by post, using a simple form provided for this purpose (Article L. 225-107 of *Code de commerce*). A shareholder may also be represented by another shareholder or by his or her spouse (Article L. 225-106 I al 1). When the company is a listed company on a RM, a shareholder may be represented by any person (Article L. 225-106 I al 2). In both cases, the company must publish on its website the forms to vote by post or to be represented. (Article R. 225-73-1 of the *Code de commerce*). Article L. 225-106-2 provides that any person making an active solicitation of votes-directly or indirectly, to one or more shareholders to represent them at the meeting-shall indicate its voting policy.

Tender offers

For companies listed on a RM (NYSE Euronext)

Title III of the RG AMF applies to all public offers made to holders of financial instruments traded on a regulated market in an EU member state or a state party to the EEA. Article 231-1 requires parties to respect the principles of free interplay of offers and counter-offers; equal treatment and information for all holders of the securities of the persons concerned by the offer; market transparency and integrity; and fairness of transactions and competition.

Pursuant to Article 234-5 a mandatory tender offer is required (i) when the offeror intends to acquire 30 percent of capital or voting rights; and (ii) when the offeror holds directly or indirectly between 30 percent and one-half of the total number of equity securities or voting rights of a company, and within a period of less than 12 consecutive months, increases such holding by at least two percent of the company's total equity securities or voting rights. In both cases the offeror must offer the same terms and conditions to all shareholders for 100 percent of the share capital.

Where the majority shareholder(s) hold alone or in concert within the meaning of Article 233-10 of the *Code de commerce*, 95 percent or more of the voting rights of a company whose shares are or were admitted to trading on a RM, any holder of voting equity securities who is not part of the majority group may apply to the AMF to require the majority shareholder(s) to file a draft buyout offer

The offeror must submit a prospectus, which is subject to AMF approval (Article L 433-1 to L. 433-5 of the COMOFI). The AMF published specific an instruction detailing the information that shall be provided in the offer documents (AMF Instruction 2006-07). Among the information to be provided, the offeror must disclose (i) his intentions; (ii) the conditions to which his offer is subject; (iii) the number and type of securities of the offeree company that he already holds, alone or in concert; (iv) the price or exchange ratio and the basis on which such price or ratio was determined; and (v) procedural aspects. The AMF may require the Offeror to modify the terms and conditions of the proposed offer if it deems that they do not meet the principles described above. The AMF decision is made public and can be appealed to the *Cour d'Appel de Paris*.

Shareholders have a minimum of 10 trading days ("simplified procedure") or 25 trading days ("normal procedure") to accept the offer. In case the offer is revised subsequently, or if a competing offer is filed, the timetable is extended. At any time during the offer, the AMF may postpone the offer closing date.

A competing offer may be filed with the AMF at any time after the opening of the offer and no later than five trading days before the closing date (Article. 232-6 RG AMF). In order to be approved by the AMF, a competing offer must be at least 2

percent higher in value than the initial offer. In the event of a competing offer, the timetable is altered so that the closing dates of both competing offers coincide. The initial offeror can, under the same conditions, improve the terms of its initial offer.

Finally, the offeree company of a takeover bid shall appoint an independent appraiser if the transaction is likely to cause conflicts of interest within its Board of directors, supervisory Board, or governing body that could impair the objectivity of the reasoned opinion mentioned in Article 231-19 or jeopardize the fair treatment of shareholders or bearers of the financial instruments targeted by the bid (Article 261-1 RG AMF).

For companies listed on Alternext

The rules related to tender offers in RMs have been extended to OMTFs in case of a crossing of 50 percent of capital shares of the company, public buyout offers, and squeeze-out.

Other changes of control

Mergers not involving a takeover are regulated by separate legislation. Two months before the scheduled date of an extraordinary general meeting called to authorize an issue of financial securities relating to a merger, demerger, or partial merger, the issuer must file with the AMF the document prepared for that meeting. This document is similar to a prospectus. It must contain among other things the partial merger agreement, the merger agreement, the draft resolutions submitted to the general meetings called to ratify the partial merger or to approve the merger, the decision of the Board of directors or the executive Board, and, where relevant, the statutory auditors' reports on the partial merger or merger, along with a copy of any related legal notices published. This document shall be published and distributed (in accordance with Articles 212-26 and 212-27) 15 days for partial mergers or 1 month for mergers and demergers, before the date of the extraordinary general meetings called to authorize the transaction.

Responsibility of directors

Article L. 225-251 (SA) of the *Code de commerce*, establishes that managers are responsible, individually or jointly, as appropriate, to the corporation (*société anonyme*) or to third parties for infringements of laws or regulations applicable to limited liability companies, or violations of statutes or of negligence in their management.

Pursuant to Article L. 621-14 of the COMOFI, the Chairman of the AMF may ask the Court to order the person responsible for the practice detected to comply with the laws or regulations and end the irregularity or eliminate its effects. The request is brought before the presiding judge of the *Tribunal de grande instance* of Paris ruling on a summary basis, whose decision is immediately enforceable. He may automatically take any protective measure and impose a coercive fine payable to *Le Trésor*. (Article 621-14 II of the COMOFI).

Substantial holdings

Notification

Pursuant to Article 233-7 of the *Code de commerce*, the notification of substantial holdings applies in connection with the shares of a company admitted to listing in a RM. In this regard, the persons that reach certain thresholds (whether up or down) are required to make a notification to the AMF, not later than four trading days after the thresholds were crossed. Such thresholds are 5, 10, 15, 20, 25, 30, 33.33, 50, 66.66, 90 and 95 percent, respectively. All such threshold crossings are published on the AMF's websites (Article L. 233-7, *Code de commerce*). The notification must also indicate the issued shares covered by any agreement or financial instrument

which is exclusively cash-settled and which, for that person, has an economic effect similar to that of owning shares. Percentages are applied to persons acting individually as well as in concert (Article L. 233-7 of the *Code de commerce*, within the meaning of Article L. 233-10 and Article L. 233-10-1 of the *Code de commerce*)

In addition, after a person crosses the 10, 15, 20 or 25 percent thresholds, they are obliged to inform the issuer their intentions (for example whether the intention is to acquire control). (Article L. 233-7 VII of the *Code de commerce*), and to submit such declaration of intentions to the AMF also. The AMF makes them public through its website.

If not been properly declared, shares in excess of the fraction which should have been declared are stripped of the voting right for any shareholders' meeting held within two years of the date of effective notification. (Article L. 233-14 of the *Code de commerce*).

Pursuant to Article 233-7 II of the *Code de commerce*, notification obligations apply also to MTFs, at the request of the facility operator. In this case, the Code prescribes that the obligation can apply only to a portion of the thresholds. As per this provision, notification obligations apply to Alternext. However, the significant holding notification requirement applies solely to the 50 percent and 95percent thresholds in terms of share capital and voting rights.

Information in the prospectus and other periodic reports

Commission Regulation No. 809/2004 details the information that must be included in the prospectus. In particular Annex I, item 18 ("Major Shareholdings") requires among other things disclosure by the issuer of (i) any person who has an interest in the issuer; (ii) whether the issuer is directly or indirectly controlled by someone; and (iii) any arrangement which might result in a change of control.

In addition, substantial holdings (5 percent or more) must be disclosed in all offering documents, and in the issuer's annual report. The company shall publish in the annual report the list of all notifications by shareholders of crossing of thresholds of the year (5 percent or more) (Article L. 233-13, *Code de commerce*)

Insiders

Notification

Article 621-18-2 of the COMOFI imposes notification requirements for "insiders" in connection with shares of companies admitted to trading in a RM; directors and senior managers must notify the AMF of all acquisitions, transfers, subscriptions, and exchanges of shares and financial instruments linked to them, within five business days. They are also required to notify the issuer. These disclosures are made public by the issuer and on AMF's website. There is an exception if the sum of transactions in a year is less than €5,000.

Pursuant to Article 621-18-2II, COMOFI this obligation applies also in connection with companies admitted to trading in other markets that are not regulated, at the request of the facility operator. Article 223-22A of the RG AMF establishes that such obligation is applicable also to OMTFs. Therefore, this obligation applies also to Alternext.

Information in the prospectus and periodic reports

According to European Commission Regulation No. 809/2004, the share registration document must contain information on the share holdings and any options over shares for (a) members of the administrative, management, or supervisory bodies; and (b) partners with unlimited liability. The management report must also contain a summary statement of the transactions in securities that

	<p>directors and senior managers have made during the past financial year (Article 223-26 of the RG AMF).</p> <p>The AMF can enforce any disclosure obligations of director/manager and impose financial penalties (Article L. 621-14 of the COMOFI).</p> <p>Cross-border offerings</p> <p>As indicated in Principle 16, ESMA adopted a framework for third-country prospectuses under Article 20 of the Prospectus Directive. This framework is designed to ensure a uniform application of the Directive. The framework allows prospectuses from non-EU countries, drawn up in accordance with third-country legislation-to have a “wrap” added, so that the resulting document meets the requirements of the EU Directive. If listed in a RM or an OMTF, they would be subject to the obligations described above in connection with shareholders rights.</p> <p>Practice</p> <p><i>Acquisitions</i></p> <p>The <i>Direction des émetteurs</i> reviews documents concerning tender offers and mergers. In practice, there are more tender offers than mergers. There are roughly 10 mergers per year.</p> <p>Excluding squeeze-outs, in 2011 there were 28 tender offers (compared to 14 in 2010 and 14 in 2008). The vast majority of tender offers involve domestic offeror (8 cross-border in 2011, and three each for 2010 and 2009). A high proportion of offers involve companies that are still family owned. Thus a fairness opinion is required.</p> <p><i>Notifications</i></p> <p>There were 621 notifications related to substantial holdings in 2010 (compared to 874 in 2009); and 6,173 notifications by insiders (compared to 7,265 in 2009). AMF staff indicated that there are more cases of late filing by directors. The AMF has issued specific recommendations and guidance directed to managers reminding them of their duties; lists of Q&A. There has also been one case of a sanction imposed on a major shareholder for a failure to notify.</p> <p><i>Directors' responsibilities</i></p> <p>Participants highlighted the existence of an institute for directors, which provides training for new Board members on their duties and responsibilities.</p> <p><i>Cross-border offers</i></p> <p>There have not been many cases in which the AMF has had to deal with offers where the country of origin does not have a similar framework for investor protection. One case involved an offering from a Swiss issuer which was not listed in its own country. In that case, the AMF required that the by-laws of the issuers included certain rules for the protection of investors.</p>
Assessment	Fully implemented
Comments	<p>The framework for tender offers and notifications of substantial and insider holdings does not apply to <i>Marché Libre</i> nor <i>Alternativa</i>. However, as per explanations provided by the authorities and explained in detail in Principle 16, in practice these markets operate as markets for institutional and professional investors. Nevertheless, as indicated in Principle 16, the assessors encourage the authorities to conduct a review of these markets to determine whether additional safeguards are needed.</p> <p>The assessors note the existence of a differentiated framework for <i>Alternext</i> vis-a-vis the RM, in regard to mandatory tender offers specifically in relation to the thresholds</p>

	<p>that trigger the obligation to launch it, and they encourage the authorities to consider their harmonization. The assessors acknowledge that for both markets, the French takeover regulations require that all parties involved in the process respect the fundamental principles of equal treatment and access to information of all holders of securities of the offeree, as well as market transparency, integrity, and fairness in transactions and competition. A differentiated framework exists also in connection with notification of substantial holdings, where there are fewer thresholds that trigger notification. Also in this area, the assessors encourage the authorities to seek further harmonization.</p>
Principle 18.	<p>Accounting standards used by issuers to prepare financial statements should be of a high and internationally acceptable quality.</p>
Description	<p>Accounting standards required</p> <p><i>Issuers listed on a regulated market</i></p> <p><i>Issuers that consolidate</i></p> <p>Pursuant to June 2002 EU Regulation, issuers listed on the RM that prepare consolidated accounts must use of IFRS as endorsed by the EU Regulation No. 1606/2002.</p> <p>IAS 1.10 requires the presentation of a complete set of financial statements that comprises:</p> <ul style="list-style-type: none"> (a) a statement of financial position as at the end of the period; (b) a statement of comprehensive income for the period; (c) a statement of changes in equity for the period; (d) a statement of cash flows for the period; and (e) notes, comprising a summary of significant accounting policies and other explanatory information; and (f) a statement of financial position as at the beginning of the earliest comparative period when an entity applies an accounting policy retrospectively or makes a retrospective restatement of items in its financial statements, or when it reclassifies items in its financial statements. <p>IAS 1.38 requires the presentation of comparative information over one period. ESMA and the AMF require two comparative periods fully in accordance with IFRS.</p> <p><i>Issuers that do not consolidate</i></p> <p>Use of French GAAP is mandatory for issuers listed on the RM that do not prepare consolidated accounts. Under French GAAP (CRC 99-02), § 420 requires all information needed for a good understanding of the financial statements. French GAAP (CRC 99-02) requires the presentation of comparative information over one period.</p> <p>AMF staff indicated that the number of companies that file under French GAAP is very limited, roughly 30. All bond issuers prepare their statements according to IFRS.</p> <p><i>Issuers listed in Alternext</i></p> <p>Issuers listed in Alternext can choose to present their financial statements under IFRS or French GAAP. AMF staff indicated that less than 50 percent of the issuers prepare their financial statements under IFRS (usually those that are planning to do so move to the RM).</p>

Differences between IFRS and French GAAP

AMF staff indicated that French GAAP has converged to IFRS over the years. Currently there are very few differences, for example in connection to goodwill and provisions for retirement. AMF staff indicated that the main difference corresponds to the treatment of financial instruments.

Oversight

IFRS standard setting is the responsibility of the IASB which is an independent body supervised by the IFRS Foundation. Interpretation of IFRS is made by the IFRS Interpretation Committee (IFRS IC) which is a body that also reports to the IFRS Foundation. The IASB and IFRS IC apply processes that are described in a Due Process Handbook.

The ANC is the national standard setter in charge of the endorsement of the French GAAP. The Director of the *Direction des affaires comptables* of the AMF is a Board member of the ANC.

Mechanisms to ensure compliance with accounting standards

In accordance with Article 24.1 of the Transparency Directive, the Competent Authority for enforcement of financial information is designated in each Member State within the EEA. In France, such authority is the AMF. As indicated in Principle 16, the *Direction des affaires comptables* of the AMF has adopted a mixed model for review/oversight selection whereby a risk-based approach is combined with a rotation approach:

Risk factors that are considered in assessing the relative risk of material misstatements in an issuer's financial report include: significant changes in market capitalization or in shareholders' equity, major acquisitions or disposals of entities; ratios such as indebtedness/equity; intangible assets/total of assets, market capitalization/equity.

The rotation approach is based on the following principles: financial information reported by issuers from the CAC40 index is reviewed every two years; financial information reported by issuers from compartment A is reviewed every three years; and compartment B and C issuers are reviewed every five years.

The *Direction des affaires comptables* carries out:

full reviews of the financial statements of issuers selected in the annual working program full reviews of the financial statements of the issuers in a process of IPO; and partial reviews upon request of the two main Divisions of the Corporate Finance Division (*Direction des émetteurs*) and when carrying out studies on some specific accounting issues.

In 2010, full reviews represented 73 percent of the reviews performed by the AMF. In 2010, 260 IFRS harmonized documents were subject to review (from the *Direction des émetteurs* alone, from the *Direction des affaires comptables* alone, or joint review).

Enforcement measures

Three different enforcement tools are used by the AMF to ensure compliance of a particular issuer with accounting standards: recommendations; orders to disclose information to the public; and requests for an investigation. AMF staff explained that recommendations are mostly used when the problems encountered are not material, thus the AMF requests the correct application of IFRS for the following period. When material information is missing, then the AMF requires immediate disclosure to the market of such information. The AMF could also ask an issuer to

	<p>correct the financial statements; however, this power is not often used, as in practice this can be difficult especially if the financial statements have already been approved by the Board and the external auditors. Finally, in especially serious cases, the department may also request that a formal investigation be carried out for purposes of the imposition of an administrative sanction. AMF staff explained that these cases are rare, as IFRS are based on principles that require professional judgment and thus leave room for differences in opinion. Thus, it is difficult to impose a sanction. In 2010, the AMF took the following enforcement actions:</p> <ul style="list-style-type: none"> • 11 issuers were asked to disclose additional notes to their financial statements; • 137 messages were sent to issuers without requiring corrective action; and • the <i>Division des affaires comptables</i> sent one request for investigation based on the identification of material mistakes in the application of IFRS. <p>In addition, since 2009, the AMF has issued general guidance/recommendations applicable to all issuers in connection with disclosures about financial instruments and the main estimates made by management.</p> <p>More specific monitoring of financial institutions has been made jointly with the <i>Division industrie –immobilier - bien de consommation – banque assurances et titres de créances</i>. This follow up is made by reviewing each year the financial statements, organizing conference calls with the issuers before the preliminary announcement of financial statements (quarterly, half-yearly, and annual) and a specific meeting with the management for the annual financial statement. The AMF also keeps contact with the ACP on these matters.</p> <p>Cross-border enforcement of IFRS</p> <p>The AMF is also member of EECS (European Enforcers Coordination Sessions), a forum organized by ESMA in which national enforcers exchange views and discuss experiences relating to the enforcement and interpretation of financial reporting standards. As of December 31, 2010, around 420 decisions had been entered into the EECS database (of which 43 came from the AMF). In addition, at the end of 2010, the EECS database contained around 140 emerging issues (of which 10 came from the AMF). AMF staff indicated that this mechanism has been useful. However, in practice, time constraints render coordination a challenge particularly in connection with emerging issues. The level of complexity of issues raised by larger jurisdictions is also a challenge for smaller jurisdictions.</p> <p>Cross-border offerings</p> <p>The AMF allows the use of other GAAP different from IFRS when those GAAP are assessed by the EU as equivalent to IFRS. Equivalence to IFRS can either be definitive (e.g., U.S GAAP and Japanese GAAP) or temporary if a convergence process to IFRS is under way (e.g., Chinese GAAP).</p>
Assessment	Fully implemented
Comments	<p>The IOSCO Principles do not require the implementation of IFRS; rather they require the use of standards of high international quality. Thus, the fact that the use of IFRS is not mandatory for MTFs such as Alternext is not per se a deficiency vis-à-vis the Principles. The question is whether French GAAP meet the high-quality level required by the principles. Experts agree that over time, French GAAP has largely converged with IFRS, although a few differences remain. On that basis this issue has not been taken into consideration for the grade.</p> <p>Consistent implementation of IFRS is a challenge domestically as well as cross-border. Last year French banks were criticized for their practices in connection with the valuation of Greek debt. The question vis-à-vis this assessment is not the</p>

	outcome of such case, rather whether the AMF has a credible supervisory approach to review financial statements and to deal with any potential issues arising from such review. The evidence provided by the AMF (included in the description of this principle) support such conclusion.
Principles for Auditors, Credit Ratings Agencies, and Other Information Service Providers	
Principle 19.	Auditors should be subject to adequate levels of oversight.
Description	<p>The H3C</p> <p>The <i>Loi de sécurité financière (LSF)</i> No. 2003-706 adopted by parliament on August 1, 2003 created a supervisory authority the <i>Haut Conseil du Commissariat aux Comptes (H3C)</i> in charge of auditors' oversight. The responsibilities of the H3C include to:</p> <ul style="list-style-type: none"> Identify and promote good professional practices and rules of good conduct; Issue opinions on professional auditing standards before their approval ("homologation") by the <i>Ministère de la Justice</i>; Define the framework, orientation, and methodology of periodic inspections (<i>quality control</i>), and monitor their implementation, Evaluate whether the non-audit services provided by a professional or through the professional's network, threatens his independence. <p>The H3C has a Board of 12 members, including 3 magistrates; the Chairman of the AMF or its representative; a representative of the MOF; a university professor who specializes in legal, economic, or financial matters; 3 individuals with expertise in economic and financial matters (2 experts on public offering of securities and companies admitted to trading on a RM, and 1 with experience in SMEs); and 3 statutory auditors (2 with experience in auditing of issuers admitted to trading on a RM). Board members are appointed by decree for a period of six years, renewable by half every three years.</p> <p>A representative (Government Commissioner) of the Ministry of Justice also attends the Board meetings with non-voting consultative powers.</p> <p>The President is a full time member, while the others are part-time members. There is a framework for conflicts of interest, which requires a member to recuse himself.</p> <p>Similar to the AMF and the ACP, the H3C has a Secretary General who is in charge of day-to-day operations. The Secretary General is the head of the staff.</p> <p>Since 2009, the H3C is self-funded by a levy (tax) paid by auditors. There is a fixed annual tax (€10) for each auditor and a specific tax on each report issued (€1,000 for companies listed on the RM, €500 for companies listed on Alternext and €20 for the others). As from 2011, there is a new tax rate equivalent to 0.65 percent of the audit fees. The auditor's corporate body, the CNCC, raises money that is thereafter transferred to the H3C. For 2010, the budget of the H3C was €6 million. As in the case of the AMF and the ACP, the financial law of 2011 put a ceiling on the human resources budget of the H3C, which in practice corresponds with H3C estimated number of personnel.</p> <p>As of January 2012, it had 40 staff. In March 2012, the auditors' team will amount to 15 people; the plan of the H3C is to add 5 more auditors, and such addition is already contemplated in the 2012/2013 budget.</p> <p>Qualifications of auditors</p> <p>As of January 2011, there were roughly 5,000 audit firms in France and 14,000 statutory auditors. There were roughly 600 firms with PIE ("Public Interest Entity")</p>

engagements, out of which roughly 270 firms had engagements with issuers listed on an RM. Six audit firms account for the audits of the larger issuers (CAC 40) but more medium-sized firms are involved in the auditing of middle-size issuers.

Auditors in France must be registered with the Regional Registration Committees within the Court of Appeal. To be registered, an auditor must (i) have the corresponding academic degree, and (ii) have three years of training and pass an exam. In addition, an auditor must complete 120 hours of continuing education on a three-year basis, with a minimum level of 20 hours each year.

Oversight

Auditors are subject to the oversight of the H3C. For such purpose, auditors must register with the Regional Registration Committees. The Secretary General of the H3C is in charge of the implementation of the inspection plan over auditors under the oversight of the Board, which defines the framework, proposes the orientation and the methodology of periodic inspections, and monitors the implementation. According to Article R. 821-26 of the *Code de commerce*, there is a triennial review program for audit firms that audit financial statements of PIEs, which include issuers admitted to trading in RMs as well as other types of companies (such as banks and insurance companies). For audit firms that audit the financial statements of non-PIEs, the review program is carried out every six years.

The MOU between the H3C and the AMF provides for coordination in connection with the inspection plans. The list of engagements for review is discussed with the AMF so that the AMF can provide a list of engagements in connection with listed issuers. In addition, the reports of such inspections must be shared with the AMF prior to sending them to the audit firm.

Under the current framework, the H3C cannot take enforcement action directly; rather it can only refer cases to the Public Prosecutor. The Public Prosecutor, in turn, is free to decide whether to bring the cases against the regional disciplinary chambers or not. As stipulated by Article 822-2 of the *Code de commerce*, the regional bodies are composed of seven members: besides judges and professors, there is one member who is a representative of the professionals. Decisions are taken by majority. H3C acts as appeal body for the decisions taken by the regional chambers. (Article L. 822-7 of the *Code de commerce*).

The AMF can impose administrative sanctions on auditors, if-as a result of its review of issuers' disclosure obligations- it finds material problems in the work conducted by the auditors.

Supervisory approach

Before 2009, the H3C delegated to the CNCC the quality control of audit firms while H3C exercised oversight over the CNCC. Starting in 2009, the H3C now directly conducts the onsite review for all the PIE firms except those with only one PIE engagement, whose reviews are still delegated to the CNCC, pending the recruitment of additional H3C auditors (in such cases the report is reviewed and discussed with the H3C before it is sent to the audit firm). Non-PIE firms are inspected by the CNCC. The H3C carried its first "direct" inspections in 2009 and just recently finished its first cycle of PIE firms. To do that it has a team of 14 inspectors. Each year it inspected two of the large firms, and a number of middle-sized PIE firms (roughly 60 per year).

Initial inspections were not risk-based. For the big six audit firms, the inspections took roughly 9 months and 4,500 hours each, and were considered thorough by participants. For other firms the time spent was much shorter; but many of them had had a very limited number of engagements.

	<p>In such inspections, the H3C reviewed:</p> <ul style="list-style-type: none"> • Quality control procedures; and • A sample of engagements (for one big firm for example, the H3C reviewed 38 engagements). The H3C selected a sample of public and non-public clients of the audit firm and reviewed the audit files. The AMF provided input in regard to the PIE engagements to review. <p>Individual recommendations were sent to 198 PIE audit firms in 2009. For the 45 that showed the most significant weaknesses, an improvement plan was requested. Individual recommendations were also sent to 593 non-PIE audit firms under the 2008 program. In their case, referrals to the Public Prosecutor were made in regard to seven audit firms which showed repeated observations of deficiencies dated from six years before. Even after referral, these firms can continue providing auditing services.</p> <p>The H3C will implement a risk-based approach starting with the current cycle, whereby the big six firms will be audited on a yearly basis, and firms that were requested an improvement plan will also be subject to a shorter cycle. H3C also plans to assume the direct inspection of all PIEs.</p> <p>Enforcement measures</p> <p>For the last three years, the regional disciplinary auditor's bodies have imposed 28 disciplinary sanctions. Such statistic includes both PIE and non-PIE firms. The CNCC has referred a very limited number of cases to the Public Prosecutor, while the H3C has referred the seven cases described above.</p>
Assessment	Partly Implemented
Comments	<p>The main issues affecting the grade are the enforcement framework and the challenges in relation to resources.</p> <p>The H3C has shown to be more active than the CNCC in connection with the referral of cases to the Public Prosecutor; however, the lack of direct enforcement powers is a material weakness for the credibility of the system as a whole. In this regard, the system of referral to the Public Prosecutor does not ensure that cases will be taken on by it. Rather it remains at the discretion of the Public Prosecutor whether it brings the cases to the regional bodies or not. In the short term there might be the need for some type of formal arrangement between the H3C and the Public Prosecutor to ensure that these cases are given the priority they need. More broadly, the assessors encourage the French authorities to consider a reform to this framework that would grant the H3C more direct enforcement powers.</p> <p>The current supervisory approach of the H3C—in which it directly conducts inspections on PIEs—is still relatively new and therefore evolving. Inspections conducted on PIE firms appear to be thorough, in particular for the big six audit firms. The challenge, however, is to ensure a high level of quality across a wider number of firms, in particular given the fact that in France many medium-sized firms audit small and medium-sized listed companies. The new risk-based approach that the H3C plans to implement might free some resources, as less time would be dedicated to the big six, given the shorter cycle of inspection. But even if that were the case, the number of resources appears limited. In such context, the assessors welcome the plans of the H3C to hire additional personnel, and recommend that such numbers be further reviewed to ensure the quality of reviews.</p> <p>Finally, from an independence perspective, similar concerns to those explained in Principle 2 arise in connection with the participation of “active” auditors in the Board of the H3C and in the regional bodies. The assessors acknowledge that active members are a minority and that decisions are taken by majority vote.</p>

Principle 20.	Auditors should be independent of the issuing entity that they audit.
Description	<p>Standards for independence</p> <p>The standards for independence are defined in the French statutory auditor's Code of Ethics. Such Code is implemented in the French law (Appendix 8-1 –VIII of the <i>Code de commerce</i>) by decree of the <i>Conseil d'Etat</i> after seeking the advice of the H3C and, for the provisions which apply to auditors who act for listed entities, the AMF.</p> <p>Article 5 of the Code establishes the principles of independence, of the statutory auditor from the audited entity. Such independence must be characterized by the freedom to exercise, in fact and in appearance, the powers and duties bestowed upon him by law. Article 6 requires statutory auditors to avoid conflicts of interest, in particular situations that could compromise their independence. Other Articles of the Code of Ethics address the matters that concerned the principles in connection with self-interest (Articles 5-6); self-review (Article 11); advocacy (Article 10); and familiarity (Article 27). Intimidation is not expressly covered, but Article 5 states that: "The statutory auditor shall be independent of the entity whose financial statements he has been appointed to audit. The statutory auditor's independence shall in particular be characterized by the freedom to exercise, in fact and in appearance, the powers and duties bestowed upon him by the law."</p> <p>Prohibitions and restrictions on non-audit services</p> <p>Article 10 of the Code of Ethics deals with prohibited situations, which include auditing of (i) persons who control the auditing firm or that are controlled by it, and (ii) the provision of a broad range of non-audit services to the audited company including among others, services in connection with the management of the firm; recruitment of personnel; preparation of accounting information; internal controls; and information systems related to the financial information.</p> <p>Articles 23 and 24 deal with the provision of non-audit services by the network of the audit firm to audited clients. Article 24 defines a series of services that could affect the independence of the auditor, if they are provided by a member of the network of the audit firm. If any of those services are to be provided, the statutory auditor must analyze the circumstances and the related risks and-if necessary-must apply appropriate safeguards. The statutory auditor may only pursue the audit engagement if (the statutory auditor) is in a position to substantiate that the service does not affect its professional judgment, opinion, or the conduct of the audit. If in doubt, the statutory auditor or the entity whose financial statements are being audited must seek advice from the H3C.</p> <p>The Code also contains provisions in connection with the remuneration received by auditors. Article 34 establishes that the remuneration for an engagement should not create a situation of dependence on the audit firm. Such situation is presumed when the remuneration received from one firm represents a significant proportion of the total remuneration of the auditor for the corresponding fiscal year. Auditors are subject to disclosure obligations in connection with their remuneration.</p> <p>Risk controls</p> <p>According to Article 15 of the Code of Ethics, the organization and operation of the statutory audit practice, whether an individual or a firm, must enable the statutory auditor to comply with legal and regulatory requirements, as well as the requirements of the code, and ensure, as far as possible, the prevention of risks and the proper conduct of the engagement. In particular, each practice must comply with the following requirements:</p> <ul style="list-style-type: none"> - It must have the resources to enable the statutory auditor to fulfill his responsibilities.

- To that effect the firm must conduct a regular assessment of staff knowledge and continuing training;
- It must implement procedures that ensure that the conditions for the conduct of each engagement are reviewed on a regular basis, with a view to checking that the engagement can be continued in compliance with ethical requirements, in particular as regards independence vis-à-vis the entity being audited;
- It must, where applicable, guarantee (i) the rotation of individual auditors and signing members of auditing firms (*engagement and principal partners*) (on a six year cycle for PIEs pursuant to Article L. 822-14 of the *Code de commerce*); (ii) the implementation of an independent review of opinions issued; (iii) an increase in the resources assigned to the engagement when the technical complexity of the engagement or the ethical requirements so demand; and (iv) the implementation of an internal quality control system.
- It must ensure that the steps taken to comply with the above-mentioned requirements are adequately documented.

Issuers' governance

The Order of December 8, 2008, which transposes the European Directive on Statutory Audits into French Law, requires specialized committees-or audit committees-for entities issuing securities that are admitted to trading on a RM. Such committees are required to oversee (i) the statutory audit of the annual financial statements and the consolidated financial statements; and (ii) the independence of the statutory auditor or the audit firm. There is an exception for small companies, in which the Board itself performs such role.

According to Article 823-19 of the *Code de commerce*, the audit Committee must issue a recommendation regarding the statutory auditors proposed to the general meeting of shareholders. Furthermore, the AMF is informed of the proposition for the appointment or renewal of statutory auditors of listed companies and may make any comments in this regard. These comments are communicated to the shareholders (Article L. 621-22 of the COMOFI).

Under the terms of Article L. 823-16 of the *Code de commerce*, each year auditors must send the audit committees: (i) an independence statement; (ii) the total amount of fees paid to the network of statutory auditors by the companies controlled by the company, or the company that controls it, for services that are not directly related to the statutory audit; and (iii) information about services provided that are directly related to the audit.

The statutory auditors and audit committees are required to examine the risks to the auditors' independence together. Audit committees and statutory auditors examine the safeguards that the latter have taken to reduce the potential risk of undermining their independence and to ensure that they comply with the legal and regulatory requirements regarding incompatibilities set out in the auditors' professional code of ethics. Where there is uncertainty about certain services, audit committees ask statutory auditors for their analysis and interpretation of the laws and regulations; if the latter do not address the various cases explicitly, along with any supporting opinions issued by the Auditing Board.

For all other companies, the process of selection of the auditors is a responsibility of the Board, and needs to be approved in shareholders meeting.

Resignation of auditors

According to the European Prospectus Regulation (Article 2.2 –Annex I), an issuer shall disclose if auditors have resigned, been removed, or not been re-appointed

	<p>during the period covered by the historical financial information. Vis-a-vis shareholders, there is no specific timeframe for such notification. In practice, resignations are usually given a deferred effect at the next shareholders general meeting, except in case of incompatibility or breach of independence. Resignations are immediately notified to the AMF.</p> <p>Enforcement of compliance with auditors' independence</p> <p>Internal controls: In large audit firms, in addition to the local risk managers, there are global ethics committees in charge of reviewing that engagements respect the independence principle. Examples were given of cases where such controls resulted in the refusal to accept an engagement.</p> <p>“Oversight” by issuers: The level of involvement of audit committees varies. Large companies meet usually six times a year with the audit firm and have a few conference calls. Examples were given of cases in which the audit Committee requested information from the audit firm in connection with non-audit services, and how they could affect independence. Participants highlighted the existence of an institute for directors, which provides training for new Board members on their duties and responsibilities.</p> <p>Review by the H3C: Review of the procedures and practices to ensure the independence of auditors is one of the items reviewed by the H3C during its inspections. The H3C has also issued guidance in connection with independence.</p> <p>Review of disclosure of fees by the AMF: The AMF reviews the reports made by the audit firms in connection with fees. Examples were given of cases in which the AMF contacted an audit firm to ask about declining fees. The AMF can also provide an opinion at the moment of appointment or renewal of appointment of an auditor. The AMF informed that such power has not been used yet.</p>
Assessment	Fully implemented
Comments	The assessors acknowledge AMF staff view that introducing audit committees beyond RM to OTMFs would be too burdensome and increase costs for SMEs. At the same time the assessors encourage the authorities to find mechanisms to ensure a similar level of oversight in relation to auditors' selection and independence as it is required for issuers admitted to trading in an RM.
Principle 21.	Audit standards should be of a high and internationally acceptable quality.
Description	<p>Auditing standards</p> <p>The European Prospectus Regulation states that financial statements must be audited in accordance with auditing standards applicable in a member state or an equivalent standard.</p> <p>In France auditing standards are developed by the CNCC. Standards must be submitted to the H3C, which issues an opinion on professional auditing standards, before their homologation by the Minister of Justice. When relevant, the AMF is consulted especially for standards related to publicly listed companies. To facilitate the homologation process, there is a joint working group between the H3C and the CNCC to prioritize the different topics and to provide advice on auditing standards before the issuance of the oversight body's opinion. The AMF participates in this joint working group.</p> <p>Differences between French standards and ISA</p> <p>French auditing standards are based on ISA. French standards can be characterized as rule based and are therefore more prescriptive than ISA. There is also application guidance which provides additional detail. The main differences are described below:</p>

	<p>A few provisions of the standards are not identical: for example standard 580 requires that the auditor obtains audit evidence that management acknowledges its responsibility for the fair representation of the financial statements. The French standard does not require this statement from the management, as the <i>Code de commerce</i> already specifies that directors have the responsibility to establish the financial statements.</p> <p>There are a few additional standards, for example in connection with (i) the joint audit, as in France the auditing of the financial statements of listed issuers must be carried out jointly by two audit firms; (ii) audit reports, which requires more detail in the report; and (iii) justification of the assessment, which requires the auditor to provide a more comprehensive view of the findings.</p> <p>ISQC1 (which relates to quality control) has not been adopted. However, according to experts, large audit firms have such controls in place. In addition, the Code of Ethics requires audit firms to adopt internal controls.</p> <p>Auditors should also take into account the recommendations of the H3C (Article 821-1 of the <i>Code de commerce</i>).</p> <p>Mechanisms to enforce compliance with auditors' standards</p> <p>Auditors are required to have internal controls in place. In addition, H3C reviews compliance with standards through its review program.</p>
Assessment	Fully implemented
Comments	<p>The IOSCO Principles do not require the implementation of ISA, rather that principles of high quality are implemented. The opinion of experts is that French standards are broadly consistent with ISA and of high quality. Still the assessors recommend that the standard on quality control be incorporated in the French framework.</p>
<p>Principle 22. Credit rating agencies (CRAs) should be subject to adequate levels of oversight. The regulatory system should ensure that credit rating agencies whose ratings are used for regulatory purposes are subject to registration and ongoing supervision.</p>	
Description	<p>Since September 7, 2010, CRAs in Europe are required to comply with the Regulation (EC) No. 1060/2009 of the European parliament and of the Council on credit rating agencies (CRA 1) as amended by Regulation (EU) No. 513/2011 (CRA2), in their consolidated version, "the EU CRA Regulation," that entered into force on June 1, 2011.</p> <p>The EU CRA Regulation, which is of direct application, covers the IOSCO Principles set out below as well as additional requirements. There is no direct reference to IOSCO Code of Conduct in the EU CRA Regulation, but it does incorporate the underlying principles of the CoC as well as going beyond by specific requirements.</p> <p>As of July 1, 2011, the ESMA has taken over responsibility for direct supervision of all registered CRAs issuing credit ratings in Europe. ESMA is also the sole directly competent regulator to receive and assess any new CRA's application for registration in the EU. The largest three global CRAs; Standard & Poor's, Moody's Investor Service and Fitch Ratings, as well as DBRS, have been registered in the EU and as such, are under ESMA's ongoing supervision since October 31, 2011.</p> <p>Use of ratings for regulatory purposes</p> <p>As per the EU CRA Regulation (of direct application), ratings that are used for regulatory purposes may only be used if issued by CRAs established in the EU and registered in accordance with this Regulation.</p>

The Regulation provides room for the use of ratings from CRAs that are not located in the EU, in two forms: (i) by a process of endorsement, whereby a CRA registered in the EU can under certain conditions endorse the ratings of a “sister” CRA located in a third country; and (ii) by a process of certification of the CRA from a third country, provided that the CRA is subject to registration and oversight in its home country that is equivalent to that of the EU, there are cooperation arrangements in place, and the CRA is not **systemic for the EU market**. An example of the latter is the certification of Japan Credit Rating Agency, which was conducted by the AMF.

Registration requirements

The EU CRA regulation provides ESMA with the authority to obtain all information it deems necessary from a CRA seeking registration in order to determine whether the requirements for registration have been fulfilled. As part of any application for registration, the applicant is expected to provide detailed information and evidence as to how it demonstrates compliance with the applicable requirements of the EU CRA Regulation. The content and format is provided for in the annexes of EU CRA Regulation. CESR published guidance in connection with the registration process, which distinguishes seven areas of requirements: (i) General Organization and Governance; (ii) Internal Controls; (iii) Business Activities and Resources; (iv) Conflicts of Interest; (v) Rating Process and Methodology; (vi) Disclosures; and (vii) Endorsement. All documents related to these seven areas have to be provided in the form of policies and procedures.

Quality and integrity of ratings

The EU Regulation requires that CRAs put in place written procedures and methodologies providing for a fair and thorough analysis of all information relevant to credit analysis. In particular, CRAs are required to use rating methodologies that are “rigorous, systematic, continuous, and subject to validation based on historical experience, including back-testing.” CRAs are also required to put in place procedures for permanent monitoring as well as regular updates of credit ratings as new information becomes available.

The EU Regulation also requires that a CRA establish a review function responsible for periodically reviewing its methodologies, models, and key rating assumptions—such as mathematical or correlation assumptions—and any significant changes or modifications thereto as well as the appropriateness of those methodologies, models, and key rating assumptions when they are used or intended to be used for the assessment of new financial instruments.

Record keeping

The EU CRA Regulation introduces several requirements concerning internal record keeping. There is a general requirement to maintain internal records of credit rating activities. As per the CRA Regulation (Annex I, section B, point 8) records and audit trails shall be kept at the premises of the registered CRA for at least five years, and an additional term of at least three years, where the registration is withdrawn.

Sufficiency of resources

The EU CRA Regulation introduces a requirement for CRAs to have sufficient resources in order to carry out high-quality credit assessments. Annex 2 of the Regulation describes the information to be provided in the application for registration. The list of covered areas includes “financial resources to perform credit rating activities,” “staffing of credit rating agency and its expertise,” as well as “documents and detailed information related to expected outsourcing arrangements including information on entities assuming outsourcing functions.”

Addressing conflicts of interests

EU Regulation requires CRAs to take all necessary steps to ensure that the issuing of a credit rating is not affected by any existing or potential conflict of interest or business relationship involving the credit rating agency issuing the credit rating, its managers, rating analysts, employees, any other natural person whose services are placed at the disposal, or under the control, of the credit rating agency, or any person directly or indirectly linked to it by control. To ensure compliance with such principle, the CRA must comply with the requirements set out in Sections A and B of Annex I

Organizational requirements (Annex I, Section A)

CRAs must have an administrative or supervisory Board. Its senior management must ensure that conflicts of interest are properly identified, managed and disclosed. In addition to their overall responsibilities as members of the Board, independent members of the administrative or supervisory Board have the specific task of monitoring the effectiveness of measures and procedures instituted to ensure that any conflicts of interest are identified, eliminated, or managed and disclosed. The compliance officer must ensure that any conflicts of interest relating to the persons placed at the disposal of the compliance function are properly identified and eliminated. The compliance officer must report regularly on the carrying out of his or her duties to senior management and the independent members of the administrative or supervisory Board.

Operational requirements (Annex I, Section B)

CRAs are subject to a general obligation to identify, eliminate or manage and disclose-clearly and prominently-any actual or potential conflicts of interest that may influence the analyzes and judgments of its rating analysts, employees, or any other natural person whose services are placed at the disposal, or under the control, of the CRA and who are directly involved in the issuing of credit ratings and persons approving credit ratings. More specific obligations include:

Prohibitions:

The EU regulation prohibits CRAs for issuing ratings when the CRA directly or indirectly owns financial instruments of the rated entity or related parties, or has any direct or indirect ownership interest; or when a control relationship exists or certain other specific types of relationships that may cause conflicts of interest, as well as from providing consultancy or advisory services to the rated entity or a related third party regarding the corporate or legal structure, assets, liabilities, or activities of that rated entity or a related third party. A CRA may provide ancillary services.

Specific rules concerning analysts:

Certain rules on analysts, include the prohibition to participate in fee negotiations, prohibition of trading securities, rules related to analysts' rotations, and rules related to non "business contingent" remuneration. In relation to Article 7, Annex 1, Section C introduces several rules for rating analysts and other persons directly involved in credit rating activities (including securities and derivatives trading by and compensation arrangements). These rules address, among others

Specific disclosures:

Disclosure of rated entities and related parties from which a CRA receives more than 5 percent of annual revenue; and

Disclosure of (i) the largest 20 clients of the CRA by revenue generated; (ii) a list of those clients of the CRA whose contribution to the growth rate in the generation of revenue in the previous financial year exceeded the growth rate in the total

revenues of the CRA in that year by a factor of more than 1.5 times (any such client shall be included on the list only where, in that year, it accounted for more than 0.25 percent of the worldwide total revenues of the CRA at global level); and (iii) a list of all ratings, including the proportion of unsolicited ratings.

Transparency and timeliness

The EU CRA Regulation introduces a general requirement to ensure timeliness on the release and distribution of credit ratings (when newly issued or for subsequent changes). A CRA shall disclose any credit rating, as well as any decision to discontinue a credit rating, **on a non-selective basis** and in a timely manner. In the event of a decision to discontinue a credit rating, the information disclosed shall include full rationale for the decision.

Information on ratings

The EU CRA Regulation introduces several requirements related to the publication of the CRAs' procedures, methodologies, models and key rating assumptions. When methodologies, models or key rating assumptions used in credit rating activities are changed, the CRA must immediately disclose the likely scope of credit ratings to be affected.

When announcing a credit rating, a CRA shall explain in its press releases or reports the key elements underlying the credit rating.

Historical defaults

The EU CRA Regulation introduces several requirements related to the publication of information about historical default rates of the CRAs' credit rating. These requirements comprise a general obligation to disclose information on the ratings' historical performance to a central repository managed by ESMA (CEREP) and an obligation of periodic disclosure data (every six months) about the historical default rates of its rating categories, distinguishing between the main geographical areas of the issuers and whether the default rates of these categories have changed over time.

Confidentiality

The EU CRA Regulation contains requirements designed to ensure CRAs protect non-public information. There is a general obligation not to use or share confidential information for any other purpose excepting the conduct of credit rating activities, and as a result the obligation to take measures to achieve such objective.

Enforcement powers

The EU CRA Regulation provides ESMA with a set of enforcement powers in case a regulated CRA fails to meet registration requirements after its initial registration, including: (i) the imposition of a fine as well a periodic penalty payment, in order to compel CRAs to be cooperative; and (ii) for certain violations it can (a) withdraw the registration, (b) temporarily prohibit the CRA from issuing credit ratings with effect throughout the EU, (c) suspend the use-for regulatory purposes-of the credit ratings, (d) require the CRA to bring the infringement to an end, and (e) and issue public notices.

Registration process and ongoing supervision

As of January 2012, there were 16 registered CRA groups involving 28 legal entities and 1 certified entity, all of which were registered under the transitional provisions that had granted the local authorities jurisdiction over the registration process. For the global CRA, colleges of supervisors were set out. The registration process was divided into two stages. In the first one, the college reviewed that documents were

	<p>complete, while in the second the colleges reviewed that requirements were met from a substantive point of view.</p> <p>The process was long (roughly one year). At the end of their review, colleges shared their findings and views, which helped to achieve a consistent application of registration requirements. In practice, such review led to changes in organizational structure for some CRAs. Examples were given of cases in which the CRA had to make legal changes to isolate the rating activity into one legal entity and/or to incorporate independent members on the Board. In addition, changes to procedures were requested (roughly 50 percent of procedures were redrafted).</p> <p>Supervision</p> <p>As indicated in the introduction, the supervision of registered CRAs in France is now under the remit of ESMA, as with other regulated CRAs in Europe. ESMA created a specialized unit, which at the time the mission visited France, was composed by 12 staff, with authority to increase the number up to 20 staff. The ESMA unit is in charge of the policy, supervision, and risk identification functions.</p> <p>The ESMA unit is in the process of solidifying its supervisory approach. The inspections program will be fed by risk signals, including: (i) the findings from previous inspections; (ii) complaints; and (iii) signals/concerns submitted by local authorities.</p> <p>In connection with smaller/local CRAs, ESMA foresees the possibility to delegate specific tasks in connection with the onsite inspection to the local authorities (for example, review of documents).</p> <p>Since October 2011, the ESMA CRA unit has conducted onsite inspections on the three global firms as a “pilot” exercise to get a better understanding of the rating process, as well as to identify potential issues that require further attention (risk signals). Three ratings from each of the following categories (sovereign, banking and covered bonds) were selected for review. The inspections lasted roughly four weeks and were performed by a team of two to three persons. Individual reports were sent to each CRA, and a report with general findings was made available to the public in March of 2012.</p>
Assessment	Broadly implemented
Comments	<p>Conversations with market participants lead the assessors to conclude that the registration process by the colleges was thorough and that there was an effort to achieve a consistent implementation of the requirements across the different CRAs. With supervisory powers for CRAs having been transferred from all EU national competent authorities (such as AMF) to ESMA recently (for France similarly to other European jurisdictions), the supervisory approach is still at an early stage. However, ESMA has already conducted inspections on the three large CRAs and released a general report on them; this provides evidence that ongoing supervision is shaping well. Once a full-fledged supervisory program is in place, including an inspection plan covering the remaining CRAs (either individually or through thematic work), a review of the grade would be warranted. Obtaining the remaining resources envisioned is key to the effective implementation of such supervisory program.</p>
Principle 23.	<p>Other entities that offer investors analytical or evaluative services should be subject to oversight and regulation appropriate to the impact their activities have on the market or the degree to which the regulatory system relies on them.</p>
Description	<p>Sell-side analysts</p> <p>General framework on conflicts of interest</p> <p>Article 314-3 of the RG AMF requires that ISPs act honestly, fairly, and professionally in the clients’ best interests as well as in a manner which promotes the integrity of the market. Article 313-20 of the RG AMF requires ISPs to establish</p>

and maintain an effective conflicts of interest policy, set out in writing, and appropriate to their size and organization and to the nature, scale, and complexity of their business. Article 313-21 provides that the procedures and measures for managing conflicts of interests must be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest (...) carry on those activities at a level of independence appropriate to the size and activities of the ISP and of the group to which it belongs, and to the materiality of the risk of damage to clients' interests. The procedures and measures to be adopted must include, as appropriate, measures such as: (i) effective procedures to control the exchange of information; (ii) separate supervision; (iii) elimination of links on the remuneration of certain persons or activities versus others; (iv) measures to omit the influence of relevant persons; and (v) measures to prevent the involvement of relevant persons in certain activities. Moreover, Article 313-22 of the RG AMF requires ISPs to keep and regularly update a log of the kinds of investment service or ancillary service and other activity carried out by it or on its behalf where a conflict of interest entailing a material risk of damage to the interests of one or more clients has arisen or, in the case of ongoing activities, is likely to arise. Finally, Article 313-20 of the RG AMF states that "where an investment services provider is a member of a group, its conflicts of interest policy must also take into account any circumstances, of which it is or should be aware, that may give rise to a conflict of interest as a result of the structure and business activities of the other members of the group."

General obligations concerning research

Article 315-1 of the RG AMF requires research to be prepared honestly, fairly, and impartially, as well as for it to be presented clearly and precisely. Article 315-3 requires ISPs and investment analysts to make their best efforts to ensure that: (i) facts referred to in the investment recommendations are clearly distinguished from interpretations, estimates, opinions and other kinds of non-factual information; (ii) all sources are reliable; (iii) all projections, forecasts and price targets are clearly indicated as such, and the principal assumptions are disclosed; (iv) all important sources for the investment recommendation are disclosed; (v) any basis or method used to value a financial instrument or to establish a price target is summarized in an appropriate manner; (vi) the meaning of any recommendation made, such as "buy," "sell," or "hold," as well as any time horizon associated with such recommendation, is adequately explained, and any appropriate risk warning (including a sensitivity analysis of the assumptions used) is indicated; (vii) The expected frequency of updates to the recommendation is disclosed, as well as any material change in the policy with regard to the issuer; (viii) the date on which the investment recommendation was first released for dissemination is clearly and prominently indicated, as are the date and time of day of any actual price mentioned for a financial instrument; and (ix) where an investment recommendation differs from a recommendation issued during the previous 12 months regarding the same financial instrument or the same issuer, this change and the date of the earlier recommendation are indicated clearly and prominently.

Specific measures to address conflict of interest

Governance

Article 313-26 of the RG AMF states ISPs that produce or arrange for the production of investment research intended to be subsequently disseminated to their own clients or the public must ensure that the provisions of Article 313-21-II are applied to investment analysts involved in production of such analysis and other relevant persons whose responsibilities or business interests may conflict with the interests of persons to whom the investment research is disseminated.

Prohibitions directed to analysts

Article 313-27 of the RG AMF states that ISPs must adopt measures to ensure that investment analysts and other relevant persons do not undertake personal transactions or trade in financial instruments to which investment research relates, or in any related financial instruments, if they are aware of the likely dissemination date or content of the investment research and this knowledge is not accessible to the public and clients.

In addition, ISPs, investment analysts, and other relevant persons involved in the production of investment research must not accept inducements from persons with a material interest in the subject-matter of the investment research and must not promise issuers favorable coverage in their analysis.

Disclosure requirements

Article 315-5 of the RG AMF requires investment research to disclose any relations and circumstances concerning the investment analyst or ISP that one can reasonably believe likely to impair the objectivity of the recommendation. In particular, when the provider, analyst, or any person who participated in the preparation of the research has a significant financial interest in one or more of the financial instruments recommended, or a significant conflict of interest with the relevant issuer, this fact must be disclosed.

Article 315-6 of the RG AMF specifies the minimum information to be disclosed regarding the ISP or related entities in compliance with Article 315-5:

Any interests held by them or conflicts of interest involving them, knowledge of which was accessible or reasonably expected to be accessible to persons who took part in preparing the recommendation; and

Any interests held by them or conflicts of interest involving them that were known to persons that did not take part in preparing the recommendation but had access, or can reasonably be expected to have had access to the recommendation before it was disseminated to clients or to the public.

In addition, Article 315-7 of the RG AMF requires research to disclose clearly and prominently, inter alia, the following information on interests and conflicts of interest of the ISP:

any relevant shareholding links;

- when the ISP is a market maker or liquidity provider in the issuer's financial instruments; and
- when the ISP has recently been lead manager or co-lead manager in a public offering of the issuer's financial instruments.

Article 315-8 of the RG AMF requires research to disclose, in general terms, the information barriers set up within the ISP to prevent and avoid conflicts of interest with respect to investment research.

In addition, Article 315-9 of the RG AMF requires the ISP to publish, on a quarterly basis, a breakdown of the recommendations it has disseminated showing the proportion of recommendations that are "buy," "hold," "sell" separately for all recommendations, and for recommendations pertaining to issuers to which the provider has furnished certain investment services to a significant extent during the previous 12 months.

Practice

The first regulations of AMF in connection with investment analysis date from 2000-01. At that time, the AMF followed quite closely the implementation of such regulations. More recently in 2004-05, the AMF encouraged transparency on the cost of research, which also intended to foster analysis produced by independent research bureaux not associated with an ISP. Currently, there is no systematic review of research to ensure that it complies with the disclosure obligations described above; but during onsite inspections, internal controls of ISP are reviewed, including those aiming at addressing conflicts of interests, and research requirements including disclosure obligations are likely to be subject to thematic inspections in the near future.

Other information providers***Independent research analysts***

Currently roughly 99 percent of research is produced by the analysts of banks and ISPs. However, there are “independent analysts,” although their number is uncertain given that they are not required to register. Sell-side analysts on the other hand are approved persons by the ISP or the bank. Given that such type of analysts can exist, the AMF extended the framework for sell side analysts to such “independent analysts.” In this regard, if an ISP disseminates investment research produced by another person to the public or its clients, it must ensure that the producer of the investment research is subject to requirements equivalent to those listed in Article 313-21-II of the RG AMF (see below) for the production of the research, or that it has established a policy setting such requirements. Articles 315-1 to 315-14 explained above also apply in such case.

Specific rules apply to investment analysts not associated with an ISP (Articles 327-1 to 328 of the RG AMF). The rules applicable to the personal transactions of ISP staff also apply to “independent analysts,” and some specific rules for personal transactions of “independent analysts” are added in Article 327-2-1.

To improve the independence of those analysts, any inducements that they may receive are subject to the general disclosure requirements and to rules preventing conflicts of interests (Article 314-76). “Independent analysts” must also comply with the rules listed in Articles 315-2 to 315-11 of the RG AMF (see below), and Article 327-4 details the additional obligations that must be fulfilled to ensure their independence.

In addition, Article 327-6 of the RG AMF requires “independent analysts” to adopt a code of conduct, unless they belong to an industry association that is recognized by the AMF.

When persons other than ISPs disseminate research that they have not produced, they must communicate clearly their identity and indicate any change that they have made to the original research. If a summary of third party research is disseminated, it must be fair and not misleading.

Fairness opinions providers

The AMF considers the fairness opinion a critical element of its investors protection framework in the context of tender offers (see description in Principle 17). Thus, AMF issued regulations which seek to address the risks posed by this type of information.

	<p>In connection with such opinion, the AMF regulations:</p> <ul style="list-style-type: none"> • prohibit the author of the fairness opinion from being conflicted in relation to the target, offeror, or their advisers (this may preclude the same expert being used repeatedly by the same advisor bank); • set the contents of the expert's report which must include a self-certification of independence, a description of the diligences performed and a comprehensive evaluation of the target; and • prohibit the use of the term "fairness opinion" for any opinion that does not comply with AMF regulations. <p>There are currently two associations for experts that provide "fairness opinions," although only one is active. There are roughly 40-50 experts. 10 to 15 of them provide opinions on a regular basis, and 10 of them concentrate roughly 80 percent of the cases. Thus, the AMF checks that experts do not provide opinions to the same bank. In practice, the AMF checks both issues of independence as well as of quality of their opinion.</p> <p>AMF staff considers that such opinions are providing value added to shareholders as they provide a price reference for minority shareholders to evaluate the offer. A review of files shows that the opinions are detailed, and include different mechanisms to price the securities.</p> <p>Proxy advisers</p> <p>Also in the context of proxy advisers the AMF decided on the need for some basic guidance but not direct regulation. In this regard, the AMF published a recommendation on March 18, 2011. The AMF encourages the relevant parties to implement these provisions for the 2012 General Meetings season:</p> <p>The AMF recommends that all proxy advisers publish their general voting policy on their website.</p> <p>The AMF recommendation also provides that the proxy advisory firm should dispose of the appropriate skills and resources to provide the relevant services, and especially to analyze draft resolutions. The persons in charge of examining draft resolutions must have the adequate skills and experience to conduct this type of analysis.</p> <p>According to this recommendation, proxy advisers should engage in dialogue with the listed companies whose draft resolutions they analyze. For this reason, the AMF recommends that the proxy advisor submit its draft report to the relevant company for review, failing which the proxy advisor shall clearly state in its report that the draft was not submitted for review and explain the reasons why.</p> <p>On preventing conflicts of interest, the AMF recommends that proxy advisers should establish and web post reasonable and appropriate measures to prevent conflicts of interest and to manage any that arise, particularly if advisers are active in a number of areas (consulting services to issuers, provision of a voting platform, proxy solicitation, etc.).</p>
Assessment	Fully implemented
Comments	Active monitoring of the framework (via onsite inspections) for sell-side analysts is not in a current priority of the French authorities, although as-indicated above-the review of internal controls indirectly would look at this issue if an ISP provides research services. Vis-à-vis other more pressing issues the assessors do not consider this to be a material concern. However, the authorities could consider including remuneration of sell-side analyst as part of the topics for further review in connection with compensation of ISPs.

Principles for Collective Investment Schemes	
Principle 24.	The regulatory system should set standards for the eligibility, governance, organization and operational conduct of those who wish to market or operate a collective investment scheme.
Description	<p>Marketing of a CIS</p> <p>Marketing of CIS can be carried out by the following types of entities: (i) ISPs, which include (a) investment firms, among which are PMCs, and (b) Credit institutions; (ii) direct marketers; and (iii) FIAs.</p> <p>Each of these categories is subject to authorization. Requirements for ISPs that, in general, are not portfolio managers are described in Principle 29. Requirements for ISPs that are portfolio managers will be described below. Direct marketers are subject to fit and properness requirements, which include (i) holding a qualification in the field of promotion and direct marketing, or having worked in the area for at least two years; (ii) a clean criminal record; and (iii) having professional liability insurance with a level of coverage that meets certain requirements. In addition, direct marketers must comply with conduct of business obligations.</p> <p>Management of a CIS</p> <p>Management of a CIS is an investment service that requires authorization pursuant to the COMOFI.</p> <p>The authorization of firms whose main activity is portfolio management service belongs to the AMF (Article 311-1, 311-2, and 311-8 of the RG AMF and AMF Instruction 2008-03). In the case of firms that wish to provide among others portfolio management services, their authorization falls within the competence of the ACP, but always requires the prior consultation with the AMF.</p> <p>Prior to granting approval to a management company the AMF checks that:</p> <p>Its registered office and its principal administrative establishment are in France.</p> <p>It has sufficient initial capital and financial resources. The share capital of a management company must be at least €125,000 and must be fully paid- in cash. Once authorization is granted, in subsequent financial years, the management company must be able to prove at any time that its capital is at least equal to the higher of the following two amounts: (i) €125,000 plus an amount equal to 0.02 percent of assets under management by the management company in excess of € 250 million. The total capital requirement must nevertheless not exceed € 10 million; or (ii) one-quarter of general operating expenses for the preceding financial year (Article 312-3 of the RG AMF). The <i>Direction de la gestion d'actifs et des marchés (DGAM)</i> requires from the applicant the provision of a three-year business plan describing the expected amount of assets under management, the relevant incomes (and their origins), and liabilities to assess the ability of the CIS to operate over the long run (AMF Instruction 2008-03). The DGAM also requires information on the nature of the shareholder (natural person or legal entity), as well as the consistency of its capital base, in order to assess its ability to recapitalize the PMC if needed or required (AMF Instruction 2008-03, Annexes 2 and 2.1).</p> <p>It has indicated the identities of its direct or indirect shareholders, natural persons or legal entities, who have a qualified equity holding, as well as the amount of their holdings;</p> <p>It is managed by persons possessing the necessary fit and properness qualities, and experience for their function. At the time of authorization, the AMF verifies that all Board members possess the necessary respectability, competence, and</p>

adequate experience for their functions. The experience of the portfolio managers is assessed through their résumés, declarations, and must be adequate in view of the CIS's investment strategy and the complexity of the financial instruments used (AMF Instruction 2008-03, Annexes 3 and 3.1). The résumé of the compliance and internal control officer is also checked by the AMF. The AMF also assesses whether the shareholders (above a 10 percent stake) are fit and proper. In case of foreign managers or shareholders, the AMF will seek comparable information from the financial regulator of that manager or shareholder's country of residence (AMF Instruction 2008-03, Annexes 1, 2, 2.1, 3, and 3.1).

It has a program of operations that specifies the manner in which it envisages providing a description of the CIS's organizational structure, of its management, and marketing channels, as well as the type of transactions envisaged. The program of operations must be submitted to the AMF, along with the CIS's constituting documents (including the prospectus, fund rules, or Articles of incorporation, key investor document, etc.).

It has appropriate internal controls, risk management, and a compliance function. During the authorization process, the AMF assesses the appropriateness of the internal control and compliance functions regarding the size and activities involved. A person in charge of such controls (the compliance and internal control officer - *Responsable de la conformité et du contrôle interne* - RCCI) is required for any CIS operator to be authorized. A very small company will be allowed to designate a person responsible for the internal controls and compliance, or to outsource the actual controls. Within the first six months of the authorization by the PMC, the RCCI is granted a professional card by the AMF, based on an oral exam (in front of a jury), taking into account their personal ability and experience, as well as the general organization of the compliance functions within the operator, i.e., sufficient means to exercise its controls, reporting to the top management, etc. (Articles 313-66 to 313-71 of the RG AMF). It has appropriate governance. In particular during the authorization process, the AMF would look at the conflict of interest policy and whether there is appropriate monitoring of such potential conflicts of interest. In particular, executives cannot be shared between two or more CIS operators, except in very limited circumstances.

It is a member of the *Fonds de Garantie des Dépôts* (Deposit Guarantee Fund) for the "securities guarantee" procedure.

PMCs must comply with their authorization conditions at all times (Art. L.532-9 of COMOFI). The AMF may withdraw the authorization issued to a PMC when it no longer fulfils the conditions under which the authorization was granted (Art. L.532-10 of COMOFI and Art. 311-4 of the RG AMF).

A French UCITS, can be operated by a PMC established in another EEA Member State if that PMC has been approved by its home Member State's competent Authority to operate such a fund in France, either by the establishment of a branch or under the freedom to provide services (Art. L.532-20-1 and L.532-20-2 of COMOFI). A French PMC seeking to do business under the freedom to provide services, or to open a branch office under the right of establishment in another State party to the EEA agreement, must notify the AMF of its plans in accordance with Art. R. 532-24, R. 532-25, R. 532-28, R. 532-29, R. 735-6, R. 745-6, R. 755-6 and R. 765-6 of COMOFI and in accordance with AMF Instruction 2008-03, Annexe 9 (Art. 311-7 of the RG AMF).

Regarding companies managing securitization vehicles companies managing securitization vehicles and management companies of real estate investment funds, some specificities exist in relation to the conditions to be authorized (RG AMF, Art. 321-1 to 321-48).

Practice

The authorization and ongoing supervision of a PMC and funds are performed by the *Direction de la gestion d'actifs* (DGA). The Department is a team of 60 people split in 4 divisions: (i) a Management Company division: in charge of the authorization and ongoing monitoring of the management companies (*Division prestataires de services d'investissement*); (ii) a product division: in charge of the authorization and ongoing monitoring of the funds and supervision of all marketing materials and marketing campaigns related to these products (*Division produits et commercialisation*); (iii) an expert division: in charge of providing a first level of expertise on legal questions (4 persons), complex products & risk management (2 persons), and risk managers (1 person) (*Division expertise juridique, doctrine opérationnelle et gestion complexe*); and (iv) a support division: in charge of managing the data, reports, analyzes, etc. related to funds and management companies (*Division maîtrise d'ouvrage et métiers support*).

Authorization of new CIS operators

Applications to obtain an authorization are reviewed by the DGA. This review takes approximately two months (and less than three months). The process entails an initial interview of the directors of the PMC by staff from the Management Company Division, a review of regulatory documents and development of a scoring grid by an analyst from the Management Company Division, a second review by the head or deputy head and validation of the project by the Management Company Division; after which a formal analysis is presented for review and approval of the managing director of the DGAM. The project is presented at an internal pre-Board meeting, and the formal decision is taken at the AMF Board meeting.

Until 2010 the AMF policy was to conduct an onsite visit on newly registered entities. This policy has changed due to a move to a more risk-based approach. However, in practice PMC will generally receive either a supervisory visit from the DGA or an onsite inspection from the DEC in the first three years of their existence.

Changes to the authorization

Changes in organization, management or any condition under which an authorization was given must be reported to the AMF. Depending on the issue, this amendment may require the prior authorization of the AMF, or an immediate notification. For example, changes in managers, acquisitions and increases in holdings of a management company have to be authorized by the AMF. Changes in the CIS must be transmitted to unit-holders. Material changes (as discussed under Principle 26) require prior approval by the AMF and give the unit-holder a right to obtain reimbursement without charges during 3 months.

Supervision and ongoing monitoring

The AMF has put in place a risk-based approach to detect suspected breaches that may lead to a follow-up or to an inspection.

Offsite supervision

Reporting obligations: (Annual account and situation reporting - FRA, annual compliance report-RAC, specific annual reporting). Pursuant to Art. L.214-23 of the COMOFI, the CIS, or CIS operator where relevant, must prepare annual and semiannual reports that contain accounting information relevant to the CIS and a statement concerning the interests in the CIS that have been redeemed or repurchased over the relevant period. The accounts of a CIS included in these reports must be prepared in accordance with applicable accounting standards.

These annual and semiannual reports are transmitted to the AMF (Art. 411-122 of the RG AMF).

In addition, the PMC sends its financial statements each year to the AMF (Art. 313.59 of the RG AMF).

A dedicated IT system (SMARTVL) provides analysis on NAVs. Each month the AMF uses this database to run tests on NAV information (more than 100.000 data points). Alerts are generated based on different tests to capture abnormalities. Alerts detected by the system (roughly 100 per month) are given for formal review to members of the Product Division (*Division agreements et suivi – DAS*). After initial analysis, a full review of a significant event is performed during a monthly meeting with all the members of the DGA. A formal score (between 0 and 8 points) is given to all cases analyzed. Single cases presenting the highest score are given for further action (i.e., a case is assigned to a different member of the DAS. For example in 2008, 34 cases were opened, 61 in 2010 and 70 in 2011. Some of these cases resulted in a reform of internal procedures by the PMC, the modification of the relative prospectus or marketing materials, and a few resulted in referral of the case to the *Direction des contrôles* (roughly 3 percent) or to the compensation to investors (9 percent).

A dedicated tool (Kantar) checks the marketing campaign linked to retail investment products. Marketing campaigns relating to bank products and insurance products are referred to the ACP. Between April and October 2011, 82 marketing campaigns on funds were identified and analyzed. A monthly meeting with other groups of the AMF reviews the different marketing campaigns.

The AMF has developed a scoring approach for PMCs (i.e., combining multiple factors, e.g. assets under management, complexity of instruments invested, etc.). Based on such scoring the AMF develops an annual plan of inspections. PMCs to inspect are selected on the basis of different criteria, e.g. the time of the last inspection, the risk associated with the investment process, or the risk associated with the management company (recent change of directors, risk managers, etc.), on the basis of thematic visits (i.e., visits to a selection of management company on the same topic), etc. The AMF also conducts onsite inspections on depositories.

In addition, as indicated in Principle 12, the AMF also conducts supervisory visits on PMCs to monitor both their financial health, as well as compliance with conduct obligations. These visits are supported by a formal feedback and analysis procedure. They do not have the vocation to lead to sanctioning procedures, but they could give rise to more enhanced supervision/monitoring for a particular PMC.

The AMF is seen in the market to be strict on a range of topics (relatively to other countries): The use of front and back books in facilitation, the equal treatment of clients, investment advice to institutional clients, and product approval (especially in the area of highly complex products).

Onsite work conducted by the AMF on PMCs				
	2008	2009	2010	2011
Onsite inspections on PMCs	34	27	20	30
Supervisory Visits	56	80	84	100
Onsite inspections on depositories	3	3	4	n/a

Detection of breaches

As indicated in Principle 12, the AMF has a broad set of investigative and enforcement powers. One of the key objectives of AMF's off and onsite supervisory program is to detect breaches to laws and regulations. Offsite work and visits for example have led to actions by PMCs to compensate investors. For example, in 2011 the sums recouped for investors amounted to €5,073,650, while in 2010 they amounted to €432,000.

Onsite inspections are followed by a follow-up letter ("*lettre de suite*"), which as indicated in Principle 12, have a formal tone and weight. Sanctions have also followed, although as indicated in Principle 12, the number of sanctions imposed for violation of conduct obligations is limited.

Record keeping

ISPs (including the PMCs) must arrange for records to be kept of all services and transactions undertaken sufficient to enable the AMF to monitor compliance, and in particular, to ascertain that the CIS has complied with all obligations with respect to clients or potential clients (Art. L.533-10 of the COMOFI). Records must be retained for at least 5 years. (Art. 313-49 of the RG AMF). Agreements that set out the relationship with a client must be kept at least for the duration of the relationship.

Conflicts of interest

As indicated under Principle 23, Art. 313-20 of the RG AMF requires ISPs to establish and maintain an effective conflicts of interest policy, set out in writing and appropriate to their size and organization and to the nature, scale and complexity of their business.

Article 313-21 of the RG AMF provides that the procedures and measures for managing conflicts of interests must be designed to ensure that relevant persons engaged in different business activities constituting, or which may give rise to, a conflict of interest (...) carry out those activities at a level of independence appropriate to the size and activities of the ISP and of the group to which it belongs, with regard to the materiality of the risk of damage to clients' interests.

PMCs must take all reasonable steps to identify and restrict the types of conflicts of interest that arise in the course of providing services and activities. Where organizational or administrative arrangements made by the PMC to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the management company must clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business on its behalf (Art. L.533-10.3 of the COMOFI and Art. 313-18 et seq. of the RG AMF).

Rules of operational conduct

The principle of fair treatment is an overarching principle of the French regulation of portfolio management embedded in law, where the CIS, the depositary and the PMC must act independently and solely in the interest of the unit-holders. They must ensure that unit-holders are treated fairly (Art. L.214-9 of the COMOFI and Art. 314-3 and 314-3-1 of the RG AMF). A set of more specific conduct obligations is included in Art. 314-3 et seq. of the RG AMF. As a result of provisions in both the COMOFI and the RG AMF PMCs must comply with obligations related to (i) best execution; (ii) proper handling and allocation of orders; (iii) prohibition of churning (in fact sanctions have been imposed in this area); (iv) related party transactions (the framework includes certain restrictions, as well as the obligation to set up procedures for notification and a "registry" system); (v) due diligence in selection of investments; and (vi) fees and expenses (which include both an obligation to prevent undue costs, as well as disclosure obligations).

	<p>Delegation</p> <p>As an overarching principle, PMCs must retain the necessary resources and expertise to effectively monitor the activities carried out by third parties on the basis of an arrangement with the management company (Art. 313-77 of the RG AMF). The AMF requires the CIS operator to delegate only activities within the scope of its authorization and delegation is strictly limited and cannot involve a major or critical part of the PMCs activity. The delegation of the investment management of a CIS can only be handed to a CIS operator duly authorized by a public authority (Art. 313-78 of the RG AMF). Any project of delegation between two CIS must be filed with and approved by the AMF. The AMF reviews the file (describing the project, the diligences and controls made by the portfolio management company on its delegate) and assesses the appropriateness of the measures taken by the CIS operator enabling it to monitor the activity of the entity to which management is delegated (Art. 313-77 of the RG AMF). The AMF doctrine is to refuse or withdraw authorization from companies not having at least three full time persons employed (letter box entities are not allowed). In any event, the liability of the PMC or of the depositary must not be affected by delegation by the management company of any functions to third parties (Art. 313-77 of the RG AMF). AMF Instruction 2005-02 states that all kinds of delegation have to be disclosed to investors in the prospectus.</p>
Assessment	Fully implemented
Comments	<p>In the implementation of the UCITS IV directive, the AMF has chosen to apply the risk management framework from the regulation for banks (Instruction 97-02) to the PMCs. As a result a significantly more comprehensive framework on risk management is now in place compared to the last assessment of 2005.</p> <p>It is fair to say that the supervision on PMCs is rather active and the interpretation of the law stringent. So far this has served the French investors well, yet raises some issues for the European level playing field.</p> <p>In France, the AMF has stricter requirements on the diversification rules than most other European jurisdictions, where for example UCITS funds with just one single investment (e.g., gold) are allowed.</p> <p>The AMF also requires all risk (including counter party risk that could occur for example in case of securities lending) within a fund to be aggregated and measured into by a single number. As a result, funds in France can overall contain less risk than funds in some other European jurisdictions.</p>
Principle 25.	The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.
Description	<p>Legal form/investors' rights</p> <p>The French regulatory system provides for two types of legal forms of CIS. Under Art. L.214-4 of the COMOFI, undertakings for collective investment in transferable securities (UCITS), take the form of either (i) open-end investment companies (SICAVs) or (ii) unit trusts (FCPs).</p> <p>Under Art. L.214-7 of the COMOFI, a SICAV must be a public limited company or a more flexible form of PLC known as <i>société par actions simplifiée</i> (SA), where investors have the right to vote at an AGM as shareholders. In unit trusts, the investors do not have the right to vote but are represented by the PMC (Art. L.214-9 of the COMOFI). SICAVs can delegate the management of a CIS to a PMC. When a SICAV manages its own assets, it must fulfill the same conditions as a PMC (Art. 411-1 of the RG AMF).</p> <p>The fund rules or instruments of incorporation of an investment company (and so the legal form and/or structure of a CIS) are an integral part of the prospectus and must</p>

be annexed thereto. The AMF vets that the form and structure requirements are in compliance with the legal and regulatory framework through the authorization of a CIS, which is further described in Principle 26.

Changes to a CIS

The regulatory system provides that investors must be informed of every modification concerning a CIS. In the event of material changes, investors must be informed personally before the changes take effect. In the latter case, investors have the right to redeem without any redemption fees. This is particularly the case when the changes concern the identity of the PMC or the depositary, investment objectives or policy, fees, risk, profitability or yield profile, the reduced frequency of calculation or publication of the redemption price of units, change of guarantor, or the delegation of a substantial part of the investment management.

Compliance with investment rules

Investment objectives and policies must be included in the prospectus. In the French regulatory system, the depositary fulfils a basic role of ensuring that fund managers comply with the policies stated therein. In addition, pursuant to Art. L. 621-9 et seq. of the COMOFI and Art.143-1 et seq. of the RG AMF, the AMF conducts ongoing supervision of CIS.

Segregation of assets/safekeeping

The French regulatory system requires segregation of CIS assets from the assets of the CIS operator and its managers. The CIS assets must be held by a single custodian separate from the PMC and chosen from a list of legal entities drawn up by the *Ministre de l'Economie et des Finances*. The custodian itself must keep CIS assets segregated from its own assets (Art. 322-17 of the RG AMF).

Art. L.533-10 of the COMOFI and Art. 313-18 et seq. of the RG AMF provide that all investment firms must correctly identify and manage conflicts of interest in order to protect the interests of their clients. According to this, the conflicts of interests have to include those concerning related parties, i.e., when the management company and the depositary are related entities. In addition, Art. L.214-9 of the COMOFI, defining the obligations of the PMC and of the depositary, provides that they act independently of each other and in the sole interest of the fund's unit- or share-holders. Moreover, to these general safeguards, the legal and regulatory framework requires the provision of two specific annual reports by the statutory auditor of the depositary. Article 313-17-1 of the AMF RG requires the auditor to report to the AMF at least annually on the adequacy of measures taken by the depositary to protect the clients' rights in the financial instruments that belong to them and prevent their use, unless the clients' express consent is obtained. In addition, Article 323-10 of the AMF RG requires the auditor to conduct a special annual audit of the accounts opened by the depositary for the CIS. This audit aims at ensuring that the procedures in place are sufficient to ensure compliance with the obligations attached to the safekeeping function of the depositary. The AMF also provided evidence that it has conducted inspections specifically on 3 depositories which acted solely for CIS managed by a related PMC. In all such cases *lettre de suite* were sent to the entities. The letters sent by the AMF show that onsite inspections are robust and therefore act as an additional safeguard of investors' interests. Art. L.214-10 of the COMOFI and Art. 323-2 and 322-4 of the RG AMF provide that in the event that the custodian has entrusted all or some of the assets in its safekeeping to a third party, the custodian remains responsible for the restitution of financial instruments held on its books. In a recent case in which a custodian contested this law, the *Cour de Cassation* ruled that such obligation is lawful, even if the custodian has entrusted the assets to a third party which in the case at hand was a prime broker (see 2012 decisions).

	<p>In the event that a PMC goes into liquidation, as the assets belong only to the fund and not to the PMC, the assets of the fund are totally protected from any claim of the PMC's liquidator.</p> <p>Through its ongoing supervision, the AMF monitors that these obligations are respected. In addition, after the Madoff scandal, the AMF conducted a focused check and only found important problems in one company that was subsequently sanctioned.</p> <p>Winding up</p> <p>Art. L.214-3 of the COMOFI provides that formation, conversion, merger, demerger or liquidation of a UCITS is subject to authorization from the AMF.</p> <p>Art. L.214-12 provides that the conditions for liquidation and the arrangements for dividing up the assets are determined by the rules or CIS instruments of incorporation. The custodian, or, if appropriate, the PMC, assumes the liquidator's functions, failing which, a liquidator is appointed by the court at the request of any unit holder.</p> <p>The winding up of CIS is a formal process where the management company requests the winding up of the fund. Such request is reviewed by a product fund analyst at first, and secondly signed off by a senior analyst. For structured funds, the conversion, or winding up, of the fund is a formal process where the convergence of the formula (and potential guarantee payment) is checked.</p>
Assessment	Fully implemented
Comments	<p>Segregation requirements have received special attention in the past period because of the crisis as well as due to the Lehman, Madoff failures.</p> <p>The assessors note that the French legal framework has taken a stricter stance in connection with the obligations of the depositary than other regulators in Europe, as demonstrated by courts' rulings. The assessors welcome current review of these requirements at the EU level.</p> <p>In the wake of the Madoff scandal, the AMF performed a review and only found serious weaknesses with one company which was subsequently sanctioned.</p>
Principle 26.	Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor's interest in the scheme.
Description	<p>Disclosure Obligations</p> <p>The French regulatory framework establishes a set of disclosure obligations in connection with CIS. First, the PMC must submit a set of information for the authorization of a CIS, which includes the prospectus and a Key Investor Information Document (KIID). In addition, ongoing and periodic disclosure requirements, similar to those applicable to issuers, apply also to CIS as described below.</p> <p><i>Prospectus</i></p> <p>The prospectus must contain sufficient information to allow an investor to understand the risks involved. As per the IOSCO Principles, the prospectus must include (i) the date of issuance; (ii) information concerning the legal constitution of the CIS and the attributes of the share or units of the CIS; (iii) information on the CIS operator and its principles (e.g. name, address, etc.); (iv) valuation rules, procedures to calculate the NAV, procedures for purchase, redemption and pricing of units/shares; (v) information on the custodial arrangements, starting with the name of the CIS depositary; (vi) information on risks involved in achieving the investment objectives; (vii) persons, who have a significant and independent role in relation to the CIS, must be specified in</p>

prospectus (including delegates); (viii) information on fees and charges in relation to the CIS.; and (ix) the names of the auditors.

KIID

The “Key Investor Information Document” must be provided to investors free of charge, ahead of subscription into a CIS, in order for them to make an informed investment decision (Art. 411-128 of the RG AMF). The KIID should only contain key information to make an informed decision, according to a predefined format which is regulated in the Regulation of the European Commission 583/2010. The information to be included is the identification of the UCITS, a short description of its investment objectives and policy; past performance or where relevant performances scenarios, costs and associated charges and the risk/reward profile of the investment, including appropriate guidance and warnings in relation to risks. The KIID must be written in nontechnical language. It should not exceed two pages, except for 'structured' UCITS where the length may extend to no more than three pages. The KIID specifies where and how to obtain additional information relating to the proposed investment, including where and how the prospectus, annual and semi-annual reports can be obtained on request free of charge.

Authorization of a CIS

CIS are subject to authorization by the AMF. The process of authorization of a new CIS involves a five-step process: (i) an initial review of the fund regulatory documents by staff. For complex funds, this review includes a thorough analysis of all the marketing materials; (ii) a second review of the regulatory (and marketing) documents by a reviewer; (iii) a short review by one of the deputy head of the *Division produits et commercialisation* or by the head of the product team; (iv) a presentation of the new fund in the AMF Fund Committee (meeting twice per week); and (v) formal approval by the Chairman of the AMF of the product. As part of such review, the AMF verifies that the content of the prospectus and the KIID provide information in a clear, fair and not misleading manner (Art. L.533-12 of the COMOFI). The files reviewed showed that the AMF conducts a thorough review, and frequently asks for clarifications and modifications to the prospectus and KIID.

Periodic and Ongoing information obligations

Applicable AMF Instructions to CIS (UCITS, classical CIS and private equity CIS) provide that the prospectus and KIID must be kept up to date to take account of any material changes affecting the CIS that are relevant for the completeness and accuracy of the offering documents.

Annual financial statements (Art. 411-35 of the RG AMF): Financial statements of the CIS must be prepared in accordance to French GAAP and they must be audited.

Annual and semi-annual reports (Art. L.214-23 of the COMOFI and Art. 411-121 and 411-122 of the RG AMF): These reports must contain accounting information relevant to the CIS and a statement concerning the interests in the CIS that have been redeemed or repurchased over the relevant period. In addition, they must include a management report (Art. 411-38 f the RG AMF).

List of assets at the end of the financial year: Pursuant to Art. 411-125 of the RG AMF, a CIS must additionally compile an offering circular of the composition of assets at the end of each semester. The content of the circular on the composition of assets is defined in an AMF Instruction. Offering circulars must be published within eight weeks following the end of every period defined in a detailed memo. If the CIS is made up of sub-funds, periodical offering circulars must also be compiled for each sub-fund.

Pursuant to Art. 411-39 of the RG AMF, the annual financial statements, the list of assets at the end of the financial year, the statutory auditors' reports and the report by

	<p>the Board of directors or the executive Board of the SICAV, must be made available for unit-holders at the registered office of the SICAV or of the PMC of the trust fund (FCP). They must be sent to any unit-holders who request them within eight business days of receiving the request. Subject to the unit-holder's consent, the documents may be sent electronically (Art. 411-128-3 of the RG AMF).</p> <p>Advertisement</p> <p>Advertising materials outside of the offering documents must be compliant with Art. L.533-12 I of the COMOFI, Art. 314-10 at following, Art. 314-29 et seq., and Art. 411-126 et seq. of the RG AMF. French regulatory rules prohibit inaccurate, false or misleading advertising.</p> <p>Pursuant to Art. 314-30 of the RG AMF, at any time, the AMF may require ISPs, and people who market CIS, to submit their marketing communications for the investment services that they provide and the financial instruments that they offer prior to publication, distribution or broadcast. It may require changes to the presentation or the content to ensure that the information is accurate, clear and not misleading. Marketing materials must also respect rules of Art. 314-10 to 314-17 of the RG AMF.</p> <p>The AMF may review marketing materials of a specific CIS (e.g. structured CIS) during its authorization process. Ongoing monitoring is also made by the AMF on website, newspaper and other forms of publication, etc. In case of noncompliance, the AMF contacts the PMC to recommend corrective actions. Finally, the AMF has published guidelines on advertising material outside of the offering documents (i.e., <i>Guide de bonnes pratiques pour la rédaction des documents commerciaux</i>) and a more general position on the marketing of complex financial instruments applied to structured CIS (AMF Position No. 2010-05 of 15 October 2010 'Marketing of complex financial instruments').</p> <p>Rules on distribution</p> <p>As any other ISPs, PMCs and distributors of CIS are subject to conduct obligations in connection with the commercialization of CIS, including suitability or appropriateness obligations depending on the service provided. It is important to mention, however, that UCITS can be distributed on an execution service only capacity, as they are considered to be non-complex under the MiFID. The authorities have indicated however they have advocated for the elimination of the automatic categorization of all UCITS as non-complex products.</p>
Assessment	Fully Implemented
Comments	<p>Disclosure requirements for CIS are robust. The assessors welcome actions by the authorities to eliminate the automatic classification of UCITs as noncomplex products.</p> <p>As described in Principle 24, business conduct obligations, including in connection with disclosure and distribution obligations are a key component of the AMF supervisory program. In the latter the creation of the highly complex product doctrine has sought to clarify obligations of ISPs and FIAs in connection with the distribution of such products to retail investors. With the creation of the highly complex product doctrine, the AMF has interpreted the MiFID principle of suitability more broadly than some other countries in Europe. In doing so the AMF has taken an objective oriented (the objective here being investor protection) perspective. The assessors encourage the AMF to continue to further refine this work, as suggested below. In practice, this doctrine puts a limitation to the marketing of highly complex structured products. Products that contain a guarantee of at least 90 percent of the principal, fall outside of this new doctrine of the AMF. From an investor protection point of view this can be debated, since products with such a guarantee but highly complex structures and very high cost can be also detrimental to customers without the customer knowing.</p>

	<p>Some respondents indicated, however, that they still see many problems with structured products. They, just as the AMF, expect much from PRIPs, which is expected to regulate financial products more strictly irrespective how they are wrapped. These respondents think the transparency of these products should be increased significantly. Also, they think the definition of a simple product versus a very complex product should be sharpened ensuring the more structured products fall within the remit of the highly complex products doctrine. The example these respondents give is that seemingly simple products from the outside can be very complex inside. Whenever a structure, such as a complicated hedge inside the products fails to produce results as expected, the product stops being simple and not only becomes complex but can also become dangerous and detrimental to customers.</p> <p>Finally, it is advisable that AMF also considers including the topics of fees, commissions and hidden costs in their doctrine. Some respondents had significant worries here and expect a broadening of the doctrine could effectively contribute to more safe as well as fair products. These issues seem to be not only relevant for retail investors, but also for the smaller institutional investors.</p> <p>In drawing up the highly complex product doctrine, AMF took the initiative and wanted to take ACP on Board, because these products were inside insurance products as well. Although both regulators tried to create one doctrine, they were not completely successful because there were some important different details between insurance and investment products. As a result two doctrines were created in parallel, with some differences (see also Principle 1 for the market participant perspective). For example, with insurance products the guarantee is typically during the life of the contract whereas with investment products often times the guarantee is only at the end of the contract. AMF and ACP decided in the same week their doctrines. And they were published together as well. As a result, the impact of this doctrine led to a quick clearing of the market for these products.</p>
Principle 27.	Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.
Description	<p>Asset Valuation</p> <p>As a general principle Article L.214-19 of the COMOFI requires PMCs to be able to value the assets of a CIS in an accurate and independent manner. Valuation of assets must be done in accordance with French GAAP.</p> <p>Pursuant to Art. 411-24 to 411-33 of the RG AMF, a PMC is responsible for establishing, implementing and maintaining policies and procedures to ensure an accurate calculation of the NAV of the CIS portfolios. Financial instruments, contracts, deposits, etc. as part of the assets of the CIS, must be valued each day for the calculation of the NAV. Art. 411-28 of the RG AMF requires that the accounting rules within the CIS or the sub-fund portfolio be consistent and that the same rules apply to assets of the same class. AMF Instruction 2008-06 complements these provisions. Pursuant to Art. 18 of the AMF Instruction 2005-02, the prospectus must also contain the rules regarding the valuation of the assets of the CIS.</p> <p>Illiquid assets</p> <p>AMF Instruction 2008-06 provides guidance on the valuation of illiquid assets. In such case, for example, the portfolio manager must not entirely rely on the prices given by the counterparty (e.g. in the case of an OTC derivative). The PMC must perform a valuation based when necessary on a valuation model, whose selection, validation and implementation must be adequately conducted and documented. The PMC is responsible for selecting appropriate inputs and market data. Finally, the PMC must implement an independent valuation control.</p>

Pursuant to Art. 313-53-4 of the RG AMF, the valuation procedures must be reviewed and supported by the permanent risk management function, which is hierarchically and functionally independent from the operating units. In addition, the external accountant is to audit compliance with the valuation requirements.

Publication of NAVs, subscriptions and redemptions

Pursuant to Art. 411-123 of the RG AMF, a CIS must publish in an appropriate manner the NAV of the units or shares which they issue at least twice a month. UCITS may publish once a month if this periodicity is not detrimental to the unit holders' interest and with prior authorization of the AMF. In practice, this occurs only for funds marketed to professional investors, whereas the retail funds calculate and publish NAVs on a daily basis. There are about 4000 funds for the retail public. There are another 4000 funds which calculate the NAV on a quasi-daily basis. This means that usually they publish daily unless there are circumstances where the duration of calculation takes longer and the NAV is published a day later. These funds are typically marketed to the professional associations and smaller insurance companies. Then there are about 2000 funds which mostly have a weekly cycle for NAV calculation. These funds are aimed at the institutional investors.

Pursuant to Art. 411-124 of the RG AMF, quoted CIS (e.g., exchange-traded funds) must establish and publish their units' NAV on each negotiation day. Pursuant to Art. 412-42 of the RG AMF, the NAV of a private equity CIS marketed to retail investors must be calculated at least twice a year, as documented in the fund's rules. Pursuant to Art. 424-42 of the RG AMF, the NAV of a real estate CIS marketed to retail investors must be calculated at least four times a year and within an interval of maximum three months as documented in the fund's rules.

Pursuant to Art. 411-123 of the RG AMF, the prospectus must establish the frequency of calculation and publication of the NAV. Redemption and subscription must be calculated based on that NAV.

Pursuant to Art. 10 of the AMF Instruction 2005-02, the prospectus must contain information on redemptions. The conditions under which investors may redeem units should be made clear (e.g. include name and address of the entity, existence of any potential lock-up period, centralization date, etc.).

Mispricing

The doctrine document elaborated by the AMF, called *Guide de suivi des OPC*, addresses situations in which the CIS operator has to compensate for pricing errors and provides good practices to be followed in case of mispricing. When a CIS operator detects a pricing error, it must analyze the impact and repair the damage incurred by compensating (i) the CIS; (ii) the unit holders of the CIS who have already subscribed; and (iii) the unit holders who have redeemed units. In any case, the CIS operator must contact the AMF and provide the methodology of the computation of the impact, the schedule of the compensation, the information to be disclosed to unit holders, etc.

In 2010, the total amount PMCs had to compensate unit holders for pricing errors was €4.3 million, according to the AMF report relative to the compensation of unit holders for damages incurred (*"Rapport relatif à l'indemnisation des préjudices subis par les épargnants et les investisseurs," groupe de travail présidé par J. Delmas-Marsalet et M. Ract-Madoux, 25 janvier 2011, page 19*).

Suspension

Pursuant to Art. L. 214-7-4 and L. 214-8-7 of the COMOFI, a PMC can only suspend the redemption of unit or the issuance of new units in exceptional circumstances when it is so required to protect the interest of unit-holders and according to the

	<p>conditions set by the fund rules. These Articles also allow for the AMF to issue regulations. Pursuant to Art. 411-20 of the RG AMF, the AMF must be informed without delay of the reasons and the terms of the suspension before implementing it, as well as all the competent authorities of the EU Member States in which the units are marketed.</p> <p>Powers of the AMF</p> <p>The AMF has the power to oversee that the CIS operator respects the regulations and is consequently able to carry out controls and inquiries, to verify that the CIS operator implements the rules applicable to asset valuation and pricing, pursuant to Art. L.621-9 of the COMOFI. Furthermore, as indicated under Principle 24, through its dedicated IT system (SMARTVL), the AMF conducts analysis on NAVs using different tests to capture abnormal performance and to ensure compliance of CIS operators with valuation rules.</p> <p>The COMOFI also provides for the possibility of side pockets in exceptional circumstances when the sale of assets is not in the interest of the unit holders. These provisions were used during the recent crisis, due to problems experienced mainly by money market funds. The AMF had to approve such arrangements and kept monitoring of whether appropriate communications were sent to investors by the fund.</p>
Assessment	Fully Implemented
Comments	The creation of side pockets in particular in MMFs is unusual, though might have been justified by the crisis. The assessors encourage the authorities to assess the experience with side pockets and determine whether further enhancements to the regulation of MMFs are warranted.
Principle 28.	Regulation should ensure that hedge funds and/or hedge funds managers/advisers are subject to appropriate oversight.
Description	<p>Background</p> <p>In France, hedge funds – HFs - (within the meaning of the IOSCO description provided below) may be structured as non-UCITS (nationally regulated funds) and have to be either authorized by or registered with the AMF according to the legal form they take. As such, they are regulated like other comparable CIS. French PMCs that manage HFs must be authorized as any other PMC. In practice there are not many HFs.</p> <p>This framework will be revised and completed as from 1st July 2013, the date by which the AIFM Directive has to be implemented and enters into force. The authorities have highlighted that the implementation of the AIFM Directive in France should not be problematic as the current framework has inspired many of the directive's provisions. Thus, the AMF considers that most provisions (except the ones, for instance, on the passport for non-EU funds) are already in force in France.</p> <p>Authorization requirements for hedge fund managers</p> <p>French PMCs that manage HFs are subject to the same standards applicable to other CIS operators, in particular concerning their internal organization and operational conduct. These include the necessary respectability and adequate experience for their function as manager of the CIS operator, the use of adequate and appropriate resources, including material, financial and human resources at all times and the employment of personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them. Moreover, sufficient initial capital, as well as suitable and adequate ongoing financial resources are required (Art. L.532-9 of the COMOFI). The establishment of a risk management policy for the measurement and management of risk is a further requisite.</p>

In practice, PMCs that manage HFs are required to go through a full registration and authorization process. Management companies willing to manage HFs must establish a program of operations which must demonstrate use of adequate and appropriate resources, depending on the nature, scale, complexity of funds managed (Art. 313-54 of the RG AMF). The PMC will be authorized only if the AMF is convinced that it is able to manage HFs, and notably that it employs a risk-management process which enables it to monitor and measure at any time the risk of its positions and their contribution to the overall risk profile of the portfolio (Art. L.532-9 et seq. of the COMOFI, Art.313-53-3 et seq., Art.313-60 of the RG AMF, and AMF Instruction 2008-03). The AMF also checks if the PMC is effectively directed by at least two persons of sufficiently good repute and sufficient experience for their duties, so as to ensure sound and prudent management of the HFs. For example, authorization was not granted in the past to applicants to manage HFs where the AMF detected a poor internal code of conduct or some potential conflicts of interest.

Authorization Requirements for Hedge Funds

There are two types of French CIS which correspond broadly to the IOSCO description of HFs:

- HFs which must be authorized by the AMF (OPCVM ARIA); and
- HFs which are only registered with the AMF (sorts of 'tailor-made funds').

The process before the AMF differs depending on the type of fund. There is a particular AMF Instruction for each kind of HF.

1. "OPCVM ARIA" (or CIS with streamlined investment rules):

PMCs that manage HFs are required to go through a full registration and the same authorization process as for "ordinary" funds (Art. L.214-33 et seq. of the COMOFI, Art. L.214-3 of the COMOFI, Art. 411-3 et seq., and 412-44 of the RG AMF). The conditions under which they can be authorized are the same as for the other CIS with a few exceptions. In addition, pursuant to Article L.214-3 of the COMOFI, the conversion or liquidation of a CIS with streamlined investment rules is also subject to authorization from the AMF. Subscriptions and purchase of these funds is restricted to professional investors (in the case of individuals and companies, there are very specific rules concerning their "minimum net worth," and for individuals the regulations also require a minimum subscription).

2. Tailor-made funds "only registered" with the AMF :

This form of fund does not need to be authorized by the AMF, but must file a registration with the AMF that contains the elements stipulated in an AMF Instruction. The conditions under which their formation, merger, demerger, takeover, liquidation, conversions and changes must be reported to the AMF are specified in Art. 412-74, 412-95 et seq., and 412-108 et seq. of the RG AMF, as well as under AMF Instructions numbers 2005-04, 2009-06 and 2009-09. Subscription and purchase of these funds is also restricted to professional investors (in this case, the minimum subscription requirements for individuals are higher than those established for an OPCVM ARIA).

Internal organization and segregation of assets

PMCs that manage HFs need to disclose during the authorization process and on an ongoing basis all details on the internal procedures and processes, including full details on their risk management process. Each PMC must appoint a single depositary pursuant to Art. L.214-8-1 and L.214-10 of the COMOFI. The AMF exercises control over the choice of the depositary pursuant to Art. 411-8 and 411-11 of the RG AMF.

Conflicts of interest

PMCs that manage HFs need to disclose during the authorization process all types of potential conflicts of interest pursuant to Art. L.533-10 of the COMOFI and Art. 313-18 et seq. of the RG AMF. For example for HF managers that are part of a same group of a broker dealer, need to disclose the potential amount of trades done with the group.

PMCs that manage HFs must also set up a conflict of interest policy and provide it to investors, as any other investment firm (see details on the conflict of interest policy in Principle 23).

Prudential requirements

PMCs that manage HFs are subject to the same capital requirements as any other fund manager, which are detailed in Principle 24. The AMF highlighted that these requirements will be amended to be harmonized with all other European Member States as from July 2013 with the entry into force of the AIFM Directive.

PMCs that manage HFs must also establish and maintain effective decision-making procedures which notably include due diligence in connection with the selection, monitoring and management of the risks associated with the financial instruments in which the CIS invests. They must employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

For all prudential requirements, PMCs must take into account the nature, scale, complexity and range of the services that they provide and the businesses in which they engage.

Information to investors

The prospectus requirement also applies to HFs.

Ongoing supervision*Powers*

The AMF control and inspection/investigation powers are the same for PMCs that manage HFs as for any PMC generally (Art.L.621-10 of the COMOFI and Art.143-1 et seq. of the RG AMF). The AMF can also impose sanctions on both the management companies and the individuals acting under their authority or acting on their behalf (e.g. investment service compliance officers, salespersons, investment managers, investment analysts, traders, etc.).

Based on its general powers of investigation, the AMF can request the production of any information and document, including information on HFs exposure to counterparties. As long as the conditions required for cooperation and exchange of information between the AMF and foreign regulators are fulfilled, the AMF can exchange information with a foreign regulator, including information concerning internationally active funds that may pose systemic or other significant risks (Art.L.632-1 to L.632-6 for EEA regulators and Art.L.632-7 for non-EEA regulators of the COMOFI).

Offsite and onsite supervision

Any updates from the initial authorization need to be disclosed to the regulator (referred to in Art.L.214-3 of the COMOFI and Art.411-16 et seq. of the RG AMF). Furthermore, the AMF receives all the NAVs of the different funds. The AMF runs many tests on these NAVs to check potential anomalies or to detect emerging systemic risk (Art.411-29 of the RG AMF). The AMF can also request details on the portfolios. The AMF also receives annual and semi-annual reports that contain accounting information relevant to the HFs pursuant to Art.411-121 et seq. of the RG

	<p>AMF. When HFs need not be authorized by AMF, the AMF receives NAV information (Art.142-1 of the RG AMF), but does not receive annual and semiannual reports of the HFs.</p> <p>Pursuant to Article 313-61 of the RG AMF, PMCs that manage HFs must communicate to the AMF the types of derivative instruments, underlying risks, quantitative limits and methods that are chosen in order to estimate risks associated with transactions in such derivative instruments regarding each managed CIS. AMF may control the completeness and regularity of this information.</p> <p>Finally, as from July 2013, in application of the AIFM Directive, PMCs that manage HFs (among other non-UCITS managers) will have to report to their national regulators regarding, <i>inter alia</i>, the potentially systemic implications of the funds they manage. Such reports must be forwarded by EU national regulators to the ESMA and to the ESRB for the purpose of systemic surveillance. PMCs that manage HFs are being subject to onsite inspections as part of the regular plan of inspections of the AMF.</p>
Assessment	Fully implemented
Comments	
Principles for Market Intermediaries	
Principle 29.	Regulation should provide for minimum entry standards for market intermediaries.
Description	<p>Introduction</p> <p>As indicated in principle 1, the ACP is primarily in charge of the prudential supervision of ISPs. On the other hand, the AMF is the markets supervisor and is responsible for conduct supervision of all participants in the securities market including ISPs, PMCs and exercises prudential supervision over PMCs and the funds they administer. What has been explained under the Principles relative to PMCs will not be repeated here; nevertheless PMCs also comply with Principles 29-32 as market intermediaries.</p> <p>Definition of investment services</p> <p>ISPs include both investment firms and credit institutions that have been authorized to provide the services within the meaning of Article 321-1 of the COMOFI (reception and transmission of orders in relation to financial instruments on behalf of third parties, execution of orders on behalf of third parties, own account trading, portfolio management on behalf of third parties, underwriting, placing of financial instruments on or without a firm commitment basis, investment advice and operation of multilateral trading facilities).</p> <p>Authorization Requirement for ISPs</p> <p>The COMOFI (Art. L 531-1) requires ISPs to be authorized, either directly if they are French, or in the case of firms using the rights of free establishment or free provision of services within the European Union, in their home jurisdiction in which case they must provide the required notifications under the MiFID. In order to provide investment services in France, entities from third countries (i.e., outside the EU) must also be authorized (see COMOFI Art. L533-4 and L511-41-1).</p> <p>ISPs other than PMCs (whether investment firms or credit institutions) are authorized by the ACP, in consultation with the AMF. The authorization process, including authorization requirements, is described in Articles L 532-1 to L 532-5 of the COMOFI. The COMOFI establishes a time frame for acting on the application and for consultations between the ACP and the AMF. The AMF must approve the operational program for asset management or investment advice services, and</p>

provide any relevant observations when other investment services are to be provided. If after the initial authorization, a firm wishes to expand their operational program by adding new services not initially included in their program of operations, an additional authorization given by ACP in consultation with the AMF is required.

The COMOFI (Art. L532-1 to L532-4) provides that before granting a license, the ACP must review that the following requirements are in place:

Capital: ensure that the firm meets the minimum capital requirement (Art. L532-2-2 and Regulation 96-15 as amended); The minimum capital requirement (see CRBF Regulation 96-15) depends on the investment services provided :

- €125 000 for investment advice, reception and transmission of orders, executing orders and portfolio management for third parties (€50 000 when such services are to be provided without custody of client assets) ;
- €1 100 000 for trading for own account, underwriting and placing (amounts are reduced to €730 000 when the provider holds no client assets); and
- €730 000 for placing of financial instruments without a firm commitment basis and operation of an MTF.

Substantially higher requirements apply to individual and general clearing members firms carrying out securities custody activities. These firms are subject to a minimum capital requirement of €3.8 million.

Internal controls: ensure that the firm meets the requirements of CRBF Regulation 97-02 as amended, concerning the internal risk management system, compliance, outsourcing, and prevention of money laundering.

Management: ensure that there are two senior managers of integrity and experience responsible for the overall direction of the firm (Art. L532-2-3). The ACP application form requires specific information on management, including the following points: (i) the positions held by the person during his career; (ii) the size and nature of the entities in which those positions were held; (iii) the results of the entities wholly or partly managed by the person; and (iv) any sanction imposed on the person and any pending disciplinary or judicial proceedings. The manager's availability is also assessed if he occupies more than one position, including information about how the structures will be adapted and about possible conflicts of interest with regard to other corporate offices held outside the firm. A centralized database on "fit and proper" characteristics of banking and financial institution managers (FIDEC) has been created by ACP and AMF and is operational.

Program of operations: review the operational program detailed for each investment service, the business plan and the available technical and financial resources;

Suitability (fitness and properness) of the shareholders: in accordance to Art. L 532-2 of the COMOFI, firms wishing to be authorized as an investment firm must also give the identity of their shareholders, whether direct or indirect, whether legal entities or natural persons, who hold a qualified holding (10 percent), as well as the amount of their holding. The ACP evaluates the quality of these shareholders against the necessity to guarantee a sound and prudent management of the ISP. Membership in guarantee mechanism: assess the adherence of the firm to the securities guarantee mechanism according to the Art. L 322-1 to L 322-4 (Art. L 532-2-6).

The COMOFI (Art. L532-2) provides the authority to the ACP to attach conditions to the license that go beyond minimum standard prudential requirements. Based on non-compliance with the terms and conditions of the original license, or on request by the firm, the ACP can withdraw the license (ACP is also authorized to withdraw a license as a sanction). All these requirements are publicly available as they are

published in the Official gazette and also available on ACP/*Banque de France*, AMF and Legifrance websites.

Authorization Process for IFs

The *Direction des Autorisations, des Agréments et de la Réglementation* (DAAR) of the ACP is responsible for the authorization process. Two units are in charge of the review of applications concerning new authorizations, changes to the authorization, changes in ownership and approval of new managers. These two units are specialized, in banks for the first one and ISPs for the second one. There are staffed respectively with 15 and 12 persons.

The information needed to take a decision on the granting of the license is collected through a publicly available ACP application form (“Authorization Dossier”) which requires specific information on managers, proposed risk management and control procedures, strategy and origin of the initial capital. The decisions on licensing are taken by the Banking sector sub-college.

Most applicants for a license prefer to withdraw their request when they are told that, based on the assessment of their application, the ACP may decide to refuse licensing. Over the past 6 years a total of 24 applicants finally decided to abandon the procedure. In 2010 a firm maintained its request and the ACP refused to grant the license because the AMF had decided not to approve the operational program for the investment advice service, and had provided a number of critical observations on the other investment services planned. In this case, the ACP considered that the business program was not clear enough to warrant licensing. The authorization process does not include an onsite visit or “nursery” visits shortly after the authorization is given. However the risk framework in place considers several factors to determine the entities that will be subject to onsite inspection.

Changes

CRBF Regulation 96-16 (see Art. 2.1) requires an authorization from the ACP prior to any major changes in ownership (change of control, crossing the threshold of 1/2, 1/3, 20 percent and 10 percent of voting rights), and other changes in individual situations such as legal form, registered name and investment services carried out. If changes lead to significant modifications in the terms and conditions of the original authorization or to a failure to meet relevant requirements, the ACP may refuse to authorize the change in ownership or other modifications. New specific conditions or commitments may be defined by the ACP in order to authorize the change and maintain the license.

Under the terms of CRBF Regulation 96-16 (see Art. 9), the appointment of any senior manager in an existing ISP (i.e., any person who is responsible for the effective direction of the business) must be notified to the ACP when the person takes up the position. The appointment of a new senior manager is subject to the conditions of the original authorization. If the new senior manager is not considered suitable for the firm, his appointment could lead to a review of the license.

Similar requirements as described above apply to the authorization of PMCs, and in this case decisions are made by the AMF. See also Principle 24.

AMF regime of licenses of individuals

The employment of persons holding certain positions in ISPs is subject to specific conditions of fitness and properness as well as proficiency. These conditions include the holding of a professional license (see COMOFI Art L621-7 IV 3°, and RG AMF Art. 313-29 to 313-49) as well as demonstrating appropriate qualifications, expertise and a sufficient level of knowledge (see RG AMF, Art. 313-7-1 and following). Such professional licenses are to be held in particular by persons in ISPs other than PMCs

who perform the functions of: (i) compliance and internal control officer; (ii) compliance officers for investment services; (iii) traders of financial instruments; (iv) clearers of financial instruments; and (iv) investment analysts.

In PMCs, professional licenses are to be held by compliance and internal control officers. In addition, pursuant to RG AMF Art. 314-7-1, specific requirements in terms of minimum knowledge apply to the holders of a professional license listed above as well as to sales personnel, asset managers, heads of financial instrument clearing and heads of post-trade services, all functions being defined at Art. 313-7-2 of RG AMF.

The AMF delivers licenses to compliance and internal control officers and compliance officers for investment services. Before issuing the professional license, the AMF verifies that the relevant natural person is fit and proper, that he or she is familiar with the professional requirements and capable of performing the functions of a compliance officer. It also verifies that the ISP has checked that natural persons acting under its authority or on its behalf have the appropriate qualifications and expertise as well as a sufficient level of knowledge. The license will also be delivered after the applicant to the license has passed an examination organized by the AMF.

Professional licenses for persons who are traders of financial instruments, or clearers of financial instruments, or investment analysts are issued by the compliance officer for investment services of the ISP. Before issuing the professional license, the compliance officer must ensure that the applicant is fit and proper, that it has met the procedural requirements established by the ISP to ascertain that applicants are cognizant of their professional obligations, and that he/she meets the conditions set forth in Article 313-7-1 (minimum knowledge requirements). The AMF keeps a register of professional licenses. It is informed of the professional licenses delivered or withdrawn by ISPs, as well as of disciplinary sanctions taken by the ISP against a holder of a professional license.

Information on authorizations

The status of authorizations and the activities which are permitted under a specific authorization can be found for the ISPs on the website of the ACP in the specific public database called *Registre des Agents Financiers - REGAFI*. (<https://www.regafi.fr>). For PMCs, the website of the AMC contains similar information in the database called Geco.

Custodians and financial advisors

Any entity that holds client assets must be either an ISP or a specially licensed entity subject to a regime that is very similar to the regime that applies to ISPs as prescribed by the COMOFI (see Art. L542-1, 5°, art. L 621-6 VI, 1°) and RG AMF (Art. 322-1 and following). In practice, nearly 100 percent of custodians are licensed as ISPs.

A person who only provides investment advice (and may also accept client orders for purchasing or selling units in CIS for transmission to an ISP) is not required to hold an ISP license as mentioned above, but is regulated at the national level. It does not benefit from the European passport. It must be registered with a professional association. FIAs are subject to fit and proper requirements (natural person FIA or manager of a legal entity FIA); requirements as to resources and procedures; professional liability insurance; fair treatment of clients; duty of care; know-your-client (experience, financial situation, investment objectives); client disclosures (see Art. L 541-1 to L 541-8 of the COMOFI).

A number of these requirements for FIAs are further specified in the RG AMF (Art. 325-1 to 325-31), including an obligation to implement compliance procedures as well as measures to prevent and/or manage conflicts of interest. Additional

	<p>requirements are specified in the code adopted by the professional organization to which each FIA is required to belong (see Art. L 541-4 of the COMOFI); the code of each professional organization is approved by the AMF.</p> <p>FIA's are required to implement policies and procedures in order to manage potential conflicts of interest.</p> <p>FIA's are required to keep records. Such records include the client agreement, the products recommended to the client, and an explanation in writing of why each product recommended is considered suitable for the client.</p> <p>FIA's are required to inform clients in a clear and not misleading way about their services and the products recommended, including information on both advantages and risks of products recommended. They must also disclose to clients how they are remunerated for their services including any inducements received from product providers, as well as the names of all product providers with which they have a significant relationship.</p>
Assessment	Broadly implemented
Comments	The current process of review of fit and properness focuses on the two persons who are appointed by the company as "senior managers" as per the MiFID. The IOSCO principles require that such assessment be made on all persons who control or are in a position to materially influence the applicant. Therefore the assessors welcome the negotiations ongoing at the EU level (CRD IV, MiFID II and Solvency II) that foresee to extend this review to Board members. The assessors encourage the authorities to do this extension for all ISPs as they did with the PMCs.
Principle 30.	There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.
Description	<p>Capital adequacy requirements</p> <p>As stated in Principle 29, ISPs including credit institutions and investment firms are subject to minimum capital requirements. In addition, and according to Art. 1 of CRBF Regulation n°97-04, all investment firms (i.e., non-bank ISPs), with the exception of PMCs and investment firms which hold no client assets and which only provide the services of order reception-transmission and/or investment advice, must maintain own funds (as defined in CRBF Regulation 90-02) equal to the total amount of client positions divided by 150. These client positions include positions in financial instruments on both regulated and over-the-counter markets, as well as cash debits and uncovered short positions on the spot market held by the entity in the name of a client, plus any debit balance on settlement accounts (or minus the credit balance on such accounts). Provisions on capital requirements and corresponding reporting for PMCs are discussed in Principle 24. The remaining of this Principle will focus on ISPs under the prudential supervision of the ACP.</p> <p>Components of capital and own funds and the method for their calculation are defined in Regulation n°90-02 and further detailed in Instruction n°2007-02. Tier 1 capital is restricted to core capital (i.e., ordinary shares/common stock), general reserves (positive goodwill and positive foreign currency translation reserves as well as the full amount of creditor minority interests) and hybrid instruments satisfying the eligibility criteria set forth in the 27 October 1998 Basel Committee press release, "Instruments Eligible for Inclusion in Tier 1 Capital." Provided they meet strict requirements with regard to stability and capacity of absorbing losses, certain subordinated debt instruments (Tier 2) are taken into account but are also limited in importance (Art. 4 c and 4 d of Regulation n°90-02). Tier 3 instruments are strictly limited to the coverage of market risks. Capital requirements relevant to PMCs and the supervisory activities of the AMF in this regard, are described under Principle 24.</p>

Large exposures

CRBF Regulation n°93-05 concerning the supervision of large exposures (i.e., exposures superior to 10 percent of own funds) is also applicable to ISPs (other than PMCs). The maximum exposure allowed for one counterparty is limited to 25 percent of own funds (weightings can be applied to the counterparty depending on their level of risk). Since 2010 the maximum exposure on credit institutions is €150 million and may not exceed 100 percent of the shareholder funds of the institution concerned. Investment firms (non-bank ISPs) must also, at all times, ensure that the total value of the positions of any client is less than 15 times the amount of their overall own funds (Art. 5 of Regulation n° 97-04).

Liquidity

As set out in Art. 31 of CRBF Regulation n° 97-02, ISPs must have policies and procedures for measuring and managing their liquidity risk on an ongoing and forward-looking basis. Such policies and procedures must be reviewed regularly and contingency plans to deal with any liquidity crisis must be in place. In addition, in accordance with the Ministerial Order of May 5, 2009, ISPs that are credit institutions are subject to a liquidity ratio, calculated by comparing current assets (Art. 8 and 9 of the Order) with current liabilities (Art. 10 of the Order). Following the Basel III agreement, new liquidity standards will be implemented in France with the revision process of the Capital Requirements Directives.

Risks

In accordance with Art. 17 et seq. of CRBF Regulation 97-02, ISPs must set up risk analysis and risk measurement systems that are suited to the nature and the volume of their transactions in order to assess the different types of risk to which all transactions undertaken expose them, particularly credit risk, market risk, overall-interest rate risk, intermediation risk, settlement risk, liquidity risk and operational risk. ISPs must also have sound, effective and comprehensive systems and procedures to assess and maintain, on an ongoing basis, the amounts, types and distribution of internal capital that they deem to be appropriate in terms of the nature and level of risks to which they are or might be exposed. These systems and procedures must be subject to regular internal reviews to ensure that they remain comprehensive and proportionate to the nature, scale and complexity of the activities.

Records

ISPs must maintain records that permit them to reconstruct transactions and determine positions and profits and losses daily, to maintain adequate internal limits, to monitor exposures to clients, and to enforce compliance with those limits (see CRBF Regulations n°97-04 and n°97-02) for a period of five years.

Reporting

ISPs must publish their annual accounts, within 45 days of their approval by the competent body. (Art. 4 of Regulation n°97-03 for investment firms and Art. 10 of Regulation n° 91-01 for credit institutions providing investment services). The publication must include the statutory auditor's report and explain how the management report is made available to the public. Such auditors are appointed with the advice of the ACP (Art. L 612-43 to L 612-45 of the COMOFI) and, where the ISP is listed on regulated market, with the advice of the AMF (Art. L 621-22 to L 621-25 of the COMOFI).

ISPs whose balance sheet exceeds €450 million, must also publish quarterly financial statements (within 75 days from the end of the quarter) having the same layout as an annual individual balance sheet, except for income. ISPs which are listed on a RM are subject to the requirements imposed on issuers, as described in Principle 16; which means that they are subject also to quarterly reporting.

Specific obligations concerning capital adequacy reporting are detailed in the Common Reporting (COREP) framework of the ACP. These reports (summary report of the capital ratio, reports on credit risk, reports on market risk, reports on operational risk and supplementary reports), are submitted quarterly by institutions whose total consolidated balance sheet is greater than €80 billion and which have chosen an Internal Ratings Based (IRB) approach or semi-annually by other subject institutions (including those using the IRB approach whose solo or consolidated balance sheet is greater than €80 billion, if they are included in the scope of consolidation of an institution that reports quarterly).

In addition, ISP must submit a number of reports which provide detailed prudential information and which do not relate directly to the calculation of capital requirements on an annual basis: additional information on securitization operations (CR SEC Details), on internal models for market risk (MKR IM Details), and on the 10 largest operational risk losses (OPR Loss Details), as well as the supplementary reports CRM Detail and SOLVA Group. The reporting deadline is two months after the statement date, except for the June reports, for which the deadline is three months. ISPs trading financial instruments involving commodity derivatives must file monthly statements showing their positions in the commodities market with the ACP (see Art. 9 of CRBF Regulation 97–04). ISPs must also report on long settlements (deferred settlements) on a quarterly basis (in practice this report applies only to 12 institutions). In the report there has to be a description of how the margin limits and risk are managed.

ISPs must also submit an annual report on internal controls.

Consolidated supervision

According to Art. 43 of CRBF Regulation n°97-02, any ISP supervised on a consolidated basis must prepare at least once a year a report on the measurement and monitoring of its exposures.

The ACP can also extend onsite inspections to any entities which are bound, directly or indirectly, by a contractual relationship with a supervised entity, where such relationship may affect its autonomy in terms of its operations or decision-making (Art. L 612-26-5° of the COMOFI).

Review of capital and prudential requirements

In the *Service des Entreprises d'Investissement* of the ACP, there are 23 people working on offsite ongoing monitoring. In the *Délégation au Contrôle sur place des Etablissements de Crédit et des Entreprises d'Investissement*, there are roughly 25 people working on onsite inspections at ISPs.

The ACP monitors capital and prudential requirements through the OREP system, described in Principle 6. The results of such analysis are used to determine the intensity of both ongoing (offsite) monitoring as well as onsite inspections.

The risk assessment methodology is based on the analysis of 13 individual indicators: 1) Quality of credit portfolio; 2) Doubtful (nonperforming) loans and provisions; 3) Concentration risk; 4) Operational risk; 5) Organization of internal control; 6) Anti-Money Laundering policy; 7) Safeguarding of client assets (specific to investment firms); 8) Strategy and Organization; 9) Market risk; 10) Liquidity risk and the level of transformation; 11) Interest rate risk in the banking book; 12) Earnings

and profitability; 13) Own funds. For most indicators, both the materiality of the risk and the adequacy of the internal control system for that risk are separately assessed. Each major risk category is rated (with a combined score of 1 to 4 where both the materiality of the risk and the adequacy of the internal control system for that risk are assessed). Both financial ratios and rating of the quality of risk management and control systems feed into the analysis. Following the rating of these individual criteria, a global rating (ranging to 1, best, to 5, worst), encompassing all 13 individual scores, is assigned to the institution. Both the individual ratings and the global rating are supported by written qualitative (and, for the larger groups, quantitative) analysis, which also underlines the specific areas that may require closer monitoring.

Higher risk firms are subject to more intense monitoring, including additional ad-hoc reporting obligations that can be imposed by the SG pursuant to Art. L 612-24 COMOFI. Currently about 4 percent of the ISPs have to report additional, ad-hoc information in this way.

Each year an inspection program is approved by the Board in which areas are highlighted that deserve special attention during that year. The offsite supervisors maintain an overview and select each year the entities that would be subject to onsite inspection. This selection is based on the risk rating that each ISP has been assigned, but also the date of the last inspection and the date of the authorization are taken into consideration. Based on their request the onsite supervisory team indicates whether the detailed program is feasible or not. Typically, the offsite supervisory team will give more priority to the big institutions and the high risk institutions.

In principle the ACP aims at conducting a full inspection of each ISP every five to six years. There are some exceptions, since the smallest ISPs that only transfer orders and advise clients, get controlled by the ongoing supervision team only, while on the other hand large institutions (usually credit institutions) have supervisory staff assigned to them on a continuous basis. The following illustrates its supervisory approach. Of the 137 IFs, 33 were not inspected last year since these firms started their business less than five years ago; 18 firms are financial holding companies and are inspected together with the ISP subsidiary. The remaining 70 firms are inspected every five years and therefore last year on this population there were 12 inspections. A chart with additional information on the number of onsite inspections conducted by the ACP on ISPs is included in Principle 12.

In addition to the full inspections the offsite supervisors monitor developments and may require actions from the ISPs. Also, they could visit the ISP to look into specific issues. For example, last summer there were frauds on internet brokerage platforms. The ACP had concerns on whether the ISPs were able to handle the problem. They conducted a number of visits to look into IT and risk compliance.

Finally, as indicated in Principle 3 the ACP supervises on an individual entity basis. It does not employ in the area of ISPs also a thematic approach.

Market participants confirm the approach of the ACP in which they conduct periodically full inspections. They see the contrast with the AMF which rely more on a risk based approach. Nevertheless, the ACP is seen to spend significant amount of time at the premises of the large ISPs. Market participants think the inspection capabilities are very good. The impression is that in terms of market experience and knowledge the ACP could improve itself.

Enforcement Powers of the ACP

As indicated under Principle 11, the ACP has several enforcement tools at its disposal to deal with situations where the capital of an intermediary deteriorates. It

	<p>can send follow-up letters, issue injunctions, and impose administrative measures, including remedial plans or protective measures. It can also impose sanctions.</p> <p>However, the ACP does not very often use formal enforcement mechanisms in case its rules are breached, specifically not the capital adequacy rules. For example, the ACP also sends follow-up letters like the AMF. However, the letters of the ACP do not necessarily need to be followed up by a formal letter of the regulated entity. The authorities indicated that depending on the circumstances follow-up meetings are organized.</p> <p>In one case the ACP formally intervened. It appointed a provisional administrator at an ISP, who in the end confirmed the institution was insolvent and formally asked for the insolvency. The ACP initiated the insolvency scheme. In other two occasions it has issued an instruction.</p> <p>Sanctions are not usually applied. However, recently the ACP imposed a fine for €0.8 million on a bank, and a warning to another bank in connection with deficiencies in internal controls related to AML.</p>
Assessment	Broadly implemented
Comments	<p>After 2005 and until 2010 the ACP had imposed monthly reporting of capital adequacy. However, the modernization of the information exchange and the implementation of an XMRL platform in 2010 (which was costly for ACP and industry), led to an agreement with the industry to reduce the burden of reporting. The assessors recommend that the ACP increases the frequency of capital adequacy reporting to a monthly basis, especially now that with the technology they have in place, the incremental cost of additional reporting is probably rather low. Moreover, the ACP could benefit from implementing explicit triggers, after which an ISP would have to automatically increase its reporting.</p> <p>The cost effectiveness of the supervisory approach of the ACP could possibly be improved by increasing the level of risk based supervision, especially in the area of inspections (cf. Principle 3 and 12). It is not evident that a cycle of <u>full scope</u> inspections is the most cost efficient approach. However, a risk based approach can only work effectively if sufficient risk information on a sufficiently frequent basis is received by the ACP. As indicated above, the ACP should probably invest more in this area.</p> <p>Also, as indicated in Principle 12 the enforcement of the ACP should be increased. The ACP has indicated this already at the beginning of the assessment. It may require not only improving procedures and working methods, but also working on the supervisory philosophy and mindset.</p> <p>Finally, the IOSCO Principles do not prescribe a specific framework for capital requirements. In the case of France, current capital requirements for ISPs are based on the framework developed for credit institutions. The BCP assessment highlighted certain challenges in connection with the definition of capital. The assessors encourage the authorities to review whether such challenges need to be addressed also in the context of ISPs. This issue has not been taken into consideration for the grade.</p>

Principle 31.	Market intermediaries should be required to establish an internal function that delivers compliance with standards for internal organization and operational conduct, with the aim of protecting the interests of clients and their assets and ensuring proper management of risk, through which management of the intermediary accepts primary responsibility for these matters.
Description	<p>Internal controls</p> <p>ISPs are subject to internal control requirements by the ACP, which mainly stem from Regulation No 97-02. In addition, in relation to their professional obligations (including conduct of business) they are also subject to requirements by the AMF, which mainly stem from the RG AMF.</p> <p>ACP</p> <p>Pursuant to Art. 2 of CRBF Regulation n°97-02, ISPs (other than PMCs) must set up an internal control system. Internal control includes in particular: (i) a system of controls of operations and internal procedures; (ii) the organization of accounting and information processing systems; (iii) risk and result measurement systems; (iv) risk monitoring and risk control systems; (v) a documentation and information system; (vi) a system for monitoring flows of cash and securities. ISPs must set up an adequate internal control system by adapting the system to the nature and volume of their activities, their size, and the various types of risk to which they are exposed. Additional obligations exist for ISPs that are supervised on a consolidated basis (Art. 2 of CRBF Regulation n°97-02).</p> <p>ISPs must appoint an officer responsible for ensuring the coherence and effectiveness of the periodic controls (Art. 6 of Regulation n°97-02). The staff responsible for periodic controls must perform their assignments independently of all the entities and services to which their controls relate (Art. 7 of Regulation n° 97-02). The resources allocated to periodic controls must be sufficient to enable a full audit review of all operations over as few years as possible. A schedule of audit tasks must be drawn up at least once a year on the basis of the annual internal control objectives set by the executive and the decision-making body. According to Art. 9-1 of Regulation n°97-02, ISPs must define procedures to enable the officer in charge of the periodic controls to inform directly and on his own initiative the audit Committee of any non-implementation of the corrective measures decided on.</p> <p>According to Article 10 of Regulation 97-02, ISPs must ensure that the control system is well integrated into the organization, methods and procedures for each activity and that the periodic controls apply to the entire organization, including its branches, and to all undertakings under its exclusive or joint control.</p> <p>Pursuant to Article, 11 ISPs must designate a person responsible for the controls of compliance. Such person cannot be an executive, nor participate in the commercial operations of the ISP.</p> <p>Pursuant to Article 11-8, ISPs must designate a person in charge of risk management.</p> <p>Pursuant to the Art. 38 of CRBF Regulation n°97-02, the executive body and the decision-making body are responsible for making sure that the ISP complies with its obligations under this Regulation. They are obliged to regularly assess and control the effectiveness of policies, systems and procedures set up to comply with this Regulation and take the appropriate measures to remedy possible failings.</p>

AMF

Pursuant to Article 313-1 of the RG AMF, ISPs must establish and maintain appropriate operational policies, procedures and measures to detect any risk of non-compliance with their professional obligations, which include business conduct obligations. Such policies and procedures should take into account the nature, scale, complexity and range of the investment services that they provide and the businesses in which they engage.

Art. 313-2 of the RG AMF requires all ISPs to establish and maintain an effective compliance function that operates independently and has the following responsibilities: (i) To monitor and, on a regular basis, assess the adequacy and effectiveness of policies, procedures and measures implemented for the purposes of Art. 313-1, and actions taken to remedy any deficiency in compliance of the ISP and the relevant persons with their professional obligations; (ii) To advise and assist the relevant persons responsible for investment services so that they comply with the professional obligations of the ISP.

Article 313-3 and 4 require ISPs to designate a head of compliance (RCSI or "*responsable de la conformité pour les services d'investissement*") who must be approved by the AMF (Art. 313-38 to 313-44 of the RG AMF).

Art. 313-7 of the RG AMF requires ISPs to ensure that senior management receives compliance, risk control and internal audit reports at least once a year specifying if the appropriate measures have been taken in the event of deficiencies, and that the supervisory body, if such a body exists, receives periodic written reports on the same topics.

The framework for PMCs is described in detail under Principle 24.

Segregation of functions

Pursuant to Art. 7-1 of Regulation n°97-02, the organization of ISPs, and in particular their permanent control function, must be designed to ensure that units responsible for initiating transactions operate independently of those responsible for validating them, in particular at the accounting level, for settling them and for implementing the missions of the risk function. Such independence may be secured by ensuring that the units report to different management bodies at a sufficiently senior level, or by setting up an organization in which duties are clearly segregated, or by implementing procedures (which may be computerized) specifically designed for this purpose, in which case the institution must be able to demonstrate that they are appropriate and sufficient. The remuneration of employees in units responsible for validating transactions must be determined independently of that of the business areas whose transactions they validate or verify and must be adequate to attract qualified and experienced staff; in addition, it must take account of the achievement of the objectives associated with the function.

According to Art. 11-3 of Regulation n°97-02, ISPs must introduce procedures that make it possible to monitor and evaluate the effective implementation of actions designed to remedy any malfunction in relation to the applicable obligations and standards regarding compliance risk.

According to Art. 31-2 of Regulation n°97-02, ISPs must apply compensation policies and implement procedures designed to forestall risks and conflicts of interest, in compliance with the relevant provisions regarding the consideration of risk in compensation policy in the same Regulation and consistent with the professional standards that transpose the principles and measures laid down by the Financial Stability Board.

Pursuant to Art. 31-2 of Regulation n°97-02, the remuneration of employees in a risk function must be determined independently of that of the business areas whose transactions they verify and must be adequate to attract qualified and experienced staff; in addition it must take account of the achievement of the objectives associated with the function.

Conflicts of interest

Art. L 533-10-3 of the COMOFI provides that ISPs must take all reasonable steps to prevent conflicts of interest from adversely affecting the interests of their clients and that when the measures taken to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, ISPs must clearly disclose the nature and/or sources of conflicts of interest to the client before undertaking business on his behalf. This obligation is further detailed in the RG-AMF, and explained in Principle 23.

DEA (direct electronic access)

As regards French regulated markets, the Euronext Harmonized Rule Book comprises rules about the internal control systems that members have to maintain in order to ensure that they continuously comply with all requirements imposed by the Rule Book. According to Art. 8106/3 of this Harmonized Rule Book, a Member must ensure that it has appropriate arrangements in place:

(i) to vet orders prior to their submission to the Central Order Book, irrespective of whether such orders have been submitted manually or electronically (including via an Automated Order Routing System or via Sponsored Access); and (ii) to monitor the positional and financial risks inherent in the business it conducts.

According to Art. 8106/4, a member must be able to demonstrate to Euronext that its risk control systems integrate, inter alia, position limits and maximum order size per user, and either automatically reject an order when a limit is exceeded or hold the order subject to manual override by an appropriately authorized risk manager. ESMA has recently finalized guidelines on DEA on the basis of the current MiFID provisions. These guidelines have recently become binding (using a “comply or explain” mechanism). The Guidelines require both markets and market intermediaries to use automated pre-trade controls on orders.

Protection of clients' assets

Art. L533-10-6 of the COMOFI requires ISPs, when holding financial instruments belonging to clients, to safeguard clients' ownership rights, and to prevent the use of a client's instruments on own account except with the client's express consent.

Art. 313-13 of RG AMF requires ISPs to (i) keep such records and accounts as are necessary to enable them at any time and without delay to distinguish assets held for one client from assets held for other clients, and from their own financial instruments.; (ii) maintain their records and accounts in a way that ensures their accuracy, and in particular, their correspondence to the financial instruments belonging to clients; (iii) conduct periodic reconciliations between their internal accounts and records and those of the third parties with whom the clients' financial instruments are held; (iv) take the necessary steps to ensure that any client financial instruments deposited with a third party can be identified separately from the financial instruments belonging to the ISP by means of differently titled accounts on the books of the third party or other equivalent measures that achieve the same level of protection; (v) introduce adequate organizational arrangements to minimize the risk of loss or diminution of clients' assets or rights in connection with those financial instruments resulting from misuse of the financial instruments, fraud, poor administration, incorrect record-keeping or negligence.

Art. 313-17-1 of the RG AMF requires ISPs to ensure that the statutory auditor of their accounts make a report at least every year to the AMF on the adequacy of the measures taken by them relative to the protection of their clients' financial instruments. On the basis of this annual control, the AMF may order entities to take corrective actions if necessary. In certain cases, the AMF has power to appoint an agent in order to safeguard clients' assets during a specific period. In addition, there is a specific regime regarding custody account keepers set out by Art. 322 of the RG AMF.

Investors' complaints

Art. 313-8 of the RG AMF requires ISPs to establish and maintain effective and transparent procedures for reasonable and prompt handling of complaints received from retail clients or potential retail clients, and to keep a record of each complaint and the measures taken to deal with it. In addition, as mentioned in Principles 3 and 12, the AMF has a system to receive and respond to investor complaints. Moreover ACP and AMF in their joint unit are currently in consultation with consumers' representatives to share views and propose recommendations for 2012 in this area. In February 2011 the AMF consulted publicly on a number of recommendations designed to enhance compensation for losses sustained by investors. The AMF report addressed enhanced out-of-court dispute settlement processes including through recourse to the AMF Ombudsman, and ensuring that voluntary settlements with clients are taken into account when the AMF Enforcement Committee decides to fine an ISP. As already discussed under Principles 1 and 2, for securities there is an effective mediation scheme present in the form of the AMF Ombudsman.

Know your customer obligations

With respect to AML, Art. L 561-5 and 561-6 of the COMOFI require ISPs to collect information on the purpose and nature of the business relationship before commencing it, as well as any other relevant information on the client, and to conduct enhanced ongoing monitoring of the business relationship according to the risks of money-laundering and terrorist financing. Where relevant, ISPs are also required to identify beneficial owners by means adapted to the situation, and to verify their identity with the help of any appropriate supporting evidence, consistently with risks of money-laundering and terrorist financing. ISPs must be able to justify upon request the extent of the measures they take (Art. L 561-5 and R 561-7 of the COMOFI). The ACP issued nonbinding guidelines in October 2011 regarding beneficial owners (definition, identification and verification, suspicious transaction reporting, record-keeping and internal control requirements). ISPs are expected to adapt the contents of their customer due diligence (CDD) measures, including identification and verification measures, to the level and nature of AML-CFT risks. PMCs are also subject to AML obligations under the supervision of the AMF (Art. 315-49 - 315-58 of the RG AMF). With respect to Know Your Customer from an investor protection viewpoint, following the transposition of MiFID in French law and regulation, three different regimes have been implemented to ensure that services provided meet the client's circumstances and investment objectives (see COMOFI, Art. L 533-13 and RG AMF, section 4 of Chapter IV of Title I of Book III):

- suitability regime for portfolio management and investment advice: before the provision of these investment services, the ISP must gather information regarding the client's knowledge and experience in the investment field relevant to the specific type of product or service, his financial situation and his investment objectives so as to enable the firm to recommend to the client the investment services and financial instruments that are suitable for him, or to manage his portfolio in a way that is suitable for him.

- appropriateness regime for investment services other than portfolio management and investment advice: before the provision of these investment services (such as full-service order execution), the ISP must gather information regarding the client's knowledge and experience in the investment field relevant to the specific type of product or service so as to enable the ISP to assess whether the investment service or product envisaged is appropriate for the client.
- execution only regime : the investment services of execution and/or reception and transmission of client orders can be provided without the need to obtain information on the client if the following conditions are met: the service relates to noncomplex financial instruments, is provided at the initiative of the client, the client has been clearly informed that he does not benefit from the protection of the relevant conduct of business rules, the investment firm complies with its other obligations (client disclosures, conflicts of interest, etc.).

Information to clients

Art. L533-14 of the COMOFI requires a client agreement in writing for retail clients, and the RG AMF (Art. 314-59 to 314-64 and 322-2) specifies the content of such agreements., inter alia: nature of the services to be provided, fees and commissions, client reporting, as well as depending on the service the types of orders and methods of transmission of orders or the types of financial instruments that may be purchased on behalf of the client whose portfolio is to be managed by the ISP.

Art. L533-12-II of the COMOFI requires ISPs to provide appropriate information to clients or potential clients so that they are reasonably able to understand the nature and risks of the investment service and of the specific type of financial instrument that is being offered and, consequently, to take investment decisions on an informed basis. ISPs are subject to a whole range of obligations related to information to clients which stem from MiFID, Art. 314-10 to 314-42 of the RG AMF detail the timing, content and medium of client disclosures.

In connection with the custody of assets, the custody account keeper is required to notify to the investor certain events as soon as possible, including corporate actions that require a response from the account holder, and executed trades or other movements in the financial instruments or cash held in the account. In the case of "repetitive" transactions, the custody account keeper may inform of those transactions every six months. In addition, the custody account keeper is required to provide a statement of account at least annually, pursuant to Art. 314-105 of the RG AMF, as well as when requested by the account holder.

Due care

Articles 533-1 and 533-11 of the COMOFI, and 314-3 and following of the RG AMF require ISPs:

- to act in an honest, fair and professional manner in order to promote market integrity, and
- where they provide investment services and related services to clients, to act in an honest, fair and professional manner in the clients' best interest.

These fundamental principles govern the whole obligations from ISPs towards their clients. It serves as backbone to the various obligations that ISPs must comply with and that are contained in RG AMF book III (client categorization, client suitability rules as summarized above, retail client agreement, information to clients, reporting to clients, order handling rules, best execution rules, rules related to the management of conflicts of interest, inducements, to name the main ones).

Record-keeping obligations

According to Art. L533-10-5 of the COMOFI, an ISP must keep records of all services and transactions undertaken and these records must be sufficient to enable the competent authority to monitor compliance with its professional obligations, and in particular to ascertain that the ISP has complied with all obligations with respect to clients or potential clients. The RG AMF specifies requirements concerning record keeping : (i) the data mentioned in Article L533-10-5 have to be kept for at least five years (Art. 313-49); (ii) recorded information must be unaltered and readily accessible (Art. 313-49); (iii) telephone conversations of designated members of the staff of ISPs (such as traders in financial instruments or certain other persons involved in relationships with clients) have to be recorded in order to facilitate monitoring.

Supervision

All ISPs are subject to ongoing monitoring by both the ACP (in connection with prudential requirements, including internal controls) and the AMF in connection with their conduct obligations. In addition, relevant to this principle is the work of the Pôle Common. Ongoing supervision in connection with prudential aspects is described in Principle 30. Below a summary of the number of onsite inspections conducted by the ACP.

Onsite inspections conducted by the ACP			
	2009	2010	2011
IFs	11	12	9
Credit institutions authorized to provide investment services	12	11	5
Total	23	23	14

All controls/inspections carried out by the AMF aim to check if the ISPs are compliant with their professional obligations, including both market and conduct obligations. However, the AMF has since 2009 reinforced a risk-based approach in both its detection of irregularities and its controls/inspections. The following table summarizes the onsite work conducted by the AMF in connection with ISPs and FIAs.

Onsite inspections conducted by the AMF				
	2008	2009	2010	2011
ISPs (other than PMCs)	29	21	35	8
PMCs(*)	34	27	20	30
FIAs	1	29	14	11

(*) This number does not include the number of supervisory visits (see Principles 12 and 24).

The review of a few files on inspections conducted by the AMF showed that inspections are thorough. Furthermore as explained in principles 3 and 12 they are followed by a formal letter, called 'lettre de suite'. This letter has a formal tone and weight and seems to be taken very seriously by most market participants. Such inspections have paid sufficient attention to investor protection issues.

Sales and marketing practices have also been a priority for the AMF since its 2009 Strategic Plan. This is understood broadly and includes marketing material, regulatory disclosures, client categorization (retail or professional), suitability, conflicts of interest, client agreements and complaints. The supervisory work on this area is conducted through different tools, including review of documents at the moment of authorization, sampling, onsite inspections and sanctions. In particular,

	<p>the AMF reviews material at the moment of authorization/passport for “more complex products,” and conducts sampling of material for other products. This supervisory work has led to a large number of enforcement cases for breach of conduct of business rules, especially in 2011. This area now includes checking not only material designed for the client but also the documentation that is provided to advisers and sales staff to ensure that it too is free of distortion and bias. Since 2011, the AMF also requires a specified level of skills and training for all sales and advisory staff in ISPs.</p> <p>In addition, mystery shopping campaigns (three full campaigns and one pilot) have helped in determining emerging issues vis-à-vis investor protection. AMF intends to continue with these programs. It is unclear whether the ACP will engage in mystery shopping.</p> <p>Also through the <i>Pôle Commun</i> the AMF and ACP have worked together on issues related to the quality of advice given to clients. In 2010 and 2011 the AMF and ACP used questionnaires to determine the objectives, financial position, risk appetite, experience and knowledge of clients in order to enable the provision of suitable advice. The authorities expect to have a document presenting the main findings in the very near future. However, the preliminary results underline the necessity to inspect this area further. AMF and ACP have therefore indicated they will conduct in 2012 further inspections focusing on the advice itself, including how advice and the rationale for it are recorded, and analyzing client files to determine good and bad practices.</p> <p>However, the focus of all this work so far has been on ISPs and to a lesser extent on FIAs. Especially the efforts directed towards the FIAs so far have been very limited, although a focus on FIAs has been programmed for 2012.</p>
Assessment	Broadly implemented
Comments	<p>Supervision and enforcement could be improved, especially with FIAs. In the area of ISPs the AMF has delivered results of quality yet in fairly limited quantities although substantial progress has been made in recent years. As indicated in Principle 3 (and also in Principle 12) the AMF could benefit from additional resources in these areas.</p> <p>In the area of FIAs it seems necessary that the AMF continues to build up its own capability. The professional associations can provide good support in communicating to and guiding of the 4000 or so FIAs. However, they do not have the capabilities or powers to properly investigate and enforce the conduct of business rules on this population. The newly created delegation power of the AMF cannot help here, as it is clear that delegation cannot transfer the required powers of the AMF to the professional associations (as explained in Principle 9).</p> <p>The AMF has done considerable work in the area of investor protection (see also Principle 3) and more specifically in the area of the quality of advice to investors and consumers and marketing materials. These topics have indeed been on the agenda for a few years now and a risk of inappropriate advice whether in the bank, non-bank ISP or FIA channel has been identified as an area for action by the AMF. One of the main problems uncovered so far is that clients do not understand certain products and the information provided to customers by the sellers or advisors is not always understandable and comprehensive and may sometimes be misleading. The AMF is devoting considerable resources to both ex ante and ex post review of marketing materials, including those on the internet.</p> <p>The AMF has also produced specific recommendations related to the distribution of highly complex products (http://www.amf-france.org/documents/general/9633_1.pdf).</p> <p>In the joint work conducted by the <i>Pôle Commun</i> the AMF and the ACP have looked at the use of questionnaires for determining the customer profile used at non-bank ISPs</p>

	<p>(as well as FIAs) and banks. The AMF and ACP want to look at whether the questions are realistic and how they are used. The study will be finished in March 2012. The industry will probably greatly benefit from the publication of the good and bad practices from this study. The AMF and the ACP plan to continue the study into a second phase, where the recordkeeping related to the advice is going to be reviewed. This will cover the provision of advice itself and the reasons recorded for deeming the advice suitable, in addition to the pursuit of work on the quality of advice and the matching of products with client profiles. This indeed deserves to get appropriate priority since the signals from the mystery shopping campaigns indicate the quality of advice does not always meet the minimum standard. This more intensive supervisory work, as well as the new and more demanding training requirements for advisors and the traditionally strong compliance function at French ISPs, should produce significant enhancement in the quality of advice provided.</p>
<p>Principle 32.</p>	<p>There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.</p>
<p>Description</p>	<p>Plan to deal with the failure of an ISP</p> <p>The ACP has not developed formal plans in order to deal with the failure of each ISP, nor has developed manuals to that end. However the authorities highlighted that different from other jurisdictions, there have been very few failures of ISPs in France. In addition, as will be explained below, the authorities emphasized that the ACP has a scoring system which allows for early intervention. Finally according to G-20 commitments related to crisis management, the ACP is actively involved in developing recovery and resolution plans with the entities which are systemically important (SIFIs).</p> <p>Early warning system</p> <p>The ACP risk scoring system developed by the offsite monitoring team (described in Principle 30) is used to identify factors of vulnerability in an intermediary and to determine the intensity of monitoring and onsite inspections. Therefore it is a critical tool for early warning. The risk scoring system is fed by the different types of reporting that the ACP receives from ISPs, but also benefits from signals from external parties including auditors, as well as complaints. Based on the assessment of risk of each ISP, the ACP seeks to intervene at an early stage to prevent any quantitative or qualitative failure likely to jeopardize the soundness of the market intermediary and may require it to implement corrective measures prior to the occurrence of difficulties.</p> <p>For instance, in a recent case, after an early warning from the statutory auditors and an onsite inspection undertaken by the ACP, the ACP stepped in and took all necessary measures with respect to a registered ISP which had encountered serious financial difficulties. Such measures included placing the failing entity under temporary administration, and later on requesting the Guarantee Fund to put in place the guarantee mechanisms. Further to this intervention the authorization of the failing entity was withdrawn and judiciary liquidation was launched by the Commercial Court.</p> <p>These measures were taken in coordination with the AMF, as well as with the involved EU counterparts as the failing entity had operations in another EU Member State.</p> <p>As for PMCs subject to AMF supervision, Article 313-53-1 of the RG AMF requires such companies (as well as all other ISPs providing portfolio management services) to submit to the AMF on a yearly basis a set of information that includes their level of capital. In addition, Article 311-3 of the RG AMF requires such companies to inform the AMF promptly of any changes in key items with respect to the information contained in the original application for authorization, which includes capital requirements.</p>

Powers to deal with failures of ISPs other than PMCs

As indicated under Principle 10 the ACP has the power to impose a broad set of administrative measures on regulated entities, pursuant to Articles 612-30 to 612-37 of the COMOFI. Such measures may be a warning, a formal notice to require an ISP to remedy breaches, a remedial action plan, as well as protective measures. Protective measures can include restricting or temporarily banning certain operations.

Based on such powers the ACP could order the transfer of clients' accounts to another intermediary. In the event of default of an intermediary that is a member of a clearing house, the clearing house can request that hedges and margin deposits from non-defaulting clients be transferred to another member. It can also transfer to another member the positions registered with it on behalf of member's clients, along with the hedges and margins associated to them (Article 440-9 of the COMOFI).

The ACP may as protective measures suspend one or more senior managers or even place the ISP under special administration and appoint a provisional administrator.

(Article L 612-34 - I of the COMOFI). For example, in a recent case related to an investment firm a provisional administrator was appointed to manage the failing entity, under emergency procedures.

PMCs

Concerning the failure of a PMC, AMF staff indicated that there has been an internal reflection on this issue confirming the failure of a PMC as a key issue for the regulator. That is why the AMF has recently been working on the development of a template and key action points in the AMF crisis management process. Internal work to implement the procedures is still ongoing. The template covers the following areas: key scenarios, escalation process with the AMF, key legal forms to use, key contacts, and potential administrators.

Pursuant to Article 311-5 of the RG AMF, PMCs must be put under the supervision of an administrator designated by the AMF throughout the period between the withdrawal of authorization and the de-registration of the entity. A number of failures have been managed in recent years. In a recent case, the AMF placed a PMC under the supervision of an administrator designated by the AMF. Subsequently the license of this entity was withdrawn.

A PMC may not hold any cash or securities on behalf of its clients. Article 311-5 of the RG AMF provides however, where the authorization has been withdrawn, that the entity must ask its clients in writing to opt for one of three possibilities: transfer the management of the portfolio to another ISP, request liquidation of the portfolio, or assume the responsibility of managing the portfolio themselves.

Investor compensation schemes

As indicated in Principle 29, ISPs are required to adhere to the investor compensation schemes, which in France is administered by the Deposit Guarantee Fund (*Fonds de Garantie des Dépôts*, FGD), which also administers the depositor compensation schemes. The maximum guarantee to which an investor is entitled is €70,000. Cash deposits linked to securities accounts are also protected by the *Fonds de Garantie des Dépôts* up to €70,000. The *Fonds de Garantie des Dépôts* compensates the customers for the securities or financial instruments, which they have lost, based on the market value on the date they ceased to be available. This date is set by the ACP at the time it requests the engagement of the *Fonds de Garantie des Dépôts*. Customers have a period of 15 days to contest or accept the offer of securities compensation. In a recent case related to an investment firm, for instance, the securities guarantee mechanism was activated at the request of the ACP after consultation with the AMF.

	<p>Cooperation</p> <p>Article L 631-1 of the COMOFI authorizes the <i>Banque de France</i>, the ACP, the AMF and the Deposit Guarantee Fund to exchange the information they require for the accomplishment of their respective tasks. For example, in the recent case related to an investment firm above mentioned the ACP shared information and cooperated as closely as possible with the securities guarantee mechanism as well as the AMF. The COREFRIS provides the national platform to regularly exchange emerging risks and provides a forum to initiate further close cooperation where necessary. At the international level, in addition to the general agreements that the ACP can sign with foreign authorities, the ACP has signed two European Memoranda of Understanding specifically dedicated to crisis management situations. For example, in the recent case related to an investment firm above mentioned, given that the failing entity had significant business in another EU Member State, the ACP, the AMF and their EU counterparts kept in close cooperation.</p>
Assessment	Broadly implemented
Comments	The ACP does not have in place a plan to deal with the failure of intermediaries. The assessors acknowledge, however, that their risk scoring framework functions also as an early warning system. Nevertheless it does not include a system of notifications based on specific thresholds; whereby the ISPs are required to notify immediately when their capital falls below certain levels. The ACP should think about ways to improve the early warning system further. Explicit, ex ante triggers are one of the ways to proceed, along with the conduct of crisis management exercises (which could be done on a consolidated basis).
Principles for the Secondary Markets	
Principle 33.	The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.
Description	<p>Authorization Requirement</p> <p>The general framework for the authorization and the functioning of a regulated market (RM) is provided by Title V of the RG AMF (Art. 511-5 to 515-3). Any market operator that wishes to operate a RM must ask for the authorization of the RM by the Minister of Finance. Pursuant to Art. L 421-4 of the COMOFI, the AMF, in consultation with the ACP, must review the file and issue a recommendation for authorization if it considers that all the conditions for authorization are met.</p> <p>An MTF can be managed by a market operator or an investment service provider (service referred to in Point 8°, Art. L. 321-1 of the COMOFI).</p> <p>Pursuant to the Art. L.424-1 and L. 424-2 of the COMOFI and Art. 521-3 to Art. 521-7 of the RG AMF, the authorization of a market operator managing an MTF is granted by the AMF after the ACP has given its opinion on the organization, the human, technical and material resources and the financial resources of the market operator. In the case of an ISP, the authorization is formally granted by the ACP after the AMF has given its opinion on whether the intended resources are adequate for program of operations proposed.</p> <p>General requirements</p> <p>As part of the registration process the AMF and the ACP must review that:</p> <ul style="list-style-type: none"> the rules of the market or MTF comply with the relevant laws and regulations; the operator's organization, human, technical and material resources and financial resources are suitable for managing the market. Capital requirements are set forth in CRBF 97-02; and

the operator has made the necessary arrangements for ensuring that the RM or MTF meets the requirements of the RG AMF on a continuous basis, including arrangements for supervising trading in the market, for supervising market members, as well as for monitoring the compliance of its business and staff. In the case of RM and organized MTF (a concept introduced by Article 524-1 of the RG-AMF) such arrangements must include mechanisms to monitor compliance with market abuse obligations; and the operator has in place effective arrangements for ensuring the efficient and timely settlement of the transactions executed.

Information to be submitted

Overall an applicant for a RM must submit the following information:

A program of operations setting out the organization and resources of the operator with respect to the proposed activity on the market, including the type of transactions proposed and the human and technical resources that it has implemented or plans to implement.

the curricula vitae of its directors and officers and of any other person likely to effectively direct the business and operation of the RM

the identity of persons who are in a position to exercise, directly or indirectly, significant influence over the management of the regulated market, as well as the amount of their holdings (shareholders who, alone or in concert, own directly or indirectly 10 percent or more of the capital or voting rights are deemed to exercise significant influence);

the latest annual accounts, where they exist, and the financial resources available to it when the regulated market is recognized.

agreements, if any, for outsourcing the management of trading systems and information dissemination systems

market rules, including the rules for admission of securities to trading and access to the market (which should be transparent and nondiscriminatory and based on objective criteria),

the conditions and procedures for consulting with market members and issuers whose financial instruments are admitted to trading on the RM, if such rules are modified;

a description of the arrangements for settling transactions and the rules of the system or systems used for settlement and delivery of financial instruments, as well as the operating rules of the clearing house used by the RM, where such is the case. When CCPs are used such clearing house must comply with the conditions applicable to clearing houses referred to in the RG AMF, or with equivalent conditions if the clearing house is outside France (Art 512-2 of the RG AMF). In case the RM does not use a CCP, the market operator must make sure that there are proper arrangements for the settlement of the transactions.

Similar information is required from an MTF, with the exception of the process for consultation on regulations and the mechanisms to ensure compliance with market abuse obligations if the MTF is not an organized MTF.

The analysis of the AMF and ACP is based on the program of operations submitted by the requesting entity. Neither the AMF nor the ACP carry out "audits" of the reliability of the IT as part of the authorization process; rather they rely on the internal assessment of the entity. Staff indicated however that if there were any reason for concern, then the AMF has the expertise in house to conduct such type of review during the authorization process.

On an ongoing basis, market operators are required to communicate to the AMF and the ACP any disruption. This in turn would allow to the authorities to take actions, if necessary. In this regard ACP staff highlighted that, for example, as part of the ongoing supervision of Euronext, the AMF and the ACP have requested explanations, as well as an internal and an external assessment of the reliability of the IT, in light of recent disruptions. The external report is due very soon; based on its findings, they would take a decision on whether an additional inspection by the ACP/AMF is needed. AMF staff highlighted that there is in-house expertise to do that. In relation to more recently authorized MTFs staff emphasized that volumes are still very limited, but that an inspection would be considered when activity picks up.

Outsourcing

CRBF 97-02 Article 37-1 states the conditions of outsourcing and the rules which have to be respected at all times. Pursuant to Article 37-2 h), the ACP must have access to the information relating to the outsourced tasks, through onsite inspections if need be, in order to perform its duties. Such access is guaranteed upon the responsibility of the exchange or trading system that outsource a service essential to their activity. The ACP can also extend onsite inspections to any entity which has entered, directly or indirectly, into a contractual relationship with a RM or MTF when such relationship may affect its autonomy in terms of its operations or decision-making (see Art. L.612-26-5° of the COMOFI).

Fair access

There are no specific requirements in MiFID or French regulation concerning the conditions for technical connection and the differences in execution response times generated by the system of an RM or MTF. However, as a general principle, pursuant to Art. L. 421-10 and Art. L. 424-2 of the COMOFI, the AMF requires RMs and MTFs to establish and maintain transparent and nondiscriminatory rules, based on objective criteria, governing access to or membership. Breaches of this principle are subject to enforcement actions by the AMF (Art. L. 421-10 or Art. L. 424-2 of the COMOFI).

In this regard, Euronext has to ensure within the compliance and risk and audit group management functions that the different technical connection solutions are established under equal access rules for each user choosing the same technical solution. For Euronext members offering under their responsibility technical solutions to have access to the trading system (sponsored access), each sponsoring member must ensure that each sponsored participant complies with the rules applicable to trading on the Euronext markets and with any procedural or technical conditions that may be prescribed by Euronext in relation to sponsored access. *ESMA Guidelines on Systems and Controls in an automated trading environment* further detail internal controls applicable to direct market access (DMA). Such guidelines will be implemented in 2012 and will apply to investment firms and trading platforms.

In practice AMF followed up on the issue of DMA to determine how extensive this practice is in the French markets. It concluded that only one participant was providing DMA.

Trading halts

The RG AMF requires that the rules of both a RM and a MTF establish procedures for suspension of trading (Article 514-3 for RM and 521-4 for MTFs).

Pursuant the Euronext Rulebook (Rule 4403), all the trading safeguards (the conditions of volatility monitoring (dynamic and static collars, reservation thresholds), trade suspension and trade cancellation are disclosed to market members. Similar disclosure exists in connection with MTFs.

	<p>Transparency of rules</p> <p>As per Articles 511-13 and 521-7 of the RG AMF, the operator of a RM or MTF must publish the market rules on its website.</p> <p>Euronext market rules are available on its website. The same applies to MTFs.</p> <p>Confidentiality</p> <p>Rules on confidentiality of information exist for market operators (whether they manage an RM or MTF) (Article 512-7 and 9) and for MTFs managed by an ISP (Article L. 511-33 or L. 531-12 of the COMOFI). In the case of a breach of such provisions, Article 226-13 of the French Penal Code provides for an imprisonment of one year and/or a fine of €15,000. The French authorities can also take disciplinary measures.</p> <p>Audit trails</p> <p>Current rules require RMs and MTFs to keep adequate records that allow reconstructing trading activity within a reasonable time. In this regard, Articles 514-10 and 523-8 of the RG AMF requires that the operator of a RM or MTF retain data about the transactions effected on the market it operates for at least five years, including: the name of the financial instrument bought or sold, the quantity transacted, the date and time of the transaction, the price of the transaction, the name of the market member(s) that executed the order.</p>
Assessment	Fully implemented
Comments	<p>Authorization of RMs is still retained by the MoF; however under a recommendation of the AMF (and in consultation with the ACP). The process is transparent. While authorization of RMs does not occur often in the few recent cases that it was requested, the MoF followed the recommendation of the AMF. The process appeared to have been technically guided. Thus, this issue does not raise concerns vis-à-vis Principles 33 or 2. However, the assessors encourage a review of the system to grant such authority to the AMF/ACP.</p> <p>IT reliability is critical for market infrastructure. The assessors welcome the actions taken by the authorities in connection with IT incidents in Euronext. If necessary, the authorities should conduct their own audit.</p>
Principle 34.	There should be ongoing regulatory supervision of exchanges and trading systems which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.
Description	<p>Market surveillance</p> <p>There is a three tiered approach for market surveillance. Market members: must have in place programs to monitor clients and proprietary activities.</p> <p>Operators of RMs and MTFs: are mainly responsible for real time surveillance of the market for the purpose of ensuring orderly trading; while they have a complementary role in the investigation of unfair practices including market abuse (except for non-organized MTFs).</p> <p>AMF: operates as the front line regulator for purpose of detecting unfair trading practices, including market abuse. Such function is performed by the <i>Division surveillance des marchés</i>.</p>

Surveillance by Euronext

Euronext has divided surveillance of the market in two units:

NYSE Euronext Market Surveillance: this unit conducts real time surveillance of the market. For such purpose it has an automated system (SMARTS) which has a number of alerts (roughly 20). Alerts are reviewed in real time, and depending on the case explanations or information is requested from the member. If the alert warrants further review then it is sent to the Global Compliance Division. This Unit can directly intervene and cancel transactions. This Unit has roughly 24 staff (12 dedicated to market integrity); the bulk of it in France.

Global compliance: conducts surveillance on t + 1 of all markets operated by Euronext. Surveillance of the cash market is located in Amsterdam and for the derivatives market in London. This unit has roughly 24 staff.

In 2010 the surveillance of Euronext generated 89 investigation reports which were all submitted to the AMF. Some of those cases generated an enforcement measure from Euronext. Such enforcement measures are not public. Overall such measures have concentrated on fines. Also seven reports were sent to the national competent authorities for further investigation.

Surveillance by the AMF

The AMF conducts market surveillance on a t+ 1 basis, with the goal of detecting market abuse. For such purpose it has developed an automated system, which includes a basic alert system (identifying in particular abnormal price movements, market shares, volumes) and a scenario-based alert system (aimed at identifying pre-defined patterns of market abuses or of any other breaches of applicable law and rules). The AMF also relies on event-driven surveillance (notably where price sensitive information is disclosed in the press). Details about how the AMF conducts its market surveillance function are given in Principle 36.

Ongoing supervision of RM and MTFs operators

Ongoing supervision is a responsibility shared by the ACP and the AMF.

Pursuant to Article L. 421-11 III of the COMOFI, the ACP is in charge of prudential supervision which in the French context includes (i) internal controls and risk management; (ii) proper functioning of technical systems (CRBF 97-02 Article 14 and 14-1 are dedicated to the management of technical systems, operational failure and information on the record keeping system of the market infrastructure); and (iii) financial resources.

Pursuant to Article L. 421.-10 and L. 421-11 in the case of RMs and 424-2 in the case of MTFs, the AMF is in charge of overseeing: (i) market rules (and that they are transparent and non-discriminatory); (ii) conduct of business of market members; (iii) rules of conduct applicable to persons acting under member's responsibility or on their behalf; and (iv) arrangements to facilitate the efficient and timely settlement of the transactions executed under its systems.

According to the general framework which governs the cooperation between the French financial supervisory authorities (see. Article L. 631-1 COMOFI), there are no formal arrangements for cooperation between the ACP and the AMF in connection with the supervision of RMs and MTFs. The cooperation is directly governed by the provisions of the COMOFI (Art. L.631-1) allowing the authorities to cooperate and exchange information in fulfilling their respective missions. In addition, informal arrangements exist, in the form of regular contact between technical staff and sharing of information. The bulk of resources have been dedicated to the oversight of Euronext. In particular, AMF staff highlighted that such approach stems mostly from

	<p>the fact that the volumes in MTFs outside of Euronext are still too low. If transaction volumes on MTFs outside of Euronext were to increase then the AMF would increase the resources allocated to them, as well as establish additional mechanisms for oversight.</p> <p><i>Oversight of Euronext</i></p> <p>The AMF has developed a set of arrangements for oversight of Euronext, in particular:</p> <p>Frequent meetings with NYSE-Euronext; two out of four meetings per month with the College of Regulators; bilateral meetings every three months (based on periodic supervision of trading activity) and ad hoc meetings, on average monthly bilateral meetings. Depending on the subject, these meetings can also be attended by the ACP</p> <p>Designation of professional licenses for four functions (cash market, derivatives, ethics, and market surveillance) and regular contact with designated persons: for example recently on the issue of outsourcing</p> <ul style="list-style-type: none"> • Annual reports by each of the designated persons on their respective functions. • Daily reporting of orders and transactions. • Obligation to report IT incidents as well as to carry out a post-mortem. • Obligation to report suspicious transactions <p>The ACP has also established a set of arrangements for the oversight of Euronext.</p> <ul style="list-style-type: none"> • Onsite inspections of Euronext, the last one in 2006 on internal controls. • Regular meetings with Euronext (usually 3-4 a year). • An annual report on internal controls. • Annual audited financial statements. • Semiannual results and a solvency report. • Balance sheet on a quarterly basis. • Liquidity Report on a quarterly basis. • Report on large exposures on a quarterly basis. <p><i>Euronext N.V.</i></p> <p>The five competent authorities in the European jurisdictions where Euronext has markets (Netherlands, Belgium, France, Portugal and the UK) have recently signed a revised MoU in order to jointly address the oversight of Euronext. The original MoU was signed in January 2007. As per the MoU the authorities have committed to consult each other on certain decisions, that include: (i) changes to the market structure (mergers, acquisitions, closing of a market, etc); (ii) changes in ownership and organizational structure; (iii) appointments to the Board, management; (iv) changes in rules within the harmonized rule book; (v) changes to systems and controls; and (vi) significant changes to financial/human/technological resources.</p> <p>The MoU provides a framework and procedures to deal with such issues. The framework (the “College of supervisors”) provides for meetings at three levels: Working Party level, Steering Committee, and Chairmen Committee. The college works by consensus. The list of items of mutual interest requires the non-objection of the Chairmen’s Committee. The ground work is done by the working party that provides a recommendation to the Steering Committee. Euronext is required to send in advance, the information to the Steering Committee which should respond in a reasonable amount of time. For issues that do not have a major impact, a streamlined procedure has been established.</p> <p>Working Party meetings take place on a regular basis, usually once a month. There is usually a “regulators only” session followed by a meeting with representatives of</p>
--	--

Euronext to follow up on issues. Recent topics discussed by the college include the issue of collocation, and whether a “flash crash” could happen in Europe. On the latter topic, Euronext was required to provide a detailed explanation. As a result of such discussions static circuit breakers were reestablished.

In addition, the College has been keen in ensuring that Euronext adequately performs its supervisory functions concerning market surveillance and monitoring behavior of market participants. Euronext is required to submit an Annual Report of the Market Integrity Department (which deals with such regulatory functions).

The College of Supervisors is also providing for a coordinated approach to onsite inspections. While there is not a “regular” onsite inspection schedule for Euronext, onsite inspections have been carried out on issues where meetings are not sufficient; for example technology, risk and audit services and business continuity issues. In such cases, the College of supervisors decides whether one or more of the countries participate in the inspection. For example, an onsite inspection was conducted when IT data services were relocated to London. It was agreed that two supervisors would take the lead (the FSA and the AFM), and thus the onsite inspection was conducted by staff from both institutions.

With the merger of the NYSE and Euronext the College of supervisors also signed an MoU with the United States Securities and Exchange Commission (US SEC) to collaborate in supervisory issues. Given that for the time being the markets continue to work separately, there have not been many issues that require an approval process. In the opinion of the AMF so far the relationship with the US SEC has been positive.

Oversight of MTFs

Currently ongoing supervision undertaken by AMF of MTFs not operated by Euronext take place mostly through off- site reporting, in particular:

- Orders and transactions executed in the platform (daily).
- Report of Suspicious Transactions (for the Organized MTFs).
- Meetings at least twice a year.

The ACP conducts its ongoing supervision over MTFs not operated by Euronext through the following mechanisms:

- Bimonthly meetings with MTF operators.
- Annual internal control report.
- Semiannual results and a solvency report.
- Balance sheet on a quarterly basis.
- Large exposures on a quarterly basis.

Changes to rules

The rules of an RM are subject to approval by the AMF (421-10 of COMOFI). The rules of a MTF as well as their modifications are submitted to the AMF before entering into force. The AMF can object to their application if it considers that they are not compatible with the legal framework.(424-2 of COMOFI).

In addition, as per Article 511-14 of the RG AMF, the market operator shall promptly inform the AMF of any changes to the items in the file that resulted in the market being recognized as a regulated market. The AMF shall determine the measures to be taken as a result of such changes, and in particular, whether the provisions of Article L. 421-5 of the COMOFI shall apply. When the operator of a RM operates an MTF, it shall inform the AMF of any amendments it intends to make to the items taken into account when its authorization was granted.

	<p>The AMF shall inform the market operator of the possible consequences such amendments may have on its authorization (Article 521-9 of the RG AMF).</p> <p>Mechanism to address violations</p> <p>Both the AMF and the ACP can make use of certain regulatory actions to address violations by RMs or MTFs.</p> <p>The AMF may impose a penalty on the operator of a RM or a MTF, in respect of any breach of its professional obligations imposed by the applicable laws, regulations and professional rules approved by the AMF. Such penalty may include the temporary or permanent prohibition from providing some or all of the services offered (Article L.621-15 of the COMOFI).</p> <p>As per Article L. 421-5 of the COMOFI, under a proposal of the AMF, the MoF may withdraw the authorization of a RM if the market no longer meets the conditions on which its authorization has been premised, or if the market operator has seriously and systematically disregarded the requirements it had to fulfill. In the case of an MTF managed by a market operator, the AMF may withdraw the authorization on similar grounds.</p> <p>Concerning the areas under its supervision, the ACP has a broad range of regulatory tools at its disposal from follow up letters, and injunctions to administrative sanctions including money penalties which cannot exceed €100,000,000, remedial action programs, protective measures, referral to the public prosecutor, and appointment of a provisional administrator and the initiation of receivership or liquidation proceedings.</p>
Assessment	Fully implemented
Comments	<p>The supervisory approach developed by the authorities, which places much emphasis (and resources) on Euronext is reasonable, given the importance of such operator and the markets it operates. Furthermore the AMF highlighted that it has increased the resources dedicated to market surveillance with the objective to become more proactive in the definition of the agenda of topics to discuss with Euronext. In addition, the College of supervisors appears to be working well. At this point in time relying on offsite reporting and meetings for the remaining MTFs not operated by Euronext is also reasonable, provided that such approach is reviewed and onsite inspections are included in tandem with an increase on activity.</p> <p>The AMF should continue to monitor that Euronext keeps sufficient resources dedicated to market integrity issues. Similar type of actions by other European regulators could be encouraged to prevent competition from having a negative impact on the resources allocated to market surveillance.</p> <p>The AMF should request that Euronext implements a disclosure policy in connection with enforcement actions.</p> <p>Finally, the authorities are encouraged to consider the development of crisis management plans in the context of the College of Euronext.</p>
Principle 35.	Regulation should promote transparency of trading.
Description	<p>EU Directive No 2004/39 of 21 April 2004 establishes pre- and post-trade transparency requirements for RMs, MTFs as well as systematic internalizers.</p> <p>EU Regulation No 1287/2006 of 10 August 2006 – which is directly applicable in all EU Member States - specifies further the pre- and post-trade information details to be provided by RMs, MTFs (Chapter IV, Article 17), as well as systematic internalizers (Chapter IV, Article 24).</p>

The COMOFI establishes requires RMs, MTFs and systematic internalizers to provide pre-trade and post-trade information, in its Articles L421-21, L424-7 and L425-2 (transposing Directive No 2004/39). The RG AMF further details such obligations.

Pre-Trade Transparency on RMs and MTFs

Shares

RMs and MTFs are required to disclose the bid and offer prices and the size of the market at these prices in respect of shares admitted to trading. Such information has to be available to the public on a continuous basis on reasonable commercial terms and conditions and during the normal trading hours.

Other instruments

The EU legislation currently does not impose any requirement for public pre-trade transparency in non-equity financial instruments. The RG AMF does impose a general obligation to disclose information on these instruments; the particularities of such disclosure are left to the RM or MTF, which should take into consideration the type of instrument.

Derogations

Pursuant to the Directive 2004/39/EC the AMF may waive the obligation of pre-trade disclosure, for RMs or MTFs based on the market model or the type and size of orders. In particular, the competent authorities must be able to waive the obligation in respect of transactions that are large in scale compared with normal market size for the share or type of share in question (Articles 29.2 and 44.2). Articles 18 to 20 (and Annex II) of EC Regulation No 1287/2006 establish the conditions of the applicability of pre-trade transparency waivers.

CESR (now ESMA) established a protocol for such waivers. Currently, a review of pre-trade transparency waivers is in place at the ESMA level, whereby all waivers previously granted in all Member States are being reviewed for compliance with the EU legislation/regulation. Furthermore, any new request from a European trading platform to implement such a waiver must be submitted to ESMA for review, by the home regulator of the platform. ESMA will issue an opinion as to the compliance of the considered waiver with the provisions of EC Regulation 1287/2006. According to the existing legal framework, the responsibility for the final decision to allow implementation of the waivers lies with the national regulators. This procedure has been established in accordance with Article 29(a) of Regulation (EU) N°1095/2010.

Post-Trade Transparency on RMs and MTFs

Shares

RMs and MTFs are required to disclose the price, scope, and time of the transactions. Such information must be disclosed on reasonable commercial terms and conditions and within a timeframe as close as possible to real time.

Other instruments

The EU legislation currently does not impose any requirement for public post-trade transparency on transactions in non-equity financial instruments. The RG AMF does impose a general obligation to disclose transactions; the particularities of such disclosure are left to the RM or MTF, which should take into consideration the characteristics of the instrument.

Practice

In practice in France, transactions done on the RMs and MTFs operated by the Euronext are published through the facilities of the market operator. The use of

market data by Euronext members is governed by the Euronext market data distribution agreement.

As per Euronext rules, volume and prices associated with transactions made in the central order book of its regulated market (Eurolist), the organized MTF Alternext and the MTF Marché Libre, and the organized MTF NYSE Bond Match, are published immediately.

Derogations

Pursuant to the Directive 2004/39/EC, the AMF can authorize a RM or MTF to defer publication of the details of transactions based on their type or size. In particular, the AMF may authorize the deferred publication in respect of transactions that are large in scale compared with the normal market size for that share or that class of shares. Article 28 and Annex II of EC Regulation No 1287/2006 of 10 August 2006 Implementing Directive 2004/39/EC determine the detailed conditions in which post-trade publication may be deferred, which essentially are that (i) the transaction is between an investment firm dealing on its own account and a client of that firm; and (ii) the size of the transaction is equal to or exceeds the relevant minimum qualifying size, as specified in Table 4 in Annex II. In such cases the rules of the RM or MTF must disclose when deferred publication has been authorized.

Overall as per Euronext Rulebook, block trades must be disclosed within 60 minutes after reporting if the amount of the Block Trade is less than five times the relevant threshold; and within 120 minutes after reporting if the amount of the block trade is equal to or greater than five times the relevant threshold.

Obligations on Internalizers

Systematic internalizers must comply with pre transparency rules for liquid shares (publication of firm quotes in accordance with Articles 22 and 24 of Regulation (EC) n° 1287/2006 of 10 August 2006, Article L. 425-2 of the COMOFI and Article 532-1 to 532-3 of the RG AMF: publication of quotes and volumes for liquid stocks) as well as order execution.

A systematic internalizer must publish the transactions it has conducted within the time periods and according to the arrangements set in Regulation (EC) n° 1287/2006 of 10 August 2006 (Article 534-1).

Dark pools and dark orders

No dark pools operate in the French market. The authorities highlighted that if the NYSE-Euronext market offers dark services/operations to market members, these services/operations are conducted on a specific venue regulated by the UK FSA. This allows the AMF to receive (through RDT for French investment service providers and TREM for non-French ISPs) the reporting of the transactions that are executed pursuant to this NYSE-Euronext scheme in relation to the securities for which the AMF is competent.

As regard to dark orders (reserved orders), these orders will remain transparent for the AMF. Where such orders are entered into the order book, the AMF will receive the relevant information on the orders on the part of NYSE-Euronext. This would in particular be the case of "iceberg orders" (for which a part of the orders is not disclosed to the market participants) and of stop-loss orders (the triggering thresholds of which are not known by market participants). In this context, the AMF has access to the adequate information to monitor the development of orders and trades.

Where orders are pre-negotiated by the parties under a "negotiated trade" waiver, and then executed on the RM, the AMF will receive relevant information regarding the transactions as opposed to the orders. This mechanism relates to the NYSE-

	<p>Euronext TCS system under which there is no pre-trade transparency. However the AMF regrets not to be currently in a position to monitor the development of dark trading carried out in foreign countries, for which the AMF has no systematic access to order data.</p> <p>Under Euronext Rules and Trading Manual, transparent orders have priority over dark orders (e.g., the hidden part of an iceberg order). The principle of price priority applies in all cases.</p>
Assessment	Broadly implemented
Comments	<p>Overall the percentage of trades carried out without pre-trade transparency has increased significantly in Europe in recent years, since the implementation of the MiFID. This is a cause of concern vis-à-vis price formation on the European markets. The French market has been affected by these developments. The causes are multiple, including (i) fragmentation of information and a decrease in the average size of trades, as result of market fragmentation legislation; (ii) the lack of a definition and framework for OTC; as well as (iii) too many/wide waivers to pre-trade transparency allowed on regulated trading venues by the EU legislation, as well as an uneven understanding of such waivers amongst EU regulators. Given the level of integration of the French market, actions by the AMF to increase the level of transparency in the French market would not suffice per se. Therefore the AMF is encouraged to continue working with other European regulators, in particular via ESMA, in addressing the challenges mentioned above in the framework of the future revised EU financial market's legislation.</p> <p>Also, the lack of a single and exhaustive European consolidated tape in the equity markets is an important concern vis-à-vis post trade transparency. In turn, it can have an effect on the capacity of investors to oversee compliance with best execution.</p> <p>Finally, the lack of a centralized system of surveillance creates room for regulatory arbitrage and market abuse of transactions and orders. Thus, the European authorities are encouraged to look for a solution at the EU level to ensure a consolidated audit trail on orders in the European Union.</p>
Principle 36.	Regulation should be designed to detect and deter manipulation and other unfair trading practices.
Description	<p>Prohibited misconduct</p> <p>EU legislation prohibits market abuse on instruments listed on RMs and, for insider trading, to financial instrument not admitted to trading on an RM, but whose value depends on a financial instrument listed on an RM. In France, this EU legislation has been extended to financial instruments admitted to trading on an Organized MTF. In addition, market abuse provisions also apply to MTFs which are not "Organized MTFs," for transactions on financial instruments that are admitted to trading on RMs (Article 611-1 of the RG AMF). French legislation also prohibits all kinds of market abuse (including market manipulation) on financial instruments not admitted to trading on a RM or on a OMTF, but which are linked to one of these instruments (Art. 621-15 II c) of the COMOFI).</p> <p>Book VI of the RG AMF deals with market abuse. These provisions are based on Art. L.621-15 of the COMOFI, and in particular on Art. L.621-15 II c), d) and e). According to such framework the following misconducts constitute administrative infractions that can be sanctioned by the AMF:</p> <p>Market or price manipulation is prohibited by Articles 631-1 to 631-10 of the RG AMF</p> <p>Misleading information is prohibited by Article 632-1 of the RG AMF.</p>

	<p>Insider trading is prohibited by Articles 621-1 to 621-3, 622-1 and 622-2 of the RG AMF.</p> <p>Front running is prohibited by Article 621-3 of the RG AMF, as a form of insider trading.</p> <p>The definition of financial instruments of MIFID implies that these types of misconduct can be pursued both in the context of securities (equities, bonds) as well as financial products, including derivatives on commodities.</p> <p>Sanctions</p> <p>As indicated under Principles 11 and 12, the AMF Enforcement Committee is empowered to impose administrative pecuniary sanctions within the framework provided by the COMOFI and certain basic principles, in particular the principle of proportionality. Upper limits for pecuniary sanctions are defined by the COMOFI. For example, the amount of the sanction for insider dealing cannot exceed €100 million or 10 times the amount of any realized profit (or avoidance of loss). Also, under the terms of the COMOFI, the amount of the administrative sanction must be commensurate with the seriousness of the breaches committed and related to any advantages or profits derived from those breaches. In addition, the AMF Enforcement Committee should also abide by another general principle of law, which is linked to the principle of proportionality that requires that penalties be individualized.</p> <p>Apart from being administrative violations sanctioned by the AMF, insider trading, price manipulation and the dissemination of false information are also criminal violations, sanctioned by the criminal authorities. Sanctions that can be imposed include imprisonment (up to two years) and fines (which cannot exceed €1.5 million or 10 times the profits made and are therefore lower than the fines that the AMF can impose). The criminal authorities are also in charge of sanctioning other fraudulent or deceptive conduct that can be linked to financial crime (such as embezzlement, fraud, money laundering etc).</p> <p>Parallel proceedings are possible, and sanctions in both venues are possible but the amount of both sanctions together cannot exceed the maximum amount that could be imposed in either venue.</p> <p>Mechanism to detect unfair trading</p> <p>Generally speaking the AMF receives five sets of information</p> <p>For RM and MTFs under its jurisdiction (recognized or authorized by the AMF), it receives daily reporting on orders as well as transactions executed.</p> <p>It also receives daily reporting from French credit institutions and ISPs of all transactions in financial instruments admitted to trading on a regulated market of the EEA whether these transactions have been made on an RM or not (Article 28 of the MiFID Directive in relation to Articles 315-46 and 315-48 of the RG AMF and AMF Instruction n° 2007-06.). For this purpose, the AMF has developed a reporting system (called RDT) under which roughly 100 to 130 French credit institutions and ISPs report on a daily basis all their transactions directly to the AMF.</p> <p>In addition AMF receives a report on the part of European credit institutions and investment firms in relation to all transactions effected by them on securities falling within its jurisdiction via the Transaction Reporting Exchange Mechanism (TREM) of ESMA, which was put in place pursuant to MiFID (in particular, Article 14 of the implementing Regulation n° 1287/2006 of 10 August 2006).</p> <p>The AMF receives suspicious transaction reports from ISPs (about 150 each year) and from NYSE Euronext (between 15 and 20 each year).</p>
--	---

It also receives from Euroclear and LCH Clearnet a report on the positions held and the settlement/delivery details. Moreover, if, during an inspection process, unfair trading practices or manipulation are detected, the inspection team will immediately pass the information to its head of department in order to eventually launch a formal investigation on these practices.

The AMF is in the process of implementing a transaction reporting system regarding OTC derivatives. For the moment, the AMF has access, through TREM, to the transactions executed on OTC derivatives whose underlyings fall within its jurisdiction where the European credit institutions and investment firms have already complied with this reporting obligation (in particular, the UK credit institutions and investment firms which have the most important market share as far as these transactions are concerned). Starting in January 2012 the AMF also has received data on OTC derivatives transactions from French credit institutions and ISPs.

All such information is analyzed via an automated system, which includes statistical alerts and also scenario-based alerts specifically aimed at certain types of breaches. The main purpose of the detection system is to identify market abuse (insider trading and price manipulation). This system also allows identifying other types of breaches (such as breaches of the order handling rules or market halts rules).

The analysis of all such information is carried out by the *Division surveillance des marchés (DSM)*. When cases relate to the rules enacted by the market infrastructure providers, cases are analyzed in cooperation with the *Division infrastructures de marché*. The DSM consists of a team of 20 people, 7 of whom monitor listed securities. For equity securities, a staff member is responsible for a given economic sector as well as for the derivatives linked to these securities. A staff member is also responsible for the surveillance of the bond and credit derivative markets whereas another one is responsible for the surveillance of the commodity derivative markets. The remaining staff of the DSM is dedicated to the analysis of the most complex cases and to identifying the need for new tools or detection alerts. Statistical controls are carried out every day. This results in the identification of a number of irregularities for which additional information is needed. Such requests usually pertain to information on the actual beneficiary of the transactions. In the absence of a unique client ID, the AMF must first request a specific investment firm(s) for the names of *all* parties who traded in a certain timeframe. When requests involve foreign institutions, the information is obtained through the international cooperation channel.

When no satisfactory ground can be found to explain suspicious transactions following the inquiries and due diligence conducted at the *Division surveillance des marchés*, the inquiries are pursued by the AMF *Direction des enquêtes* which has larger investigative powers. At that moment a formal investigation would be launched. Such investigations can only be opened with the consent of the Secretary General. Due to past decisions from the courts which overturned decisions of the AMF on the basis of procedural problems concerning the requirements of the European Human Rights Convention, the AMF has strengthened the due process afforded in administrative proceedings. This in turn has made such procedures lengthy. On average an administrative case can take roughly two years (one year of investigation and one year at the Enforcement Committee). In spite of that, the AMF has a good track record on sanctions imposed in connection with market abuse offenses. Recently, on appeal the courts have shown deference to the decisions of the AMF, which are now seldom overturned.

The summary of the number of investigations for market abuse provided in Principle 12, as well as of the number of sanctions demonstrate that the AMF is active on the investigation of market abuse cases.

Domestic cooperation with the criminal authorities

There are formal arrangements for cooperation between the AMF and the criminal authorities. In particular, as described under Principle 13, the law requires the AMF to inform the Paris Public Prosecutor (where all market abuse cases are centralized) of potential breaches of the market abuse provisions. Furthermore, the AMF is required to send the investigation reports on market abuses to the Public Prosecutor.

Conversely, the criminal courts have the duty to ask for the opinion of the AMF when they try market abuse cases (Article L. 466-1 of the COMOFI)

Apart from the legal obligations, in practice meetings and conversations take place on a regular basis between the Paris Public Prosecutor's Office and the *Direction des enquêtes et des contrôles*, both on reports which have been submitted to the Prosecutor's Office and on other aspects of criminal and administrative laws on financial wrongdoing (investigations, sanctions, policies, actual and emerging trends and techniques of wrongdoers etc). In addition, the AMF supports training of judges on market abuse.

As indicated under Principle 12, the AMF sends an important number of reports to the Public Prosecutor every year. In this regard, for example, the AMF sent 15 cases in 2011, 22 cases in 2010, 21 cases in 2009 and 21 in 2008.

In practice the criminal authorities usually wait until the administrative investigation has taken place to start their own investigation. As a result such cases can take a long time. Furthermore, the number of convictions is very limited: 2 in 2010, 3 in 2009 and 6 in 2008. None of the persons convicted have been imprisoned (suspended sentences have been given). In a few additional cases convictions have taken place through broader statutes such as embezzlement. Limited resources, the complexity of the criminal offenses linked to the level of evidence necessary to convict (demonstration of intention) has affected criminal enforcement. However the authorities expect that the number of criminal convictions will increase over time.

Cross-market surveillance

The AMF detection system was designed to identify potential cross-market abuses. The *Division surveillance des marches (DSM)* analyzes on a daily basis data regarding all transactions executed on a given financial instrument, whatever the execution venue is. On the basis of these data, alerts are issued. Moreover, certain detection tests aim more specifically at comparing the trading activity on the principal market with that on the other trading venues.

The DSM also uses tests aimed at detecting market manipulation based on an underlying instrument and its derivatives. These tests notably consist of cross-analysis between the activity on the derivative market (and the related positions) and on the underlying financial instrument.

Commodities markets

The AMF is also responsible for the surveillance of the LIFFE Paris, which comprises a specific segment for futures and options on agricultural commodities (previously known as MATIF). Following the model used for equity derivatives, the *Division surveillance des marchés* receives on a daily basis from LIFFE Paris and from the LCH.Clearnet clearing house a report on the transactions executed on the market and the positions held on these financial instruments. As a result, the *Division surveillance des marchés* is informed of the positions held by the clearing house members to whom it can request the detailed positions for each trader. The collection of transaction and position data by the AMF allows it to identify potential market concentrations that may disclose dominant positions. Also, for the purpose of

	<p>understanding the trading activity, the AMF may ask to the traders that are active on the commodity derivative market to provide any necessary explanation.</p> <p>Cross-border cooperation</p> <p>The <i>Division surveillance des marchés</i> exchanges information with its foreign counterparts on a regular basis, and notably with the UK Financial Services Authority (FSA), because a significant portion of the remote members of the French market are based in London. In this respect, the AMF concluded a number of bilateral and multilateral agreements providing for the exchange of information, notably the agreement included within the framework of ESMA, as well as the IOSCO MMoU.</p>
Assessment	Fully implemented
Comments	<p>The authorities show a good track record in connection with the investigation of market abuse, and a number of sanctions have been imposed every year; therefore the fully implemented grade. Still the success of some cases would require “police” powers that the AMF does not have. On the other hand, the criminal authorities—who can make use of such powers—have not been effective enough in pursuing such types of offenses. The limitations in criminal enforcement can impact the overall effectiveness of an enforcement program, given the powerful deterrent effect of enforcement. Challenges to criminal enforcement have been taken into consideration in the grade of Principle 12. The assessors acknowledge that such challenges exist in many jurisdictions. Furthermore there is not an easy solution. Some countries have opted for providing prosecutorial powers to the securities regulator, others for explicitly allowing the securities regulator to conduct criminal investigations on behalf of the criminal authorities, and in such context they are provided with “police powers.” These are options that the authorities could assess.</p> <p>The lack of application of the market abuse provisions to Non- Organized MTFs raises questions; in practice the limited activity of such markets reduces the significance of such concerns, in the French context. However it is important that this issue be addressed at a regional level. The authorities indicated that the European Commission have recently adopted proposals that would extend the scope of the market abuse framework to any financial instrument admitted to trading on an MTF.</p> <p>Finally, the French authorities have taken clear steps to improve their market surveillance function and their investigation of market abuse, not only by investing in technological resources, but also by imposing additional reporting obligations on French intermediaries, beyond the requirements of the market abuse directive, and by promoting future improvements at the EU level in the context of the MIFID review. Actions by the AMF to promote the mandatory collection of order book data across Europe are also welcome.</p> <p>The assessors encourage the authorities to continue their proactive participation in the European debates for the extension of this type of reporting obligations in a European context. The implementation of a unique client ID number would also significantly enhance the ability of regulators to conduct investigations in a more efficient manner.</p>
Principle 37.	Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.
Description	<p>Large exposures</p> <p>CRBF Regulation n°93-05 concerning the supervision of large exposures (i.e., exposures superior to 10 percent of own funds) is also applicable to ISPs. It imposes requirements of risk spreading. Maximum exposure allowed for one counterparty is limited to 25 percent of own funds (weightings can be applied to the counterparty</p>

depending on their risk level). Since 2010 maximum exposure on credit institutions is €150 million and may not exceed 100 percent of the shareholder funds of the institution concerned. More specifically, investment firms (non-bank ISPs) must also, at all times, ensure that the total value of the positions of any client is less than 15 times the amount of their overall own funds (Art. 5 Regulation n° 97-04).

Mechanism to address market disruption

Euronext has mechanisms to address situations of extreme volatility and market disruption. In addition to dynamic thresholds to apply circuit-breakers, last year (after the “flash crash” in the US markets) Euronext reinstated its static thresholds. Since then, thresholds are evaluated regularly.

In addition the Chairman of the AMF has the power to halt the whole or portions of the market and trading on individual shares in the case of extraordinary events.

After the flash crash that affected NYSE Euronext in May 2010, the exchange was required by its regulators to make an evaluation of whether a situation such as the flash crash could occur in connection with the markets it operates. The conclusion of Euronext is that currently such situation is not possible because (i) rules to slow down the market and send the orders to other platforms do not exist; (ii) the RM still holds the majority of the volume of the market (roughly 70 percent); and (iii) the implementation of static thresholds.

Large exposures in connection with market transactions by LCH.Clearnet

Oversight by LCH.Clearnet

LCH.Clearnet S.A. monitors large exposures in the fixed income and derivatives markets. As a clearing organization, LCH.Clearnet S.A is a credit institution (see Article L. 440-1 COMOFI) which is registered in France and subject to the oversight of the BdF, the ACP and the AMF.

LCH.Clearnet S.A has established a set of risk management mechanisms that is applied to all the activity of their clearing members. In particular it serves to address large exposure risks, starting with membership criteria for clearing members, which include capital requirements. Positions are monitored and marked to market daily. Clearing members are required to pay initial margin (to cover default in normal conditions) as well as variation margin (to cover market risks), which are calculated at end-of-day and received at start-of-day. LCH.Clearnet S.A. can refuse to clear additional transactions if position limits are exceeded, and can also impose additional margins, including intraday margins, on an individual basis. A comprehensive intraday system was implemented around 2008 (CRB Article 1.5.3.6). LCH.Clearnet S.A. also has a general right to require that positions be reduced (CRB 1.5.3.7). It can also revoke trading privileges or require additional capital from a clearing member. LCH.Clearnet S.A also has clearing funds which are stress tested daily against the exposure of the largest member. The clearing fund is sufficient to at least cover the risk run in case of the single largest member’s default. Contributions for the clearing fund are called monthly. If the risk on a member exceeds the size of the clearing fund on a given day, then additional margin is requested.

Currently LCH.Clearnet S.A does not require clearing members to disclose customers’ positions, but AMF staff believes that the current framework would allow it to request from them information on the size and beneficial ownership of direct customer’s of intermediaries to better assess exposures. The ACP could also request such information. ACP staff highlighted that clearing members must keep two separate accounts, one for own positions and the other for customers’ positions (although it is still an omnibus account). LCH.Clearnet S.A provides clearing members with the possibility to segregate their individual clients’ accounts and in

practice clearing members segregate positions for big customers (based on bilateral agreements).

There are "position" limits in commodities futures. No later than the 12th business day before the D day of expiry (D-12), clearing members are authorized to maintain an Open Position representing a maximum of 200 percent of the Open Position limit. This authorization is reduced by 10 percent each business day until D-2 when the set Open Position limit applies. If need be, LCH.Clearnet S.A can trigger measures intended to effectuate those limits. This can lead to the automatic liquidation of surplus open positions.

Ongoing supervision of LCH.Clearnet

LCH.Clearnet S.A submits to the ACP, and to AMF for the two last reports, the following reports:

- risk synthesis daily, which includes net positions and margins in all segments, largest uncovered stress risk, default fund, the three largest uncovered stress risk by segment, default fund;
- A CDS report daily, with CDS transactions cleared and the CDS portfolio (summary and detailed) and market risk;
- A weekly statistics highlight, with activity on sovereign debt market, liquidity indicators, market risk indicators;
- A monthly report on large exposures, which is mainly focused on the market risk of direct clearing members. It details the monthly average level of margins, stress mark risk, and contribution to default fund by market by members. The biggest participant in terms of stress market risk is also provided for each day of the month.

The AMF/ACP conduct onsite inspections of LCH.Clearnet S.A to check on specific aspects; the most recent inspection was carried out by the *Inspection General Department* in 2001. There are also regular meetings between LCH.Clearnet and the ACP (usually on a bimonthly basis). Additional reports or meetings can take place if necessary. For example, in a recent case of default, the French authorities requested LCH.Clearnet SA to provide specific information to determine whether the rules were being complied. There was a relatively smooth handling of the situation, thus no additional measures were needed. Such information was shared with the College of supervisors for LCH.Clearnet discussed below.

Cross-border cooperation

There is an MoU on the oversight of LCH Clearnet S.A. between the relevant Dutch, French, Belgian and Portuguese authorities ("College of Supervisors of LCH.Clearnet"). A permanent secretariat facilitates the functioning of the College. There are, at least, monthly meetings of the college, at which a set of information is shared, including the report on large positions of clearing members. In addition, the College has developed a framework for crisis management. Such framework establishes basic coordination procedures to handle a potential crisis, from receptions of information, information collection and assessment of the impact, communication between authorities, to activation of a crisis team. According to such framework, the procedures are to be tested on a yearly basis in association with LCH.Clearnet and reviewed by the College of Supervisors. Contact details will be tested every six months. Tests are to be organized by the Permanent Secretariat. The most recent test was performed in 2011. The next test will take place in March, with a simulation of the default of a fixed income clearing member.

	<p><i>Default procedures</i></p> <p>LCH.Clearnet S.A. has a default procedure which is made available to its Clearing Members. A more detailed default procedure is also made available to the supervisors. If a Clearing member defaults, all its collateral, margins and/or payments to the default fund belong to LCH.Clearnet S.A. LCH.Clearnet will use first the margins and the contributions of the default member and if they are not sufficient, then the contributions of other members. LCH.Clearnet S.A. can exercise these rights without having to wait for bankruptcy proceedings or seek member pre-approval</p> <p>Article L. 440-9 of the COMOFI states that in case of insolvency of the clearing member, the CCP may transfer the position of the nondefaulting clients and their guarantees deposited to cover their positions to another clearing member. The operating rules of the CCP specify the procedure of transfer of the position and of the collateral of the non-defaulting clients (Article 4.5.2.5 and subsequent). The LCH.Clearnet S.A instruction IV.5-2 gives the detail of the liquidation and transfer procedure in case of an event of default of a clearing member.</p> <p>Short-selling</p> <p><i>Controls to reduce or minimize risks for orderly and efficient functioning of the markets</i></p> <p>Pursuant to L. 621-1 of the COMOFI the AMF can take actions in relation to the stability of the markets.</p> <p>AMF staff indicated that in use of such power, and in the context of the financial crisis which led to a high volatility of French securities of the financial sector during the 2011 summer, the AMF Chairman adopted in August 2011 a decision to forbid the taking of net short positions in 10 French securities of the financial sector. Such decision was renewed (first by the AMF Chairman; later on by decree), and was finally lifted.</p> <p><i>Reporting regime</i></p> <p>As from 1 February 2010, the AMF introduced a permanent regime for disclosing net short positions in equity shares to the AMF and the market (under Article 223-37 of RG AMF and AMF instruction n° 2010-08). This regime was introduced pursuant to CESR's recommendations of May 2010.</p> <p>Article 223-37 of RG AMF requires that any investor holding a net short position being equal to or exceeding 0.2 percent, 0.3 percent or 0.4 percent of the capital of a company whose shares are admitted to trading on a French RM or Organized MTFs reports such position to the AMF within one trading day. The same reporting requirement applies if the net short position falls below one of these thresholds.</p> <p>If a net short position is equal to or exceeds 0.5 percent of the share capital of a company, the investor shall report that position within one trading day to the AMF, which will publish it (the same reporting requirement shall apply when any additional threshold set at increments of 0.1 percent is crossed upwards or downwards).</p> <p>The regulatory net short position disclosure regime provides for some limited exemptions to the benefit of liquidity providers (whether an ISP under MiFID or a market member) subject to specific conditions (e.g., the submission of a documented request, the service provided must clearly be liquidity provision).</p>
--	---

	<p>As of November 23, the AMF:</p> <ul style="list-style-type: none"> received 3475 notifications of threshold crossing (concerning 51 issuers). published 712 notifications where investors reported a net short position equal to 0.5 percent of the capital or where their position exceeded any additional thresholds set at increments of 0.1 percent crossed upwards. <p>The AMF highlighted that on November 15th 2011, the European parliament adopted a Regulation on Short Selling and Certain Aspects of Credit Default Swaps. This Regulation shall apply from 1 November 2012. It includes provisions on reporting and disclosure of net short positions on shares that are broadly in line with provisions already in force in France. In addition, this Regulation also contains provisions in regard to net short positions on sovereign debt, restrictions on uncovered sovereign CDS, buy-in procedures by clearing houses and powers of intervention of EU competent authorities and ESMA.</p> <p>Measures to promote settlement discipline</p> <p>Under AMF regulation, the date on which a trade is to be effectively settled and, simultaneously, the account entry is to be made at the central depository, shall be three trading days after the order execution date (please see Article 570-2 of RG AMF). Furthermore, LCH.Clearnet S.A has in place buy-in arrangements when a settlement fail occurs.</p> <p>In addition, for monitoring purposes, the French Central Securities Depository (CSD), Euroclear France, transmits every day specific files to the AMF to feed the latter's internal database. These files are analyzed on a daily basis by the AMF to identify settlement fails. Depending on market conditions and the size of the outstanding transactions, the AMF may decide to investigate to identify the origin of the fails.</p> <p>On a regular basis, the AMF meets Euroclear France representatives in order notably to discuss and share their main conclusions resulting from their respective analysis of the statistical figures regarding settlement mechanism (duration, global volumes and numbers of settlement fails, clearing members and financial instruments concerned, etc.).</p>
Assessment	Fully implemented
Comments	Since the initial assessment LCH Clearnet S.A has implemented a comprehensive intra-day margin system that has enhanced its risk monitoring of large exposures. However, LCH.Clearnet S.A still only knows net positions of its clearing members. It would be important that a "commitments of traders" report be implemented; i.e., a report that identifies positions of each client.
Principles Relating to Clearing and Settlement	
Principle 38.	Securities settlement systems and central counterparties should be subject to regulatory and supervisory requirements that are designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.
Description	
Assessment	Not assessed.
Comments	