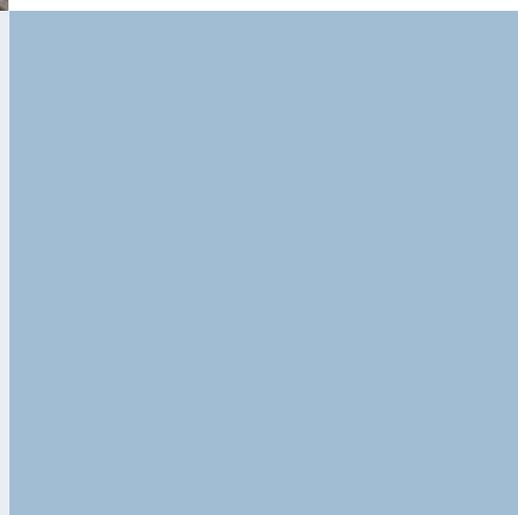
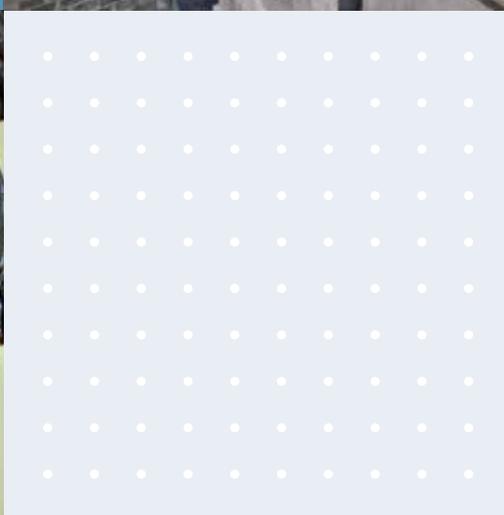


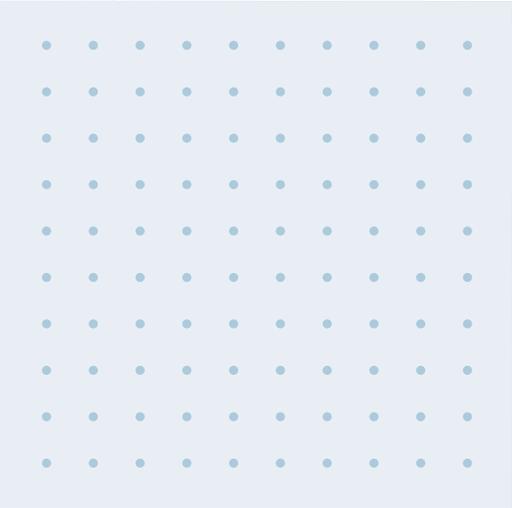
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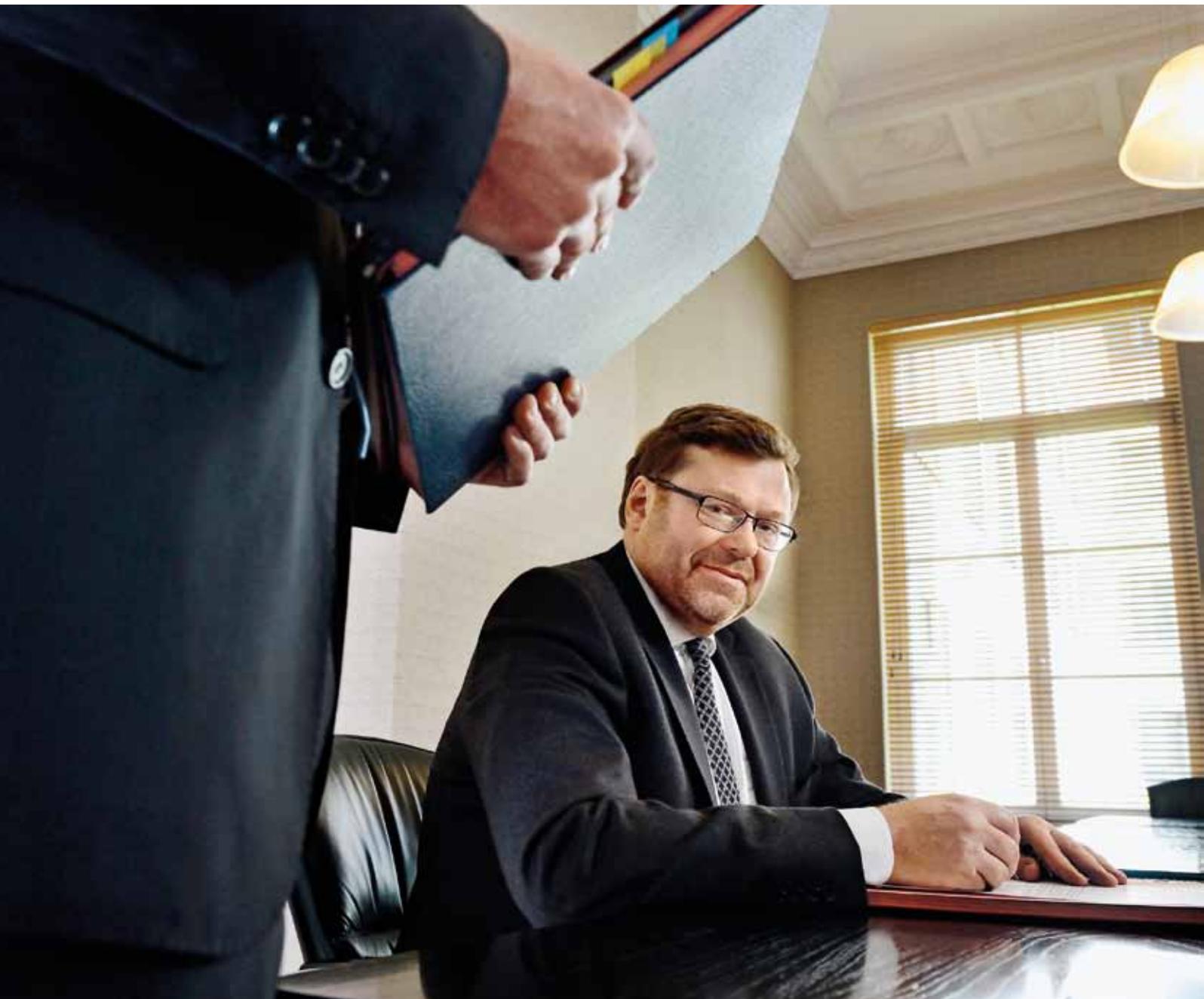
ANNUAL REPORT 2011



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Jean-Paul Servais, President

Foreword

Dear readers,

The publication of the annual report always provides an opportunity to look back over the past year and its achievements; at the same time, it is the moment to look to the future, with the tasks and challenges ahead.

2011 was the first, partial, working year for the Financial Services and Markets Authority. On 1 April, the Banking, Finance and Insurance Commission (CBFA) was transformed into the FSMA, and the new institution began operation as one of the two Belgian financial supervisors. This structure is the result of the decision by the Belgian legislators to introduce a bipartite or 'Twin Peaks' supervisory model.

In that new model, the National Bank of Belgium is competent for the prudential supervision of banking and insurance groups and of stockbroking companies. The FSMA, for its part, has been entrusted with a range of competences that taken together are well suited to promoting consumer protection and market integration.

The FSMA's six major areas of competence are: supervision of listed companies and surveillance of financial markets; supervision of financial products; supervision of compliance with rules of conduct in the financial sector; supervision of supplementary pensions; supervision of financial service providers and intermediaries; and making a contribution to the financial education of the public.

Changes in financial supervision in 2011 were not limited to Belgium's borders. At European level as well, substantial changes were introduced. Thus, on 1 January 2011, the European System of Financial Supervisors (ESFS) came into being. The ESFS comprises: the European Systemic Risk Board (ESRB) and three European Supervisory Authorities tasked with supervising the banks, insurance

companies and occupational pension funds, and financial markets respectively.

Within this new European supervisory framework, the FSMA plays an active role in the activities of the ESRB, the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA).

After the FSMA was established on 1 April 2011, its new Management Committee was installed in the first weeks of operation. The organization of the institution was thoroughly restructured in order to fit with its new set of competences, and an action plan was drawn up with concrete initiatives. Thanks to this quick start, the FSMA was soon able to adapt its working methods to the new supervisory environment. We can therefore look back upon a successful first year of operation.

A first milestone for the FSMA was the introduction of a moratorium on particularly complex structured products. As described further on in this report, the vast majority of the financial institutions that distribute structured products in Belgium signed on voluntarily to the moratorium on distributing those products that the FSMA considers particularly complex. The moratorium has led to a simplification in the offer of structured products on the Belgian market. It is worth noting that investments in these products amounted, in 2010, to 85 billion euros, or one-third of the total amount deposited in regulated savings accounts. The moratorium aroused much interest at the international level and in particular among foreign supervisory authorities.

While the moratorium applies to the financial products that are offered to consumers, the FSMA has also adopted measures regarding the way in which financial institutions market their products to the

consumer. To this end, the FSMA has set up a specialised department responsible for supervising compliance by financial institutions with the rules of conduct. A new team has been put together and a methodology developed in order to carry out careful supervision to ensure that financial institutions comply strictly with the so-called MiFID rules of conduct.

As will be described further in this report, at the beginning of 2012 teams from the FSMA began monitoring compliance with the MiFID rules through a series of on-site inspections of financial institutions. In the course of this year several other inspections of this sort will take place. The inspections can, if necessary, lead to recommendations, recovery plans or sanctions.

The measures that the FSMA has already adopted and has yet to adopt are inspired by the lessons learned from the crisis and by the efforts to create a sustainable financial system that deserves consumer confidence. But it goes without saying that the financial sector also plays an important role in this regard. Financial institutions are faced with a major task in this area. They must understand that the financial markets will never be the same again, and that change is essential.

For instance, it is essential that every unit within a financial institution be persuaded of the importance of strict compliance with the applicable laws and regulations. The FSMA has drawn up a regulation concerning the approval of compliance officers, who have an advisory role in respect of an institution's senior management in order to ensure that the organization is compliant with the applicable laws and regulations. The requirement that compliance officers receive approval from the FSMA is intended to ensure that these officers have the

requisite qualities as regards training, experience and knowledge. Not only is it important that financial institutions have a good compliance officer, but their top management must also make a compliance culture a priority within their organization.

It goes without saying that the FSMA will itself take further initiatives to contribute to a sustainable financial system, to restoring consumer confidence and to consumer protection.

The FSMA is advising the government and is working, in consultation with the sector and with consumer organizations, on initiatives concerning regulated savings accounts, which are the most popular savings product in Belgium. These initiatives are intended to achieve greater transparency in these savings accounts and stricter rules governing advertisements for these products.

The FSMA is also studying what measures, if any, may be useful in relation to other types of financial products. Thus, bearing in mind the government's intentions, the FSMA is examining the possibilities of introducing a labelling system for financial products. Such a system would indicate the level of risk associated with a financial product. Labelling would thus be complementary to the approach represented by the moratorium, which is based exclusively on considerations of the complexity of financial products.

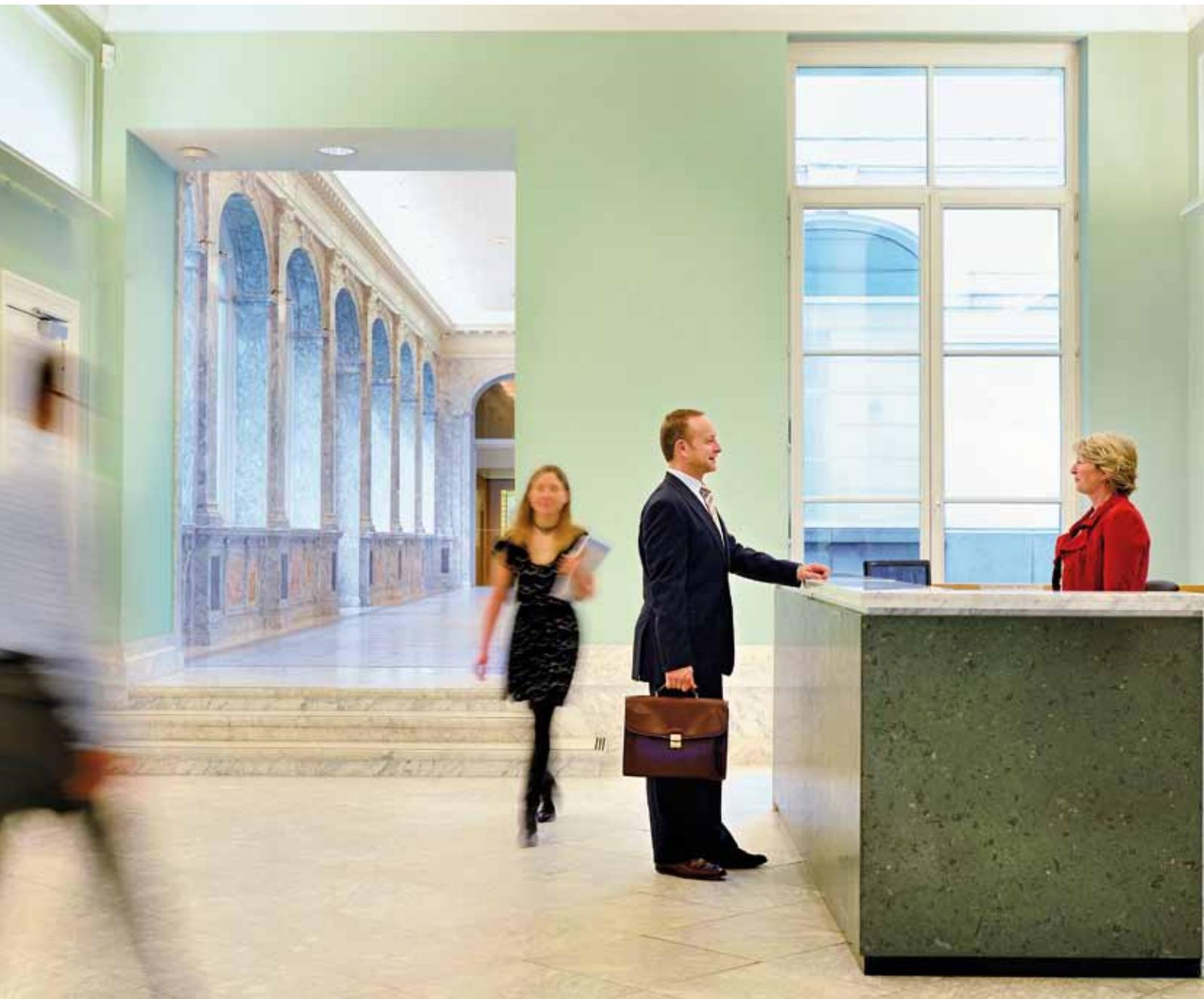
Furthermore, the FSMA is drafting recommendations for the further extension of its range of available actions, including via the reform of the procedure for imposing administrative sanctions and a series of initiatives aimed at optimizing and expanding consumer protection. To this end, the FSMA has drafted texts that take into account a number of recommendations by the public authorities. These

recommendations concern, among others, setting up a system of 'mystery shopping', the introduction of a legal status for financial planners and the optimization of the complaint-handling process.

A final and essential building-block of the restoration of confidence in the financial system is to improve the financial education of consumers. In view of reforming the financial supervisory system, the FSMA was given the explicit legal mandate to make a contribution to financial education. A separate service within the FSMA was created for this purpose and an action plan was drawn up envisaging a role that would contribute to financial education in various forms and at various levels and domains. The FSMA will thus be able to be present, with its own identity, in the appropriate channels for reaching the target audience for financial education.

With these initiatives, the FSMA, as a specialised supervisory authority in this sector, seeks to contribute to restoring confidence in the financial sector and in the financial system as a whole. To attain this goal, expand its new competences and develop the necessary initiatives, the FSMA has in the course of 2011 strengthened its ranks with highly qualified specialists in several domains. These new employees reinforce the existing talents within the institution, and I would like to take this opportunity to thank them all for their commitment and motivation over the past year.

Jean-Paul SERVAIS
Chairman



2011 at a glance

1 April: The Financial Services and Markets Authority (FSMA) begins operations. As a consequence of the entry into force of the 'Twin Peaks' legislation, the FSMA is one of the two supervisors, alongside the National Bank of Belgium, of the Belgian financial sector. The FSMA is competent for the supervision of listed companies and financial markets, savings and investment products and compliance with the rules of conduct. It also supervises financial intermediaries and service providers and supplementary pensions, and has a mandate to contribute to consumer financial education.

11 April: The new members of the FSMA's Supervisory Board are appointed by the Royal Decree of 5 April 2011. The new members are Madam Hilde Laga and Madam Marieke Wyckaert and Messrs Jean-François Cats, Jean Eylenbosch, Robert Geurts and Reinhard Steennot. The remaining members of the Supervisory Board, namely Messrs Dirk Van Gerven, Didier Matray, Pierre Nicaise, Jean-Paul Pruvot, Michel Rozie and Marnix Van Damme continue to serve their mandates. Mr Dirk Van Gerven is the chairman.

20 April: IOSCO approves a new system of internal governance. This decision is intended to provide IOSCO with a strengthened organizational structure that is suited to its role as leading international regulator for financial markets and is able appropriately to fulfil requests coming from the G20 and the Financial Stability Board.

2 May: Messrs Wim Coumans and Gregory Demal were appointed by the Royal Decree of 28 April 2011 deputy chairman and member of the FSMA's Management Committee respectively; with Chairman Jean-Paul Servais and Mr Henk Becquaert, they make up the four-member Management Committee.

4 May: The Management Committee restructures the FSMA's organization. The new organizational structure seeks to achieve a balance between the new competences yet to be developed and those competences that are already up to speed.

20 June: The FSMA announces a moratorium on the distribution of particularly complex structured products. Via the moratorium, the FSMA seeks to stop further distribution to retail investors of structured products which, according to the FSMA's criteria, should be considered 'particularly complex'. The distributors of structured products sign on to the voluntary moratorium, committing themselves not to distribute any further products that the FSMA considers 'particularly complex'.

22 June: for the first time since the entry into force of the Twin Peaks reform, the FSMA, together with the NBB, takes part in the quarterly meeting of the European Systemic Risk Board (ESRB).

29 June: The FSMA publishes an action plan. The action plan announces the initiatives that the FSMA will develop. The action plan includes, in addition to the launch of the moratorium of particularly complex structured products, a transition to a new sanctions procedure, initiatives regarding the transparency of savings accounts, a new methodology for supervision of compliance by banks with the rules of conduct and an action plan regarding financial education.

15 July: The new procedure for administrative sanctions enters into force. The new procedure specifies the way in which the FSMA can impose administrative sanctions in the event of an infringement of the financial legislation. The renewal should make the sanctions procedure more efficient and transparent, and increase its deterrent effect.

1 August: The moratorium on the distribution of particularly complex structured products comes into effect. The vast majority of the banks and insurance companies in Belgium sign on to the moratorium. From September onwards, intermediaries will also be able to sign on.

12 August: After consultation with the other members of ESMA, the FSMA decides to extend the ban on the short selling of financial shares. The decision takes into account the high degree of volatility on the financial markets and ensures the necessary consistency with the actions of other supervisors in the Euronext zone.

14 August: The FSMA launches a public consultation on the definitive rules for the distribution of structured products. In this consultation, the FSMA surveys the responses of all interested parties to the rules of the moratorium and their opinions on a future regulation.

1 September: The FSMA publishes a draft regulation on an approval process for compliance officers, and launches a consultation on this regulation. The draft regulation provides a series of requirements to be met for approval, in the areas of reliability, knowledge and experience.

20 September: The FSMA, as chair of ESMA's 'article 9 Task Force', presents the final report of that working group, on the subject of consumer protection, to ESMA's Board of Supervisors.

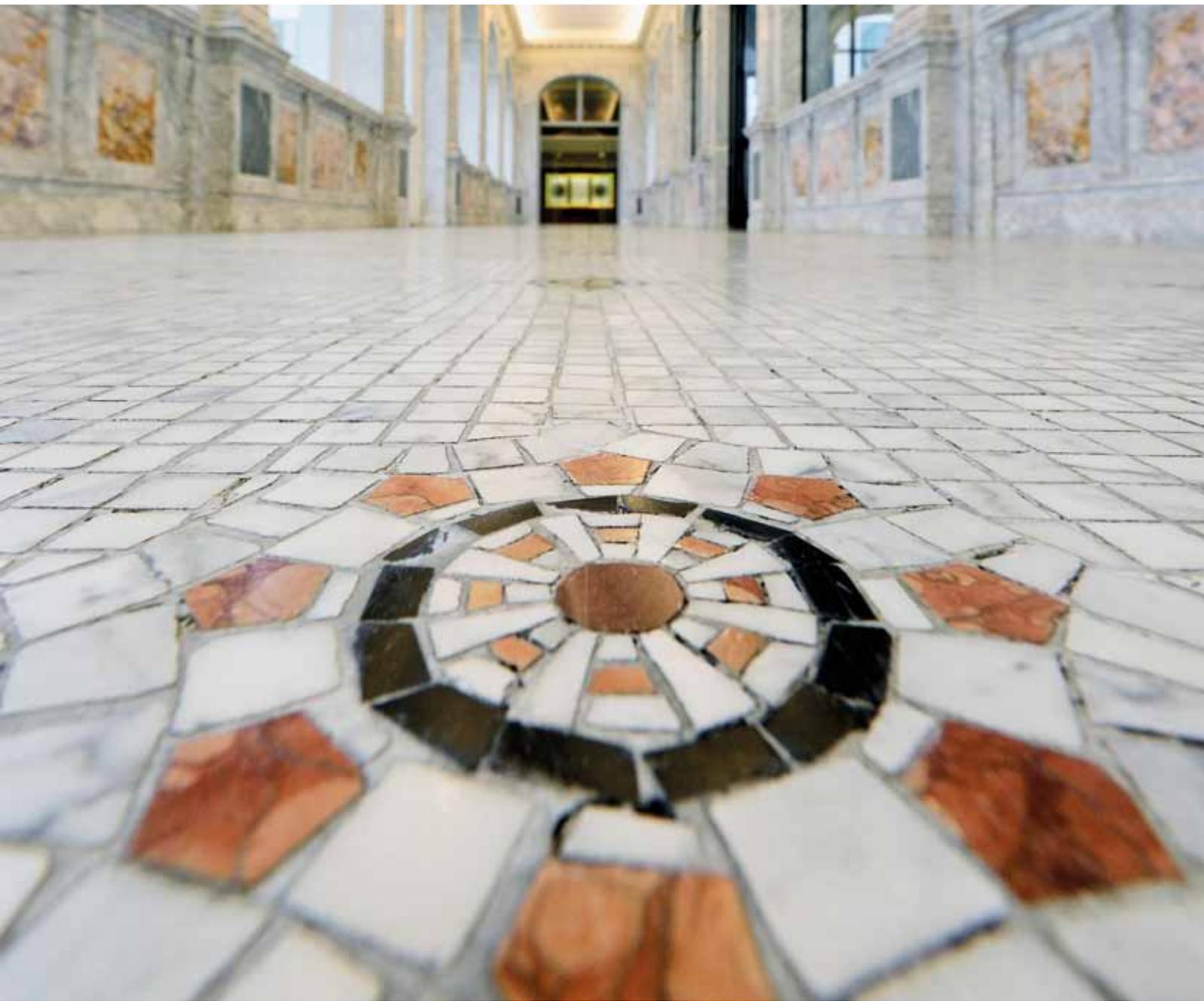
3 October: The FSMA's new Sanctions Committee is appointed. The Royal Decree of 26 September 2011, published on 3 October 2011, announces the names of the ten members of the Sanctions Committee. These include six magistrates: Messrs Luc Huybrechts, Claude Parmentier, Philippe Quertainmont, Michel Rozie and Marnix Van Damme, and Ms Hamida Reghif. The Sanctions Committee also comprises four non-magistrates: Messrs Guy Keutgen, Pierre Nicaise, Reinhard Steennot and Dirk Van Gerven. Mr Michel Rozie is named the chairman of the Sanctions Committee.

15 October: The consultation on rules regarding the distribution of structured products is successfully concluded. The FSMA received around 40 answers, from financial institutions and professional associations as well as from consumer organizations, trade unions and other participants.

6 December: The FSMA approves a new methodology for supervising the MiFID rules of conduct. The new methodology means a stricter supervision of compliance with the rules of conduct.

15 December: The European Regional Committee of IOSCO, the International Organization of Securities Commissions, holds its meeting in Brussels. The event is held

at the invitation of the FSMA, which holds the vice-chairmanship of the European Regional Committee. The discussions have to do with reinforcing international standards for the financial markets.



CHAPTER 1



Significant developments in supervision by the FSMA

1.1. DEVELOPMENT OF THE REGULATORY FRAMEWORK

1.1.1. National

1.1.1.1. Twin Peaks

As in the other member states of the European Union, the Belgian legislature opted to move from an integrated to a bipartite supervisory model, the so-called Twin Peaks model. In this model, the micro- and macroprudential supervision of financial institutions is grouped at the central bank, and supervision of the rules of conduct of financial institutions is entrusted to another supervisory authority.

The Twin Peaks model was introduced in Belgium by the Law of 2 July 2010¹, which amended the Law of 2 August 2002 on the supervision of the financial sector and on financial services, among others, and by the Royal Decree of 3 March 2011 on the development of the supervisory architecture for the financial sector², which implements the Twin Peaks Law of 2 July 2010.

The new division of competences between the National Bank (NBB) and the FSMA came into effect on 1 April 2011. Since that date, the NBB is responsible for micro- and macroprudential supervision. The FSMA has acquired new competences over and above its traditional tasks relating to surveillance of the financial markets, supervision of specific financial actors and the provision of financial products and services. These have to do with supervision of compliance with the rules of conduct by financial institutions, supervision of distribution of financial products and the financial education of the public.

¹ Law of 2 July 2010 amending the Law of 2 August 2002 on the supervision of the financial sector and on financial services and of the Law of 22 February 1998 determining the organic status of the National Bank of Belgium, and containing various provisions (Belgian Official Gazette 28 September 2010).

² The Royal Decree of 3 March 2011 sets out more specifically the organization of the transfer of competences from the CBFA to the NBB, and clarifies the concrete modalities of that transfer.

The FSMA's competences consist henceforth of six principal domains:

- supervision of listed companies and of financial markets
- supervision of compliance with the rules of conduct;
- supervision of financial products;
- supervision of financial service providers and intermediaries
- supervision of supplementary pensions;
- contributing to financial education.

1.1.1.2. Moratorium

In the wake of the financial crisis, the special committee of the Belgian Parliament tasked with investigating the financial and banking crisis³ recommended, in its report of 27 April 2009⁴, that the traceability of financial products be improved. Following this recommendation, the FSMA was given the competence to issue regulations that may impose a ban or restrictive conditions on trading in retail investment products, or that may enhance transparency in the pricing and costs of such products⁵.

In the context of this competence, the FSMA called upon the financial sector in June 2011 to stop distributing to individual investors products that may be considered particularly complex⁶. This voluntary moratorium constitutes the first step in a process that is intended to lead to the adoption of a regulation on the distribution of complex products to retail investors.

³ Established on 4 December 2008 in accordance with Article 21, paragraph 2, of the Regulation by the Chamber of Representatives.

⁴ Available on the website of the Chamber (Doc 52, 1643/002) and of the Senate (Doc 52, 4-1100/1).

⁵ Article 49, § 3, second paragraph of the Law of 2 August 2002, introduced by the Twin Peaks Royal Decree.

⁶ The technical aspects of the moratorium are discussed in Chapter 2 of this report, p. 77.

Why the structured products market?

The FSMA addressed, as a first step, the market in structured products for retail investors. With an amount invested of EUR 87.2 billion in 2010 (for a population of 10.8 million) the Belgian market is one of the largest in Europe⁷. By way of comparison, at the end of 2010 the private sector in Belgium had nearly EUR 200 billion in regulated savings deposits and approximately EUR 35 billion in term deposits⁸.

Structured products are complex investment products. They are generally made up of a savings component, such as a zero-coupon bond, and one or more derivatives. The derivative component can be very complex in structure, with the yield depending on a great many mechanisms. This makes estimating and tracking the value of the product more difficult.

In order to create a level playing field for all structured products, the FSMA does not make any distinction, in its intervention, on the basis of the wrapping of the structured product in question, be that as an undertaking for collective investment (UCI), an investment instrument, a class 23 insurance contract or a deposit.

The FSMA's approach is in line with an international trend⁹ among supervisory authorities to pay more attention to the distribution of complex products to retail investors.

A step-by-step process

The first step taken by the FSMA was, on 20 June 2011, to invite the sector to sign on voluntarily to a moratorium on the distribution of particularly complex structured products.

In a second step, the FSMA held a consultation on a new regulation on the distribution of structured products to retail investors. The drafting of a regulation based on the results of the consultation and the experience gained from the moratorium is under consideration (third step).

⁷ In relative terms the Belgian market is by far the largest in Europe. By way of comparison, in France there was in 2010 a total of EUR 85.6 million (for 64.7 million inhabitants), in Germany EUR 142.7 million (for 81.8 million inhabitants), in Italy EUR 220.1 million (for 60.3 million inhabitants) and in the United Kingdom EUR 60.2 million (for 62 million inhabitants).

⁸ These statistics can be consulted on the website of Belgostat.

⁹ For Europe, see among others the United Kingdom (FSA, Discussion Paper 11/1 Product Intervention), France (Position AMF n° 2010-05 relative à la commercialisation des instruments financiers complexes), Italy (Consob notice no. 9019104 of 2 March 2009 on The intermediary's duty of correct and transparent conduct in the distribution of illiquid financial products), Denmark (Executive order n° 345 dd. 15 April 2011 on risk-labelling of investment products) and Portugal (Draft CMVM Regulation No. 1/2012 on Complex Financial Products). See also the United States (FINRA Regulatory Notice 12-03 on Complex Products) and the consultation report by the Technical Committee of IOSCO on Suitability Requirements with respect to the Distribution of Complex Financial Products. These documents are available on the websites of the respective institutions.

By means of this process, the FSMA wishes to simplify the market and render it more transparent, regardless of the packaging of the structured product. This will enable consumers to gain greater insight into the choices facing them, enhance the comparability of the various products and foster competition. Confidence in financial institutions and the smooth operation of the financial markets will be strengthened as a result.

During the voluntary moratorium, distributors of structured products and intermediaries are asked to commit themselves not to distribute to retail investors any structured products that are considered 'particularly complex' on the basis of the criteria laid down by the FSMA. This request is motivated by the need to show some restraint during the period of the consultation and the preparation of the Regulation. Doing so should make possible a serene discussion of the new regime that is to govern the distribution of structured products to retail investors.

The moratorium has to do with particularly complex structured products, whatever the inherent risks may be. The fact that a product is not considered particularly complex does not in any way imply that it is risk-free.

Cumulative criteria

The moratorium concerns the distribution to retail investors of structured products that are considered as particularly complex based on a test consisting of four steps.

Accessibility of the underlying

The FSMA investigated whether the underlying assets were sufficiently accessible. They are considered accessible where retail investors can follow the relevant market information or the specific characteristics of the (combination of) underlyings via the customary channels. Thus, investment instruments admitted to a regulated market or securities indexes that have sufficient renown, track record and transparency and serve as benchmarks (such as the DJ EUROSTOXX 50) are considered sufficiently accessible.

A combination of underlyings, such as a customised selection of individual shares (so-called 'basket of shares') can be considered accessible if it meets certain cumulative conditions (diversification, composition on an economic basis in the interest of the client and transparency in distribution and during the lifetime of the product).

Certain underlyings are considered inaccessible, such as credit default swaps, commodities (other than gold) and speculative contracts.

No overly complex strategies

Certain product strategies are considered too complex for the purposes of the moratorium, namely:

- strategies based on a 'teaser', in particular products with a fixed return that does not apply throughout the lifetime of the product;
- strategies where the investor may incur a capital loss as a result of the fall in the value of the underlying, without being able to participate to at least the same degree in the increase in value of the underlying;
- strategies where a minimal change in the performance of the underlying can have a disproportionate impact on the repayment of the capital or on the payment of a return;
- products that are distributed as capital-protected products even though the built-in protection is conditional.

No overly complex calculation formulas

The calculation formula is considered overly complex if it comprises more than three mechanisms. In determining whether the formula is overly complex, account is taken of all mechanisms that involve a calculation relating to the performance of the underlying, with the exception of mechanisms that are considered as being in the interest of the customer (such as a minimum return at maturity).

Sufficient transparency

Finally, compliance with the moratorium means sufficient transparency:

- about all the costs included in the subscription price or charged over and above the subscription price;
- regarding the credit risk: the product must be distributed in the name of the issuer. The name of the product may not make an (implicit) reference to the distributor;
- about the market value of the product: quarterly publication on the distributor's website¹⁰;
- in communication of important changes in the risk profile or the value of the product.

The provisions of the moratorium are explained in greater detail in the FSMA's Communication of 20 June 2011¹¹.

¹⁰ If the distributor does not have a website, the information may be published on the issuer's website.

¹¹ Communication FSMA_2011_2 of 20 June 2011 'Moratorium on the distribution of particularly complex structured products', available on the website of the FSMA.

1.1.1.3. Development of a regulatory framework for advertising and information on regulated savings accounts

The FSMA took initiatives in 2011 to improve the advertising for and transparency of bank accounts. In this area as well, the FSMA was responding to a recommendation made by the special parliamentary committee entrusted with investigating the financial and banking crisis. The committee had recommended reinforcing the information given to consumers of financial services. The Twin Peaks law of 2 July 2010 gives the FSMA the additional competence to monitor the contents and presentation of advertising and other documents relating to accounts held at a financial institution.

The FSMA opted, in the first instance, to take action as regards the advertising for and information about regulated savings accounts¹². Since the end of 2011, Belgians had a total of 217 billion euros in savings on deposit in such accounts. That makes the regulated savings account the most popular savings product; just about everyone in Belgium has an account of this sort.

The FSMA's initiative regarding regulated savings accounts has two aspects: transparency and advertising. In the first instance, it is very important to increase transparency in the range of products offered. This is to be done by presenting information to consumers in a more uniform manner. To this end, the FSMA, in consultation with the sector and with consumer organisations, worked on a standardised information document that should be considered a first step towards greater transparency and comparability for the consumer.

A second aspect has to do with the advertising of regulated savings accounts. Given its observation that confidence in the financial system is under pressure, the FSMA considers that a certain reserve as regards advertising is advisable, especially when it comes to financial products that are accessible to all consumers. As part of this approach, the FSMA took an initiative regarding advertising for a specific financial product that is offered in conjunction with other goods and services. The intention is to ensure that the consumer's attention is drawn to the financial product and its advantages, rather than to other goods and services that are offered along with the financial product.

The FSMA is considering initiatives for other financial products and services as well. All these initiatives are in line with the FSMA's overall mandate to protect the interests of consumers.

¹² Savings accounts that fulfil the conditions laid down in the Royal Decree of 7 December 2008.

1.1.1.4. Developing a supervisory framework for rules of conduct

The financial crisis that broke out in 2008 demonstrated that proper protection of consumers' interests is crucial in order to preserve confidence in the financial system. Rules of conduct have thus been given a central place in the new supervisory architecture for the Belgian financial sector.

In the so-called Twin Peaks Decree that has been in force since 1 April 2011, the FSMA was assigned the role of a specialised supervisor of rules of conduct, among its other competences. In order to perform this role to the full, and to intensify supervision of business conduct, the FSMA set up a new service, entitled 'Supervision of rules of conduct'.

The FSMA began by drawing up, in cooperation with a number of recognised audit firms, an action plan and a specific methodology for supervising compliance with the MiFID rules of conduct.

The new approach is to contribute to an efficient practice of supervision of the MiFID rules of conduct. The new methodology ensures a uniform approach and creates a frame of reference for applying the MiFID rules of conduct.

The new approach will enable the FSMA to issue assessments in an efficient manner and to engage in benchmarking. Based on the inspections conducted, the FSMA will be able to determine areas in which further improvements are necessary and will publish recommendations in this regard where necessary.

1.1.1.5. Compliance officers

Within the context of its supervision of rules of conduct, the FSMA has drawn up a regulation concerning the approval of compliance officers. Compliance officers at financial institutions oversee the correct implementation of the regulations and rules of conduct.

Financial consumers rightly expect an honest, fair and professional service provision on the part of their financial institution. The compliance function within financial institutions contributes to ensuring that the rules of conduct are correctly implemented and thus that clients are treated in an appropriate manner.

The Belgian legislators have sought to ensure that the head of this compliance function, known as the compliance officer, has the necessary qualities and professionalism. For this reason, compliance officers, in line with the practice in other countries, are required to be registered.

The FSMA's regulation provides for a number of prerequisites as regards reliability, knowledge and experience, in order to gain the requisite approval. In order to demonstrate that they have the necessary knowledge, compliance officers approved by the FSMA must pass an examination at a training centre recognized by the FSMA.

The FSMA thereby ensures that at every institution it has a suitable contact person with the necessary specialized knowledge and qualities.

The FSMA, along with the National Bank of Belgium, is considering publishing a circular relating to the compliance function at financial institutions. The circular is to highlight the independence of compliance officers and to identify their specific tasks.

1.1.1.6. The adoption of a new sanctions procedure

On 15 July 2011¹³ the new procedure for imposing administrative fines came into effect. This procedure is intended to make the FSMA's interventions more efficient and more transparent and to enhance their deterrent effect.

The new procedure is as follows:

1. In the initial phase, the investigations officer¹⁴ decides, after having conducted an information process, to open an investigation into a given dossier. An investigation may be opened on the basis of an inspection conducted by the FSMA's services of institutions under its supervision. An analysis, report or observation of suspect transactions, notifications by other authorities and complaints may also serve as the basis for opening an investigation.

While in the former procedure, different services of the FSMA carried out the preliminary enquiry and the actual investigation, the two stages have been combined in the new procedure and are now conducted under the authority of the investigations officer. This should speed up the procedure and make for a more flexible and efficient use of resources.

After the investigation has been completed, an investigation report is drawn up indicating whether the elements investigated constitute an infringement liable to give rise to an administrative fine or whether they may constitute a criminal offence.

¹³ The date of entry into force of the new procedure is determined by the Royal Decree of 28 June 2011.

¹⁴ The Secretary General serves as investigations officer for the purpose of investigating actions that are liable to give rise to an administrative fine or penalty.

2. Based on the results of the investigations officer's investigation, the Management Committee may take one of the following decisions:

- close the case;
- accept an agreed settlement;
- launch administrative sanction proceedings by referring the case to the Sanctions Committee and informing the parties concerned and, where criminal offences may be involved, the Public Prosecutor's Office, of the charges.

Agreed settlements are published, with or without mentioning the names of the parties, on the website of the FSMA. Other decisions by the Management Committee regarding sanctions proceedings may also be made public.

3. If the Management Committee refers the case to the Sanctions Committee, the procedure is carried forward by the latter Committee. Unlike under the former procedure, the Management Committee may be represented at the hearings before the Sanctions Committee, intended to ensure that there is an adversarial process.

The Sanctions Committee's decision whether or not to impose an administrative fine must be given in reasoned form. Whether or not a sanction is imposed, the decision must be published on the FSMA website, mentioning the names of the parties. The decision may be published without mentioning the names if such publication seriously risks disrupting the financial markets or might cause disproportionate damage to the parties in question. The decisions of the Sanctions Committee may be appealed to the Brussels Court of Appeal. Where an appeal is lodged, the decision of the Sanctions Committee will be published without mentioning the names of the parties, while awaiting the result of the court proceedings.

The composition of the Sanctions Committee was altered pursuant to the Law of 2 July 2010. While formerly the Sanctions Committee consisted of the chairman and six members of the Supervisory Board of the FSMA, it is henceforth composed of ten members, of which 6 are magistrates. The members of the Sanctions Committee were appointed in October 2011¹⁵.

1.1.2. International

1.1.2.1. International Organization of Securities Commissions (IOSCO)

As a member of the IOSCO Executive Committee, the FSMA took part in 2011 in the reflection process concerning the governance of IOSCO, the international organization of securities commissions. As a result, the FSMA, which since 2010 has sat on the Executive Committee, was able to participate in the consultations taking place at an important moment in the life of the organization. The FSMA is also a member of IOSCO's Audit Committee. That body assists the Executive Committee in the process of approving the budget and the accounts.

As a member of the Executive Committee, the FSMA can also participate in the meetings of the Technical Committee. This has meant that the FSMA is involved in the policy work carried out by IOSCO, often at the request of the G20 leaders or of the Financial Stability Board. The standards or reports that are drawn up in this manner serve increasingly as a source for subsequent European and Belgian regulations or supervisory practice.

In 2011, for instance, the Technical Committee prepared a report on the impact of technological changes on market integrity and efficiency¹⁶. In this regard, IOSCO is examining supervisory questions such as those relating to high frequency trading. The Technical Committee has also drawn the attention of IOSCO members to the role of securities supervisors in limiting systemic risks¹⁷.

In the year under review the FSMA also took part in the meetings of IOSCO's Standing Committee no. 1. The work carried out in that capacity had to do mainly with the following three areas: accounting, audit and the provision of information to investors.

IOSCO's European Regional Committee held a meeting in Brussels in 2011 at the invitation of the FSMA. The European Regional Committee is comprised of over 45 members, who are responsible for overseeing the smooth functioning of the financial markets and the protection of investors. The chairmen and directors of these supervisory authorities discussed the recent initiatives taken by IOSCO in view of reinforcing international standards for the financial markets, with particular attention to matters of concern to the European region.

¹⁵ The members of the Sanctions Committee were appointed by the Royal Decree of 26 September 2011 (Belgian Official Gazette, 3 October 2011).

¹⁶ IOSCO, Regulatory issues raised by the impact of technological changes on market integrity and efficiency, 20 October 2011.

¹⁷ IOSCO, Mitigating systemic risk. A role for securities regulators, 24 February 2011.

1.1.2.2. Bilateral cooperation

In 2011 the FSMA also negotiated a cooperation agreement with the Emirates Securities and Commodities Authority, its fellow supervisory authority of the United Arab Emirates. The agreement was signed in Brussels on 16 January 2012. The agreement concerns cooperation and exchange of information between the two authorities and lays the foundation for mutual assistance in the execution of their supervisory tasks.

1.1.3. European level

The FSMA made a substantial contribution as regards the European Supervisory Authorities created on 1 January 2011. These authorities took many initiatives during their first year to develop common regulatory norms and convergent supervisory practices¹⁸.

1.1.3.1. ESMA activities

In 2011 the FSMA actively collaborated with other European market supervisory authorities within the framework of ESMA. ESMA played a role in monitoring the situation on financial markets and coordinating the reactions to these with national supervisors and the other European Supervisory Authorities.

In particular, ESMA played a role in the coordination and prohibition of short-selling financial shares that a number of countries, among which Belgium, introduced in August. In cooperation with the national authorities, ESMA also followed the situation of specific markets (such as the CDS market) and the functioning of the market infrastructures. ESMA also published a declaration about the accounting treatment of sovereign debt.

Moreover, since 1 July 2011, ESMA is responsible for supervising registered rating agencies¹⁹. Until now the rating agencies have been the only financial sector for which supervision is centralized at the European level.

In order to introduce consistent, efficient and effective supervisory practices and to ensure consistent application of the European legislation, ESMA can address guidelines and recommendations to the competent national authorities. Pursuant to Article 16 of the regulation establishing ESMA, the competent authorities shall make every effort to comply with these guidelines and recommendations.

¹⁸ In this regard see: ESMA and EIOPA annual reports available on their websites.

¹⁹ ESMA publishes each year a report about the way in which it applied European Regulation 1060/2009 of the European Parliament and of the Council of 16 September 2009. The first report of this kind (ESMA/2012/3) was published on 12 January 2012 and is available on the ESMA website.

On 2 December 2011 ESMA published such guidelines regarding the operation of electronic systems for trading in financial instruments²⁰. These guidelines specify a number of requirements prescribed in MiFID for regulated markets, MTFs and investment firms running such systems.

Within ESMA a working group (Article 9 Task Force) prepared the creation of the Financial Innovation Standing Committee (FISC). This permanent committee will assist ESMA in its activities concerning consumer protection. This preparatory working group was chaired by the FSMA.

This working group drew up a report containing an overview of the measures taken by the different national supervisors regarding product intervention and a prohibition or restrictions on the selling of products or services. The report also presents pathways to strengthen the protection of consumers on the European level.

In the meantime ESMA has for the first time made use of the possibility offered by Article 9 of the ESMA regulation of issuing a warning in the event that a financial activity poses a serious threat to ESMA's objectives. On 5 December 2011 ESMA warned investors against dealing with unauthorised firms offering foreign exchange investments. ESMA also warned retail investors against the main risks involved in Forex trading²¹.

The FSMA also chairs ESMA's permanent working group on investor protection and intermediaries. In 2011 this group worked among other things on the preparation of guidelines that ESMA wishes to publish concerning the MiFID requirements regarding the compliance function and the duty of care.

Within ESMA, the FSMA also collaborated actively on implementing measures for the AIFMD Directive²². The FSMA is represented for the purpose in two of the four ESMA working groups formulating an opinion for the European Commission (depository working group and leverage & transparency working group). The AIFMD harmonizes the legal regime and supervisory framework within the EU for managers of all funds which are not subject to the UCITS Directive.

²⁰ Guidelines on Systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities (ESMA/2012/122),

²¹ See: www.esma.europa.eu/system/files/2011-412_en.pdf.

²² Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers and amending directives 2003/41/EC and 2009/65/EC and regulations (EC) No 1060/2009 and (EU) No 1095/2010.

1.1.3.2. EIOPA activities

The FSMA contributed actively within EIOPA to a number of publications and activities such as the Report on financial literacy and education initiatives by competent authorities and EIOPA's call for a renewed approach to the protection of consumers. The FSMA also participated in the consultation about new guidelines for the handling of customer complaints by insurance companies.

In 2011 the FSMA participated actively within EIOPA in the preparation of the revision of the directive concerning the institutions for occupational retirement provision (IORP Directive)²³. The European Commission asked EIOPA for advice on the revision of this directive. The call for advice concerned the scope of the directive, the clarification of certain notions within the framework of cross-border activities, the information to members and especially the introduction of solvency and management rules based on the Solvency II Directive which will apply to insurers²⁴.

During the drafting of this advice, the FSMA played an active role in the different working groups created within EIOPA for that purpose. This involvement at European level is essential for the FSMA because the rules worked out at European level will have a major impact on the Belgian legislation. When determining its points of view within EIOPA, the FSMA attached great importance to the vision and the concerns expressed by the Belgian sectoral associations in the course of a constructive consultation about the revision of the IORP Directive.

1.1.3.3. ESRB activities

In 2011 the FSMA took part in the meetings of the General Board of the ESRB, that institution's main governing body²⁵. The ESRB is charged with the macro-prudential supervision of the financial system in the European Union. The General Board meets four times a year under the chairmanship of the president of the European Central Bank. Beside the ECB and the Governors of the national central banks of the EU Member States, the chairmen of the national supervisory authorities, among which the FSMA, are also members of the ESRB.

²³ Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision.

²⁴ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance.

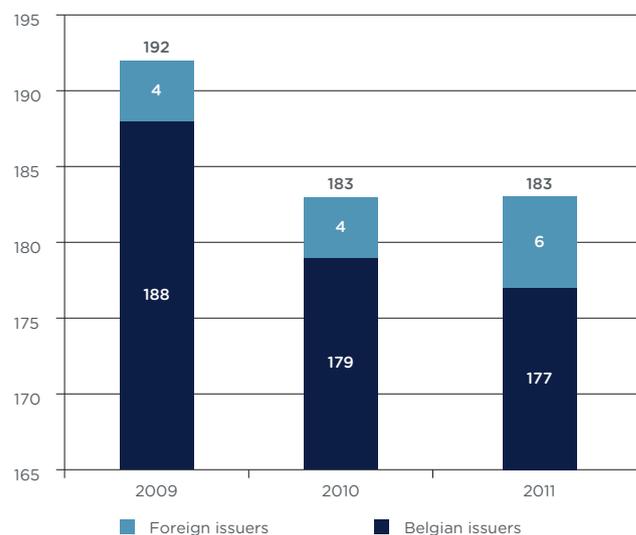
²⁵ In this regard see the website of the ESRB: www.esrb.europa.eu.

1.2. MAIN DEVELOPMENTS BY AREA OF SPECIALITY

1.2.1. Supervision in figures

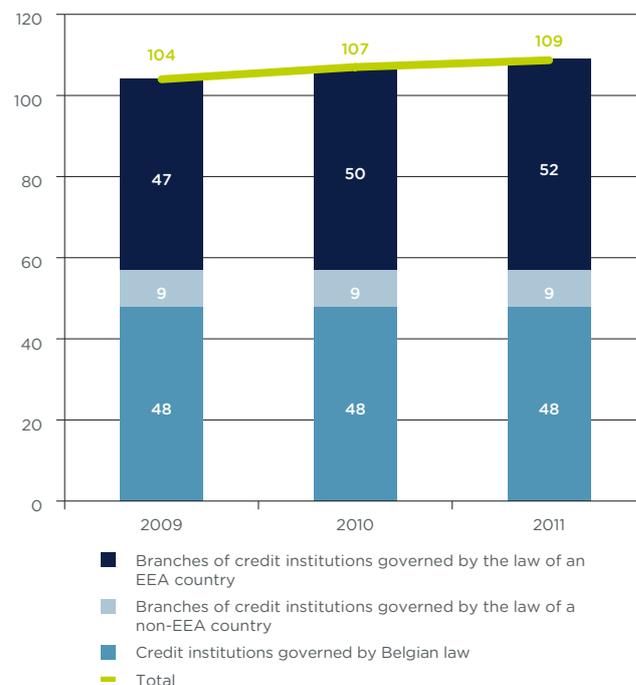
Listed companies (as at 31 December 2011)

graph 1



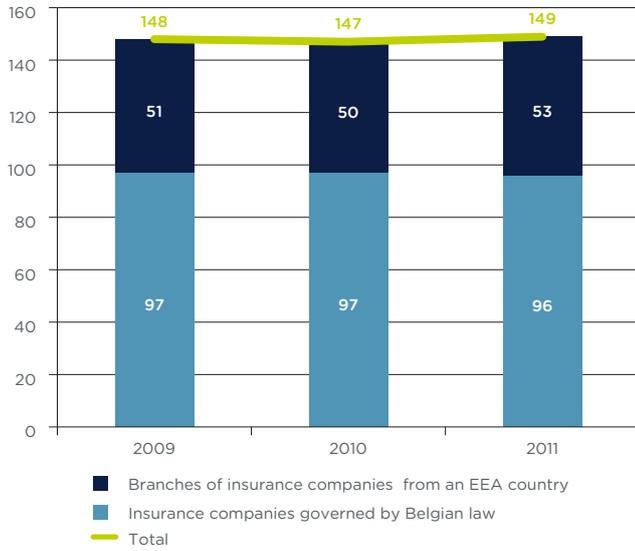
Institutions under product and conduct of business supervision

graph 2 : Credit institutions

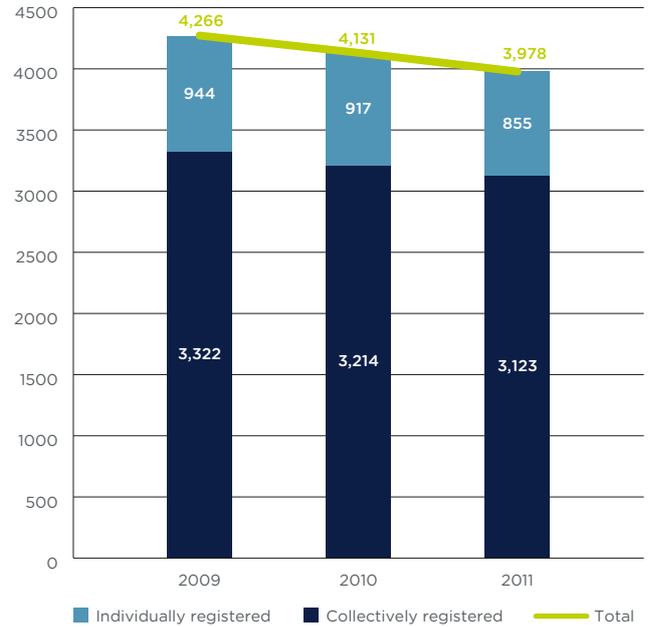


Intermediaries

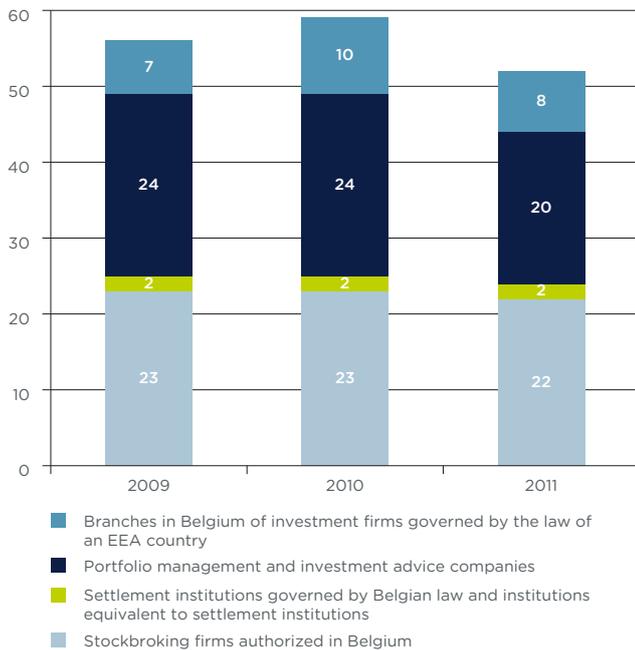
graph 3 : Insurance companies



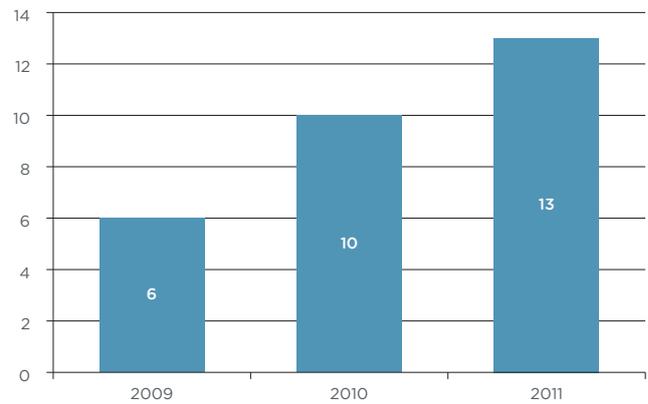
graph 5 : Intermediaries in banking and financial services (agents)



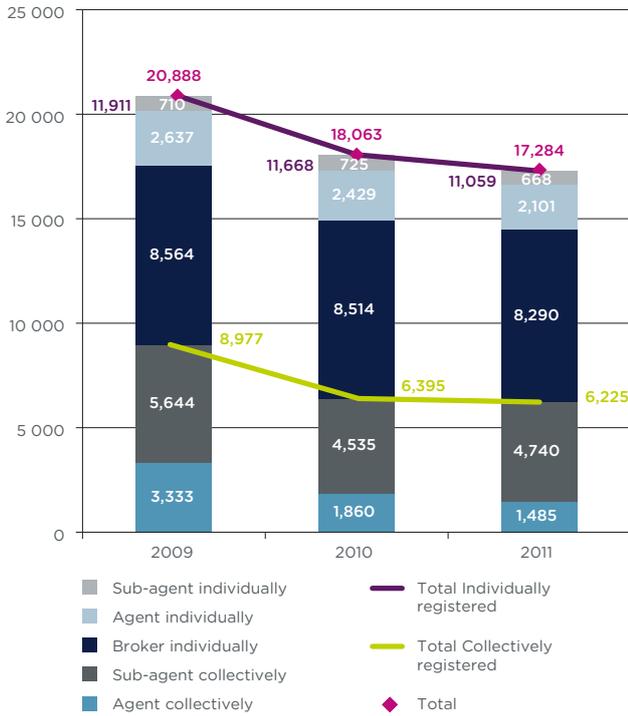
graph 4 : Other



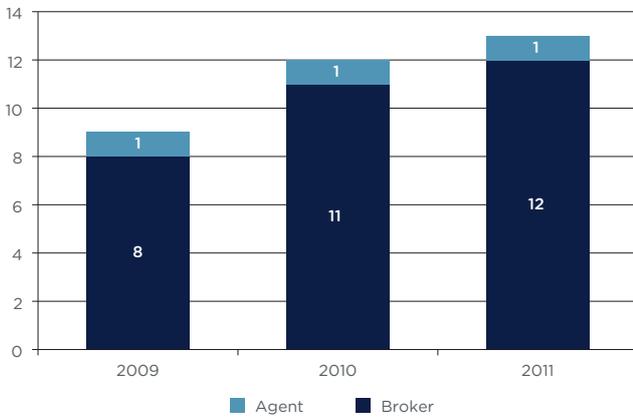
graph 6 : Intermediaries in banking and financial services (brokers)



graph 7 : Insurance intermediaries

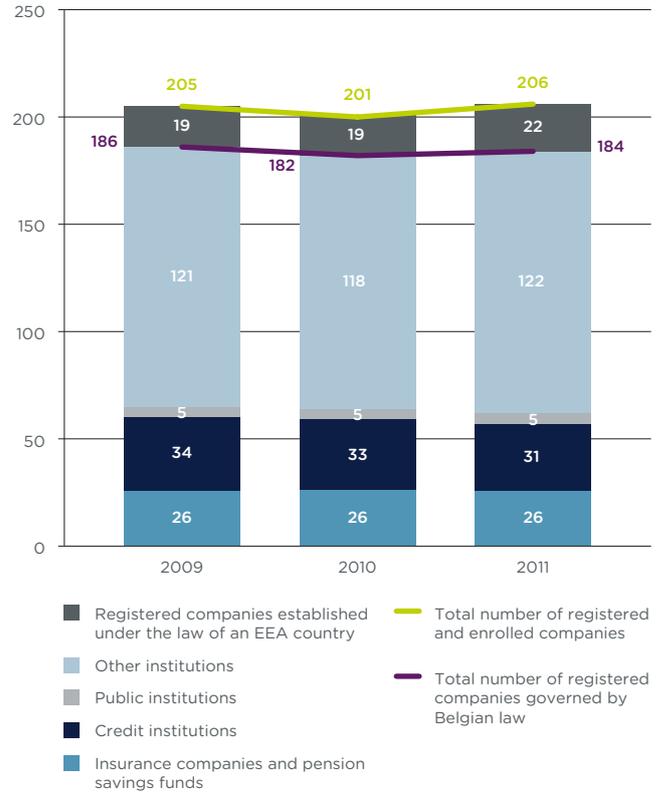


Graph 8 : Reinsurance intermediaries



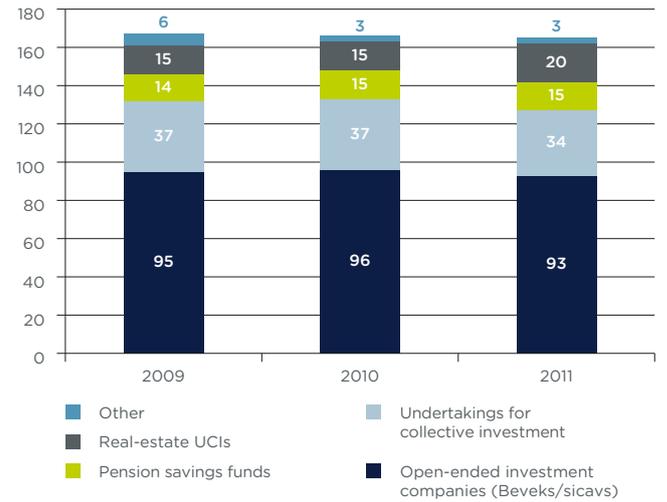
Mortgage companies

graph 9

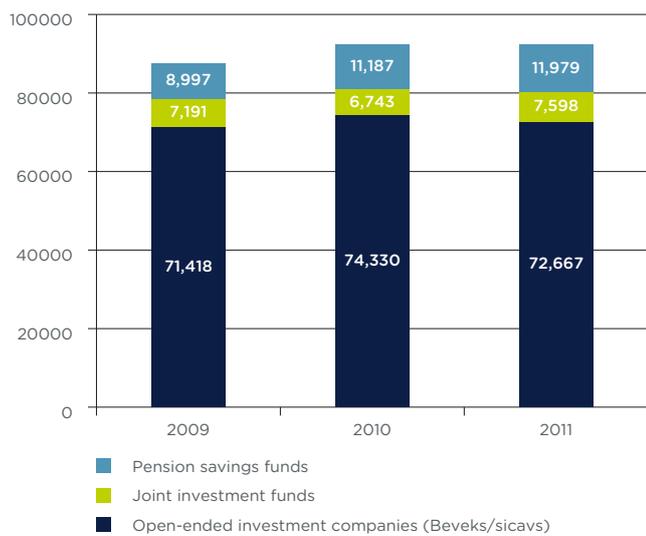


Undertakings for collective investment

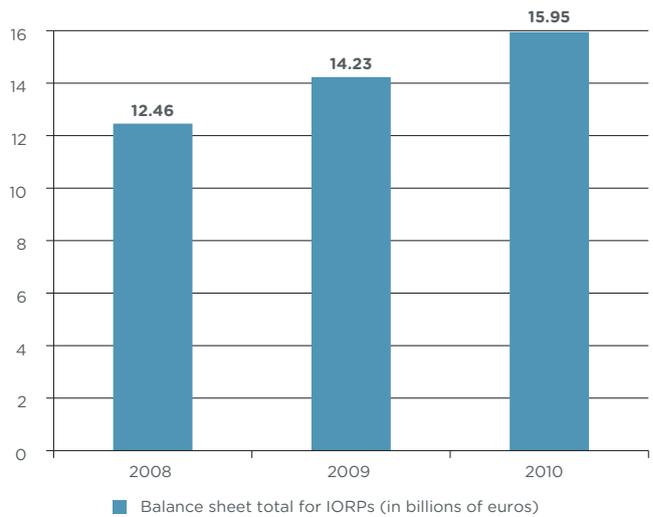
graph 10 : Number of Belgian institutions



graph 11 : Asset value (in millions of euros)

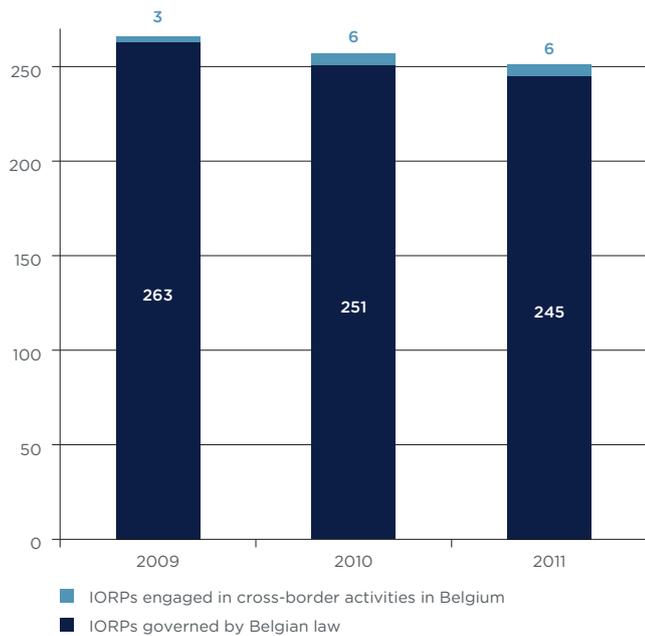


graph 13 : Balance sheet total for IORPs



Institutions for occupational retirement provision (IORPs)

graph 12 : Number of IORPs



1.2.2. Areas of supervision

1.2.2.1. Supervision of listed companies and surveillance of financial markets

The FSMA's supervision of listed companies involves monitoring the information disseminated by these companies. The FSMA ensures that this information is complete, gives an accurate picture and is made available to the public in time and in the correct way. The FSMA also oversees the fair treatment of all holders of securities in listed companies, and supervises the functioning of the financial markets themselves by exercising oversight of market infrastructures.

1.2.2.1.2. Financial operations of listed companies and public offers of shares of non-listed companies²⁶

	2008	2009	2010	2011
IPOs	11	2	2	2
on Euronext Brussels	4	2	1	0
on the Free Market (Marché libre/Vrije Markt)	6	0	1	0
on Alternext	1	0	0	2 ²⁷
Additional admissions of securities to trading on Euronext Brussels	14	13	19	14
with prior public offer				8 ²⁸
without prior public offer				6
Takeover bids in cash or securities, squeeze-out bids	6	10	6	4
Issues and/or admissions of warrants²⁹	7	2	2	0
Special reports on the basis of Article 583 of the Companies Code³⁰	34	36	26	25
Other operations	26	27	29	24
Approvals of registration documents				8 ³¹
Public offers by cooperative companies				9
Offers to the personnel				6
Other				1
Total	98	90	84	69

²⁶ Non-equity securities operations are dealt with on p. 29.

²⁷ This relates to two companies whose shares were admitted to trading on Alternext without a prior public offer. Such an operation is exempt from the prospectus requirement.

²⁸ Including three admissions of closed-ended real estate investment companies: see p. 31.

²⁹ This relates to public offers of warrants, for which the FSMA oversees compliance with the prospectus requirement. Such operations are distinct from warrant plans for personnel, in which free warrants are allocated to members of the personnel, so that the operation does not fall within the scope of the prospectus requirement.

1.2.2.1.1. Supervision of listed companies and of public offers of shares of non-listed companies

1.2.2.1.1.1. Organization of supervision

In its new structure, the FSMA has created a single service point for listed companies. A single service point is thus responsible for all matters relating to the issue of financial instruments by such companies, takeover bids and supervision of financial information. In short, as a result of this approach all aspects of the life of a listed company are now covered by the same service within the FSMA.

The reform of financial supervision in Belgium via the Twin Peaks legislation has thus had no impact on the approach to the supervision of listed companies.

The same service also deals with prospectuses for public offers of shares by companies that are not listed, for example share issues by cooperative companies.

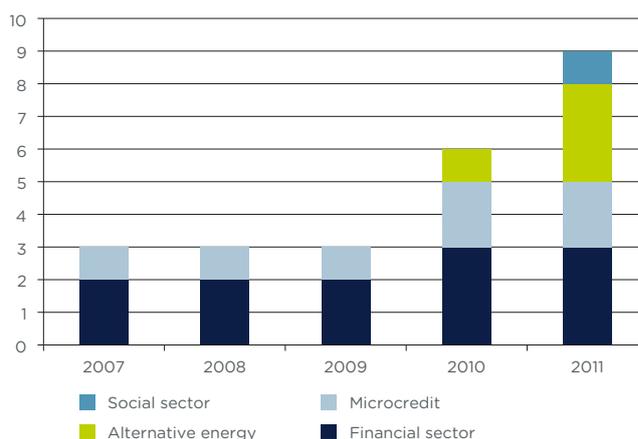
³⁰ When convertible bonds or subscription rights are issued, the board of directors draws up a special report on the basis of Article 583 of the Companies Code, in which the operation is described and justified. For companies that are making or have made a public offer for general subscription, Article 583 stipulates that this report must be submitted to the FSMA.

³¹ Including seven relating to closed-ended real estate investment companies: see p. 32.

Public offers by cooperative companies

More cooperative companies than ever submitted an issue prospectus for approval in 2011. In the alternative energy and social sectors in particular, a number of companies undertook a public offer for the first time. In most cases, these were offers that remain open for as long as the prospectus is valid. Under certain conditions, the dividends of recognized cooperative companies are exempt from withholding tax.

graph 14 : Public offers made by cooperative companies 2007-2011



1.2.2.1.3. Supervision of financial information provision

Issuers under supervision	01/01/2010	01/01/2011	01/01/2012
Belgian issuers	188	179	177
Euronext Brussels ³²	172	164	161 ³³
Alternext	11	10	12
Foreign regulated markets ³⁴	5	5	4
Foreign issuers	4	4	6
Euronext Brussels ³⁵	4	4	5
Alternext	0	0	1
Total	192	183	183

Financial information is supervised with reference to the same selection model based on risk and rotation as that used in previous years. This model determines which companies undergo supervision. For the selected companies, the FSMA determines which information in particular will be scrutinized, taking account of the risks identified for each company and the special points for attention that have been noted. In certain cases, in the light of events on the market or in the companies themselves, the initially established verification plan is adapted.

Companies that have not been selected are in principle not checked. However, ad hoc supervision of these companies is possible if the FSMA becomes aware of certain facts. The FSMA is also open to dialogue with companies and/or their shareholders, for example with reference to the accounting treatment of transactions or the application of the transparency legislation.

Points for attention

Every year, the FSMA identifies particular points for attention for the supervision of the financial information disseminated by listed companies. In 2011, it identified four points for attention for the supervision of the IFRS accounts for the year 2010. The first was the application of standard IFRS 3 (Business Combinations), as it had been thoroughly amended and 2010 was the first financial year in which the amended standard had to be applied. The second point was the application of IFRS 8 (Operating Segments), which had recently come into force. The third was IAS 24 (Related Party Disclosures), as the information required by this standard was not always present in the IFRS accounts, and the fourth was the provision

³² Including real estate certificates and closed-ended receivables investment companies.

³³ 15 open-ended investment companies (beveks/sicavs), one closed-ended private equity investment company (privak/pricaf) and two public closed-ended receivables investment companies: see p. 31.

³⁴ Belgian issuers listed abroad for which the FSMA is the supervisory authority.

³⁵ Issuers which, for the purposes of their obligations regarding periodic and certain continuous information, have elected Belgium as their Member State of origin.

of information about goodwill in application of IAS 36 (Impairment of Assets), about which the FSMA carried out a study³⁶.

In 2011, special attention was also paid to the financial situation and transformation of the listed financial institutions (Dexia, KBC and Ageas) and to the accounting treatment of the government securities that these institutions have in their portfolios.

In addition, a study of corporate governance³⁷ examined whether the 2010 annual reports contained the required corporate governance statement, and whether the statement contained all the information required by law.

As in the past, the FSMA also systematically monitored whether companies published their periodic information on a timely basis. In this context, it published a warning regarding the late publication of periodic information by a listed company.

Dexia

As securities supervisor, the FSMA monitored the Dexia case. Thus it supervised the provision of information by Dexia NV/SA, among other things by ensuring that additional information was disclosed, such as pro forma figures and financial data relating to the transfer of Dexia Bank Belgium to the Belgian state and about exposure to government debt. The listing of Dexia's shares in the course of 2011 was suspended four times in order to ensure that accurate information could be disseminated to the market.

The FSMA published additional information on its website for customers of Dexia Bank Belgium. As always in the case of significant events on the market, the FSMA also checked whether any market abuse had been perpetrated with regard to Dexia shares. At the end of 2011, analyses in this connection were referred to the FSMA's Enforcement service.

Provision of regulatory information

Since the beginning of 2011, all regulatory information received by the FSMA from companies listed on Euronext Brussels and Alternext has been available for consultation via the new web-based application STORI³⁸. STORI

was created in implementation of the Royal Decree of 23 February 2010, which designated the FSMA as the institution which, from 1 January 2011, would be responsible for the central storage of regulatory information as stipulated in the Transparency Directive³⁹. STORI can be accessed by anyone via the website⁴⁰ and makes it possible to conduct online searches of regulatory information per company and according to the type of information. STORI already contains more than 2,000 documents, and is working entirely as expected.

Periodic reports of statutory auditors

For every company whose financial information is subject to supervision on the basis of the inspection plan, the FSMA generally requests a periodic report from the statutory auditor of that company. In 2011, it performed an evaluation of the periodic reports of statutory auditors submitted to it in past years. The evaluation was used to check that the content of these reports meets requirements, and showed that the reports are too often confined to a list of topics without any further substantive detail. To remedy this situation, the FSMA wrote a letter to all statutory auditors with mandates at listed companies, emphasising that the FSMA expects a substantive description and assessment in the periodic report, rather than a mere list of topics. The letter also provides a clearer indication of exactly what information the FSMA wishes to obtain for a number of topics.

Publication of studies and documents

Corporate governance

The FSMA published a follow-up study of corporate governance in 2011. This showed that Belgian listed companies are applying the Corporate Governance Code considerably better than a year earlier.

The CBFA had already published a study of corporate governance in December 2010, in which it examined the extent to which Belgian listed companies complied with certain disclosure requirements of the Belgian Corporate Governance Code 2009 in their annual financial reports for 2009. The study showed poor compliance with a number of provisions of the Code. It also made recommendations for improving the provision of information in the run-up to the entry into force of the Law on Corporate Governance.

³⁶ See Study 41. This study is discussed on p. 26.

³⁷ See Study 40. This study is discussed below.

³⁸ STORI stands for 'storage of regulated information'.

³⁹ Directive 2004/109/EC of 15 December 2004 on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

⁴⁰ See <http://stori.fsma.be>.

This law has provided a legislative basis for both the Corporate Governance Code and the 'comply or explain' approach. This means that companies which do not comply fully with the Code must explain why they do not. Moreover, the Law has incorporated a number of provisions from the Code, thus precluding any exemption from their application. The Law on Corporate Governance entered into force in phases, and many provisions had to be complied with in the annual financial reports for 2010. To assess whether companies had made progress, the FSMA conducted a follow-up to its first study, this time based on the annual financial reports for 2010.

The FSMA has noticed a considerable improvement in the application of and compliance with the Code 2009. Thus application and compliance with the provisions with regard to the characteristics of the internal control and risk management systems and the provision of information about the evaluation process are considerably more widespread than in the previous study. The provisions on the remuneration report are also being applied and complied with better than in the previous study. The remuneration report does not have to comply with the substantive provisions of the Law on Corporate Governance until the annual financial reports published in 2012.

Goodwill

The FSMA recently published a study of the way in which Belgian listed companies treat goodwill in accordance with IFRS requirements and provide information about this. The accounting treatment of goodwill differs considerably between Belgian law on annual accounts, which provides for the amortization of goodwill on a straight-line basis, and IFRS, in which goodwill is subject to an impairment test. To establish how Belgian listed companies are treating goodwill under IFRS rules, the FSMA examined the provision of information by companies with a significant amount of goodwill (>5% of the balance-sheet total).

The study showed that the provision of information by these companies was fully compliant with IFRS requirements in only a small number of cases. The most common shortcoming was the fact that the information that

was provided was too general. This finding agrees with the conclusions of similar research by foreign supervisory authorities.

The current economic situation presents a significant challenge to the performance of the goodwill impairment test and the provision of information about it in accordance with IAS 36. Factors to which special attention needs to be paid include the basic assumptions (turnover, margin, costs, etc.), the cash flow that is taken into account for the calculation of the final value, the long-term growth rate and the discount rate that must be taken into account for market and credit risks.

The FSMA points out in the study that it is also important for the statutory auditors to supervise closely the provision of information about the goodwill impairment test: the study revealed that not a single audit report about the selected companies contained an explanatory section or expression of a reservation with regard to goodwill, although in some cases the required information was missing or was inadequate.

1.2.2.1.4. Monitoring market transparency

Within the framework of its mandate to supervise the financial markets and listed companies, the FSMA monitors market transparency. For this purpose it has a market room equipped with all the traditional information instruments used in market rooms, namely, real-time access to the Euronext markets and the European MTFs on which Belgian shares are traded, a link to the major electronic distributors of financial information, the financial press, the studies of financial analysts concerning listed companies and the information published by those companies. On the one hand, the market room ensures that suitable information is provided to the markets; it does so by supervising compliance by listed companies with their obligations as regards privileged information, both as regards the completeness and the correctness of that information. On the other hand, its task includes detecting situations or behaviours that may constitute market abuse.

The most important interventions by the market room in 2011 may be summed up as follows:

	2009	2010	2011
Treatment of information received, sought or analysed	137	98	288
Financial instrument monitoring	159	120	158
Request for information from issuers or market participants	87	79	148
Request for suspension of trading	40	32	20
Pre-analysis of stock exchange offences	22	15	33
Replies to questions on market supervision	32	31	85

In 2011 the number of interventions by the market room increased sharply. This increase is understandable given the tense situation on the markets during the period under review. Moreover, in 2011, listed companies informed the FSMA of 33 dossiers in which the disclosure of inside information was delayed, as compared to 31 dossiers in 2010 and 45 in 2009.

As announced in the previous annual report, in 2011 the procedures of the market room were fully tested; the results led to a complete updating and reorganisation of those procedures in view of bringing them fully into line with market realities.

Furthermore, during the year under review the FSMA prepared the transfer of a number of competences from the Securities Regulation Fund to the FSMA. The transfer, as set out in the Royal Decree of 19 March 2012, came into effect on 1 April 2012.

1.2.2.1.5. Dialogue at national level and participation in international activities

As part of its brief to supervise listed companies, the FSMA plays an active part in numerous national and international forums. For instance, it engages in regular dialogue with Euronext and the Listed Companies Committee of the Federation of Belgian Enterprises (FEB/VBO). The FSMA also maintains contacts with the Belgian Investor Relations Association (BIRA). It participates actively in the permanent working group of the Corporate Governance Committee and engages in dialogue with the Belgian Institute of Statutory Auditors (IRE/IBR). It is also involved in a scientific research project on efficient governance of private organizations.

At the international level, the FSMA participates in a series of working groups within ESMA. For instance, it cooperates actively with the Corporate Finance Standing Committee (CFSC), which coordinates all activities to do with corporate governance, prospectuses and notifications by major shareholders. It is also active on the Corporate Reporting Standing Committee (CRSC), where the topics of discussion include bookkeeping, audit, periodic reporting and the storage of regulated information. In addition, the FSMA takes part in the European Enforcers Coordination Sessions (EECS), the standing group within ESMA where emerging issues and decisions of supervisory authorities regarding the application of IFRS are discussed. In 2011, the FSMA presented six Belgian cases to the EECS. The FSMA also takes part in standing and temporary working groups within ESMA, such as the Takeover Bids Network, the Corporate Governance Advisory Group, the Subgroup on the Revision of Enforcement Standards and the Task Force on the Storage of Regulated Information.

The FSMA is also represented on Standing Committee 1 on Multinational Accounting and Disclosure (SC1) of IOSCO, as well as on two subcommittees of SC1. SC1 has the task of devising a new strategic orientation and a simpler and more efficient organizational structure for IOSCO.

1.2.2.1.2. Surveillance of financial markets

1.2.2.1.2.1. Supervision of market infrastructures

Merger between NYSE Euronext and Deutsche Börse

On 15 February 2011, NYSE Euronext and Deutsche Börse announced their intention to merge. The proposed operation would have created the largest stock exchange by market value after Hong Kong Exchanges & Clearing. Supervision of NYSE Euronext is exercised by the Euronext College of Regulators, on which the FSMA has a seat as the supervisory authority for the Belgian regulated market of Euronext. NYSE Euronext asked the College for its 'non-objection' to the merger. The College set up a task force charged with monitoring the merger. Within this task force, the FSMA closely monitored the following points:

- the impact of the merger on the survival, organization, governance, funds and supervision by the FSMA of the Belgian regulated market considering the integrated matrix organisation of NYSE Euronext;
- the effect of a cooperation agreement with the German supervisory authorities;
- the undiminished application of the obligations taken on by NYSE Euronext at the time of the merger between NYSE and Euronext in 2006;
- the appropriate representation of the regulated markets in the new holding organization;
- the impact of any obligations that Deutsche Börse might incur towards the German supervisory authorities;
- the impact of the remedies that NYSE Euronext and Deutsche Börse had proposed to the European Commission, especially regarding the Belgian derivatives market.

On 1 February 2012, the European Commission decided to block the merger between NYSE Euronext and Deutsche Börse. The reason for this rejection was the monopoly position on the derivatives market that the new holding organization would obtain. As a result of this rejection, the merger as proposed on 15 February 2011 was permanently abandoned.

1.2.2.1.2.2. Analyses

The detection of indications of market abuse lies within the competence of the Surveillance of Financial Markets service.

As a consequence of the reorganization of the FSMA's sanction procedures, the Surveillance of Financial Markets service is also responsible for the preliminary analysis of

this evidence. This analysis is based in particular on data about intermediaries (investment firms), the nature of the transactions and information about the issuers. If the evidence is confirmed by the analysis, the case is referred to the investigations officer, who may decide to launch an investigation.

In this connection, between 15 July and 31 December 2011 the FSMA opened an analysis in 14 cases, passed six cases over to the investigations officer and closed four dossiers.

1.2.2.1.2.3. MiFID reporting

In past years it has been observed that increasing numbers of intermediaries are based abroad. This trend was confirmed in 2011. Out of a total of 53.69 million transactions by intermediaries, 2.99 million were performed by Belgian intermediaries (5.56%) and 50.70 million (94.44%) by intermediaries based abroad.

The average value per transaction fell in 2011 due to the increasing use of algorithms. These split the transactions into smaller parts in order to ensure optimal execution.

Since 1 December 2010, the European supervisory authorities have also exchanged reports on transactions in non-listed derivative instruments where the underlying instrument is listed. The most important market for such derivative instruments is the UK.

In the current version of the MiFID Directive, this information-gathering and exchange occurs on a voluntary basis, in accordance with the rules in each EU Member State. On 1 July 2011, Belgium extended its system of voluntary information-gathering about derivative instruments. This takes place on a voluntary basis pending a modification of the regulations. So far, three Belgian intermediaries have reported transactions in non-listed derivative instruments.

The European supervisory authorities are currently working on recommendations for improving the harmonization of reporting. In doing so, they are anticipating the new MiFID Directive, which should come into force in 2015. The new version of the Directive provides for the universal use of a code that identifies who has placed an order. This identification will become an important tool for the supervisory authorities.

1.2.2.2. Supervision of financial products

The basic objective of the FSMA's supervision of financial products is to help ensure that the products that are offered are understandable, safe, useful and cost-transparent. Supervision relates to all financial products offered to consumers.

Supervision relates both to the information and advertising disseminated about financial products and to the compliance with the product regulations themselves. The supervisory regime for a product is determined by the applicable legislative framework.

The moratorium in practice

The supervision of financial products is intended to contribute to better protection for the consumers of these products. Traditionally, the focus of such consumer protection has been on making adequate information available to consumers. However, it cannot be assumed that consumers have sufficient knowledge and skills to understand such information and that they are prepared to consult the information that is available.

For this reason, it is necessary to intervene at an earlier stage, namely during the actual development of the financial product. This makes it possible to ensure that new products correspond more closely to the needs of the customers to whom they will be marketed.

The moratorium on the distribution of particularly complex structured products is entirely consistent with this new approach. The moratorium entered into force on 1 August 2011; since then, the Supervision of Financial Products service has overseen the practical application of the rules of the moratorium.

The FSMA supervises structured products that are released onto the market. Its supervision has shown that the array of such products is being simplified. The structured products that come onto the market are also easier to compare with one another. In addition, it can be concluded that fewer structured products are being launched, although it is unclear to what extent this development is a consequence of the crisis or of the moratorium.

In order to respond as efficiently as possible to the questions of general relevance that are asked in practice and to put all actors on the structured products market on an equal footing, the FSMA has published a list of frequently asked questions (FAQs)⁴¹.

⁴¹ This list consists of a section of general questions about the purpose of the moratorium and a section of technical questions about the moratorium's provisions. These FAQs are available on the FSMA website.

Since the moratorium's launch, the FSMA has had frequent contacts and consultation with the producers and distributors of structured products. These contacts are primarily used to discuss the criteria of the moratorium and screen the products on offer, but the contacts and screening have also made it possible to refine the moratorium criteria further. This has led to additional FAQs on the FSMA website.

Among other things, the FAQs have been used since the moratorium's introduction to provide clarification about the assessment of the balance between sharing profits and losses, the interpretation of when a minimal change in the performance of the underlying value has a disproportionate impact, the number of mechanisms included in algorithms or related dynamic investment strategies or customized indices, and the observability of the components of customized indexes as an accessibility condition of the underlying value.

Non-equity securities operations

	2007	2008	2009	2010	2011	% difference from previous year	% of total number of dossiers
Issues and/or admissions of investment instruments in which the capital is subject to market risk	217	134	52	116	45	-61.21%	16.67%
issued from within Belgium	0	11	9	23	9	-60.87%	3.33%
issued from within another EEA country or non-EEA country	217	123	43	93	36	-61.29%	13.33%
Issues and/or admissions of investment instruments in which the capital is not subject to market risk	194	199	205	208	221	6.25%	81.85%
issued from within Belgium	39	45	23	35	38	8.57%	14.07%
issued from within another EEA country or non-EEA country	155	154	182	173	183	5.78%	67.78%
Bank savings certificates, subordinated liabilities and capitalization bonds	6	4	4	5	4	-20.00%	1.48%
Total	417	337	261	329	270	-17.93%	100.00%

A total of 270 transactions in non-equity securities took place in 2011. This is down nearly 18 percent on 2010, when the number of transactions increased by a quarter. The fall is entirely due to the sharp decline (-61.21 percent) in the number of transactions in instruments without any capital guarantee. Transactions in instruments with a capital guarantee rose slightly in 2011 (+6.25 percent).

European passports

Approval declarations per type of instrument	Shares	Investment instruments with/without capital risk	Warrants	Total
Base prospectus	1	128	5	134
Prospectus	8	7	0	15
Total	9	135	5	149

Approval declarations per supervisory authority	Base prospectus	Prospectus	Total
AFM (Netherlands)	32	2	34
AMF (France)	12	4	16
BAFIN (Germany)	12	1	13
CSSF (Luxembourg)	37	6	43
FSA (United Kingdom)	34	1	35
IFSRA/Central Bank of Ireland (Ireland)	7	1	8
Total	134	15	149

The above tables show how many base prospectuses were used in 2011 in connection with a bid programme and how many notifications the FSMA received of prospectuses approved by a foreign supervisory authority. As in previous years, the Luxembourg supervisory authority CSSF notified the FSMA of the largest number of passports. The British (FSA) and Dutch (AFM) supervisory authorities were in second and third place respectively.

At the issuer's request, the FSMA granted a passport in 2011 to 11 transactions for which it had approved the prospectus. These passports were intended for multiple countries, including Germany (5), the Netherlands (5), the United Kingdom (4), Ireland (4), France (3) and the Grand Duchy of Luxembourg (3).

Advertising and transparency

The FSMA also took initiatives in 2011 relating to bank account transparency and advertising, starting with regulated savings accounts. The aim of this measure is to contribute to a better understanding of the financial service by the customer. The idea is also that different accounts should be more comparable, thus stimulating competition. Ultimately, this will also boost confidence in the financial institutions and the proper functioning of the financial markets.

To improve the transparency and comparability of the offering, the FSMA has drawn up a standardized information sheet, inspired by the Key Investor Information (KII) used at European level for undertakings for collective investment (UCIs).

The information on the standardized information sheet includes details about the conditions, costs and taxation of the regulated savings account. A graph showing the returns paid out in previous years is also included. There has been consultation with the sector and with consumer organizations regarding the contents and use of the information sheet.

The FSMA is also working on an approach to advertising for regulated savings accounts. The starting point is that such an approach must be consistent with the rules for other financial products, such as notes or UCIs.

In this connection, consideration has also been given to a ban on advertising for combined offers consisting of a specific financial product and another product (such as lottery tickets or bottles of wine).

Undertakings for collective investment

In 2011, the Belgian UCI market contracted sharply to a level even lower than in the first quarter of 2009. Due to the combination of negative earnings (-3.6 billion euros) and net redemptions (-3.7 billion euros), the total managed net assets fell to 79.6 billion euros. It should be noted that this marked contraction of the market is mainly attributable to the unrealized losses recorded in the third quarter of the year and the net buy-back volumes recorded during the same period. Thus the size of the market again reached the level of the beginning of 2009, when the slight pick-up experienced after the crisis of 2008 was abruptly reversed.

This decrease affected all categories of UCIs, as a result of which the overall pattern of the market in 2011 remained unaltered in terms of the market shares of the different categories of open-ended UCIs incorporated under Belgian law, apart from a slight fall in UCIs comprising shares relative to monetary UCIs. At the end of 2011, structured

UCIs represented somewhat less than 30% of the market, with total net assets of 22 billion euros, whereas at the start of 2009 they represented 40% of the market. Pension savings funds represented 14% of the market, with total net assets of 11.3 billion euros.

Change in number of Belgian undertakings for collective investment

Number of Belgian undertakings at end of period	2009-12	2010-12	2011-12
Open-ended investment companies (beveks/sicavs)	95	96	93
<i>Number of sub-funds at end of period</i>	1,931	1,938	1,936
<i>of which monetary sub-funds</i>	16	16	13
Joint investment funds	37	37	34
Pension savings funds ⁴²	14	15	15
Total	146	148	142
Closed-ended real estate investment companies (bevaks/sicafis)⁴³	15	15	20
<i>of which institutional closed-ended real estate investment companies⁴⁴</i>	0	0	3
Undertakings for investment in receivables⁴⁵	5	2	2
<i>Number of sub-funds at end of period</i>	2	0	0
Closed-ended companies in non-listed shares⁴⁶	1	1	1
Grand total	167	166	165
number of sub-funds at end of period	1,933	1,938	1,936

Change in capital (open-ended UCIs) (in millions of euros)

Asset value at end of year	2009-12	2010-12	2011-12
Open-ended investment companies (beveks/sicavs)	74,329.6	72,666.6	61,170.8
Joint investment funds	6,743.0	7,597.7	7,135.7
Pension savings funds	11,187.4	11,979.2	11,268.7
	92,260.0	92,243.5	79,575.3
of which monetary funds	1,909.4	1,881.0	4,361.9

⁴² Pension savings funds recognized under Article 14516 of the Income Tax Code 1992.

⁴³ Investment companies investing in real estate and regulated by the Royal Decree of 7 December 2010.

⁴⁴ Institutional investment companies investing in real estate and regulated by the Royal Decree of 7 December 2010.

⁴⁵ Undertakings for investment in receivables, regulated by the Royal Decree of 29 November 1993.

⁴⁶ Investment companies investing in non-listed companies and growth businesses and regulated by the Royal Decree of 18 April 1997.

UCITS IV

In 2011 the FSMA drew up the texts for the transposition of the UCITS IV Directive into Belgian law. A bill and two preliminary draft Royal Decrees were drawn up. Alongside the changes resulting from the UCITS IV Directive (information provision to investors, organizational structure, passport for UCI management companies), a number of other new features have been introduced into the legal rules for UCIs.

Among these new features is the possibility for open-ended joint investment funds to set up sub-funds themselves and create classes of participation rights. This gives them the same possibilities as investment companies, and they have the same possibility as closed-ended UCIs to delegate their administrative and management functions to a third party, subject to compliance with strict conditions.

The draft Royal Decree on certain public undertakings for collective investment includes various innovations, most of which derive from the Directive. First, provision is made for a detailed scheme for the notification procedure if UCI participation rights are traded in another Member State, for master-feeder structures and for cross-border mergers. In addition, new provisions have been made regarding organizational structure, conflicts of interest, rules of conduct and risk management for investment companies that have not appointed a UCI management company. The draft decree also includes more detailed requirements regarding the key investor information (KII) document that now replaces the simplified prospectus; and it tightens up the conditions under which a UCI can employ terms such as 'capital protection' and 'capital guarantee'. Finally, an adapted scheme is being introduced for the return figures that UCIs can include in their advertising and periodic reports.

The draft Royal Decree on UCI management companies transposes the provisions that impose requirements on UCI management companies with regard to policy structure, rules of conduct and organizational structure.

The FSMA also collaborated actively within ESMA on drafting a report providing advice in connection with implementation measures for the Alternative Investment Fund Managers Directive (AIFMD), and more specifically in connection with the calculation of the leverage effect, transparency and the depositary.

Closed-ended real estate investment companies

On 7 January 2011, the Royal Decree of 7 December 2010 on closed-ended real estate investment companies came into force. This new Royal Decree introduced a number of changes to the regulatory framework for such companies. The FSMA's Management Committee therefore decided to conduct a survey to check whether all closed-ended real estate investment companies have taken or will be taking the necessary measures to comply with the new

Royal Decree. This sectoral survey was conducted among the 15 public closed-ended real estate investment companies that were registered at the time of the Royal Decree's entry into force. Companies that registered later have had to comply with the new Royal Decree from the moment of their registration.

The survey showed that all closed-ended real estate investment companies are complying with the new rules on independent directors. With one exception, they have also all already adapted their articles of association in connection with the appointment of a depositary.

The sectoral survey also revealed a lack of clarity on the part of a number of closed-ended real estate investment companies about the Royal Decree's provisions in connection with real estate experts. After the survey, virtually all these companies made changes in order to apply the provisions correctly or confirmed that they will do so. Finally, the sectoral survey showed that some of them are still not complying with the new provisions on calculating and reporting the level of debt. The FSMA has drawn the attention of the companies concerned to these omissions.

The new Royal Decree also gives the closed-ended real estate investment companies the possibility of paying an optional dividend. Various real estate investment companies have taken up this possibility. As a result, the shareholders have had the choice between a dividend in cash or in new shares (or a combination of the two).

As well as the correct and uniform application of the regulations, the FSMA also devoted considerable attention in 2011 to the proper organization and functioning of the closed-ended real estate investment companies. Thus all amendments of the articles of association and appointments of directors are submitted to the FSMA in advance. There was also close supervision of compliance with the limit on the level of debt and the publication of the financial plan that closed-ended investment companies have to draw up when their consolidated debt level rises above 50 percent.

Closed-ended real estate investment companies 2011

Issues and/or admissions of shares, bonds or convertible bonds (<i>for which a prospectus or a transaction note with reference document must be approved by the FSMA</i>)	5
Number of registration documents approved by the FSMA (<i>the closed-end real estate investment company's annual report can be used in the context of an operation as part of the prospectus</i>)	7

A number of capital operations took place in 2011 for which the FSMA approved the prospectus. Several closed-ended investment companies also asked the FSMA to approve their annual financial report as a reference document. This enables the report to be used in connection with concrete capital operations as part of the prospectus.

As well as carrying out these checks on a case-by-case basis, the FSMA also investigated and dealt with numerous questions and legal problems. These related to classification as real estate, the interpretation of the term 'real estate project' and the possibility for closed-ended investment companies of organising or extending their activities via intricate legal structures or alternative securities.

Insurance contracts

The FSMA's supervision of insurance contracts involves supervision of both compliance with conduct of business rules and of products. The FSMA also issues formal opinions to the NBB regarding insurance contracts.

The FSMA worked in 2011 on a draft circular on simple risks home fire insurance. The circular is being compiled following the discovery in a survey completed in 2010 of omissions and infringements on the part of some insurance companies in the application of the law. The conclusions from this survey have already been communicated to the sector, and consultation has taken place about the circular.

In 2011 the FSMA exercised particular supervision of compliance with insurance legislation on premium advice notes and premium changes, as a survey of a representative sample of insurance companies had shown that this legislation was not always complied with properly.

1.2.2.3. Supervision of compliance with the MiFID rules of conduct

The FSMA is responsible for supervising the compliance of regulated undertakings with the conduct of business rules. These rules are intended to ensure that the undertakings in question act honestly, fairly and professionally in accordance with the best interests of their clients. Regulated undertakings are required to have an adequate organizational structure and use the required procedures, so that they can ensure correct and careful treatment of consumers of financial services. Among other things, this includes correct information provision, suitable management of conflicts of interest, best execution of clients' instructions and the sale of products matching the client's risk profile.

As a result of the reform of financial supervision via the Twin Peaks legislation, the FSMA has been assigned, among other roles, that of specialized supervisor of the conduct of business rules. To fulfil this mission, the FSMA has created a separate service to supervise compliance with the MiFID rules of conduct, further to which regulated undertakings must act honestly fairly and professionally in accordance with the best interests of their clients when providing investment services.

In 2011 the FSMA recruited employees with relevant experience to support this service. Further recruitments are planned.

The first task of this specialist service was to draw up an action plan and develop a specific approach and a new methodology for the supervision of compliance with the MiFID rules. The IREFI/IBRFI⁴⁷ supported the FSMA in the development of the supervisory instruments. The new methodology for determining which themes and undertakings will be inspected contains three steps.

The first step is the identification of the risks. This is done using the following information sources and supervisory instruments:

1. a set of documents that must be kept available for the FSMA, known as the documentation list;
2. a reporting template called the 'Map' (in French and Dutch 'cartographie/cartografie');
3. audit programmes;
4. other information sources.

Documentation list

In a communication to the regulated undertakings concerned, the FSMA indicated that the procedures required further to the MiFID rules should be documented and formalized. Based on the MiFID rules, a list was compiled of the documents and procedures which regulated undertakings must have in order to be compliant.

For the sake of clarity and efficiency, the FSMA grouped the rules into the following 14 themes:

- Client categorization
- Information to clients, including marketing communications
- Client file
- Appropriateness and suitability tests (duty of care)
- Client order handling
- Best execution
- Conflicts of interest
- Investment research
- Personal transactions of relevant persons
- Inducements
- Reporting to clients
- Safeguarding of client assets
- Complaints handling
- Record-keeping.

The documents and procedures relating to the 14 themes must be available to the FSMA and must be communicated upon request.

10 of these documents must be submitted to the FSMA in any case.

⁴⁷ Institute of Statutory Auditors Certified for the Financial Sector

'Mapping'

The FSMA has developed a reporting template or 'Map' (*'cartographie/cartografie'*) to be filled in by the regulated undertakings concerned and submitted to the FSMA from 2012 onwards.

The purpose of this is to provide the FSMA with quantified data regarding investment services and ancillary services provided by the regulated undertakings. This will enable the FSMA:

- to establish a behavioural risk profile of the regulated undertaking concerned;
- to identify trends within the sector, such as developments in the types of risk profiles used by the regulated undertakings with respect to their clients, the way in which orders are executed or a move towards open or closed architectures;
- to establish a benchmark for the application of the MiFID rules of conduct.

The reporting tables were drawn up in intense consultation with the sector in order to take into account the technical difficulties involved in gathering the requested data.

2012 will be used for a thorough assessment of the first round of reporting. After consultation with the sector, the reporting template will be adapted if necessary.

The FSMA plans to confirm all reporting requirements in a regulation by 2013.

Audit programmes

The FSMA, assisted by the IREFI/IBRFI, drafted audit programmes for the aforementioned 14 themes.

An audit programme is a document allowing a systematic check of compliance with the applicable rules. The proposed audit programmes present the legislative framework and give a detailed overview of the expected procedures and guidelines which regulated undertakings must have in place. Based on this list of procedures and guidelines, checks must be performed, on the one hand of the quality and efficiency or the design of said procedures and guidelines, and on the other hand of their effectiveness.

The purpose of these audit programmes is to enable both the FSMA auditors and the control functions within the regulated undertakings to strive for a complete, coherent and concurrent approach to the supervision of the effective and efficient compliance with the MiFID rules of conduct.

The tests developed to check the quality and effectiveness of the procedures and guidelines will not be communicated to the sector. However, a number of general criteria which such tests must meet are set out in the accompanying manual. The way in which the regulated

undertakings must check the quality of and compliance with the procedures and guidelines is the responsibility of senior management. The work programmes must therefore be supplemented and adapted in accordance with the nature, scale and complexity of the regulated undertaking's activities and taking account of the nature and range of investment services and activities or management tasks that are carried out.

The FSMA does not intend to impose the use of the aforementioned audit programmes. The regulated undertakings are at liberty to develop different programmes provided these are complete and coherent. If they do so, they must be able to demonstrate that they have suitable procedures and policies in place and that these are applied effectively.

The FSMA requires that all applicable MiFID rules be covered in the regulated undertaking's multi-year audit plan.

When preparing its audits, the FSMA will ask to see the internal audit programmes and audit reports of the regulated undertakings that relate to the MiFID rules. It will check whether the relevant MiFID themes were addressed satisfactorily, whether they led to appropriate conclusions, and whether or not the recommendations were implemented.

The aforementioned audit programmes will be an important tool for the FSMA to establish the behavioural risk profile of the relevant firms. They will also enable the FSMA to run its audit activities as efficiently as possible.

Finally, these audit programmes are regarded as a dynamic supervisory instrument. They will be adapted according to the needs and changing market practices.

Other information sources

In addition to the information sources mentioned above, the FSMA has various other data enabling it to further refine the regulated undertaking's risk profile. First and foremost, the nature of the services provided by the regulated undertaking, its authorization and the scale of its activities are to be taken into account. Based on these criteria, the sector has been divided into a number of categories. This classification should enable the FSMA to exercise its supervisory role taking account of the principles of proportionality and materiality.

The risk assessment also takes account of antecedents such as audits conducted in the past and compliance and audit reports that the FSMA receives from the undertakings.

Finally, the complaints that the FSMA receives from customers of regulated undertakings are another important source of information.

On the basis of the risk assessment, the FSMA identifies the priorities for its supervision and draws up a schedule.

In the light of the risk analysis and the staff resources available to the service, this schedule determines how many and what types of inspections will be performed at the various undertakings.

The actual inspections started at the beginning of 2012. Four types of audit are possible:

- Transversal thematic audits: this type of audit examines one of the 14 MiFID themes at different undertakings.
- Full audits: in this type of audit, the FSMA checks whether an undertaking is adhering to all MiFID rules of conduct.
- Special audits: this type of audit is performed at a particular undertaking on the basis of a complaint or a risk situation.
- Audits of new players.

For 2012, it has been decided that the thematic audits will relate to conflicts of interest. The other themes will be covered later on.

After every audit, a report is compiled with recommendations, and corrective measures if necessary. In due time, a check will be made of the extent to which the regulated undertaking has acted on the recommendations or implemented the corrective measures.

Finally, the FSMA may also decide to impose an administrative sanction on regulated undertakings that do not adhere to the MiFID rules.

1.2.2.4. Supervision of financial service providers and intermediaries

1.2.2.4.1. Supervision of financial service providers

The FSMA's role with regard to financial service providers essentially consists of exercising prudential supervision of the management companies of undertakings for collective investment and of investment firms that have applied for authorization as a portfolio management and investment advice company. The purpose of this supervision is to see to it that the companies under supervision are able to meet all their obligations at all times and can

guarantee the continuity of their business. Supervisory tasks include analysing the administrative and accounting structure and the internal control system, the quality of management, the suitability of the shareholders, the development of activities and risks, and the monitoring of the financial structure as a whole. There is also ongoing supervision of compliance with licensing and business practice conditions.

The FSMA is also tasked with the supervision of bureaux de change. The focus here is on preventing money-laundering and on the professional reliability of the managers.

Change in the number of firms

	31/12/2010	31/12/2011
Portfolio management and investment advice companies	24	20
Branches established in Belgium of investment firms governed by the law of another EEA country and falling under FSMA supervision ⁴⁸	10	8
Investment firms governed by the law of another EEA country and operating in Belgium under the free provision of services	2,389	2,576
Investment firms governed by the law of a non-EEA country that have indicated their intention to provide investment services in Belgium under the free provision of services	79	80
Management companies of UCIs governed by Belgian law	7	7
Branches established in Belgium of management companies of UCIs governed by the law of another EEA country	4	4
Management companies of UCIs governed by the law of another EEA country and operating in Belgium under the free provision of services	50	57
Bureaux de change authorized in Belgium	18	13

The trend of recent years is continuing, due in part to the financial crisis. This is manifested in a falling number of Belgian companies engaged in portfolio management and investment advice. The number of foreign investment firms offering investment services in Belgium under the free provision of services continues to rise.

The fall in the number of bureaux de change can be explained by the fact that a number of them have adopted the status of payment institution or agent of a foreign payment institution.

The recognition and supervision of a whole series of financial service providers (management companies of undertakings for collective investment, companies for asset management and investment advice and bureaux de change) have been exercised by the Supervision of

Financial Service Providers service since the introduction of the Twin Peaks model on 1 April 2011. This service has since then grouped together the supervisory functions formerly exercised by a number of different services.

The emphasis last year was therefore placed on the formation of a comprehensive inspection service, including the recruitment and training of new employees, especially inspectors who are able to perform on-site checks of regulated institutions. The service will only be able to operate at full capacity once all vacant functions have been filled and the new employees have been trained.

In the past year, attention was mainly focused on the strict monitoring of the financial situation of the institutions under supervision and on policy discussions with the management of these institutions.

⁴⁸ Under the division of powers agreed in June 2011 between the FSMA and the NBB, the FSMA supervises the branches in Belgium of foreign investment firms which are authorized in their Member State of origin to offer investment services or subsidiary services reserved in Belgium for portfolio management and investment advice companies.

1.2.2.4.2. Supervision of intermediaries

The FSMA's role with regard to intermediaries⁴⁹ involves overseeing access to the profession of insurance or re-insurance intermediary or intermediary in banking and investment services. This mainly consists of:

- handling applications for inclusion in the registers of insurance and reinsurance intermediaries and of intermediaries in banking and investment services, and maintaining these registers;
- supervising compliance with the legal conditions for maintaining such registration.

Changes in the number of intermediaries under supervision

Insurance intermediaries	31/12/2010	31/12/2011
Collectively registered	6,395	6,225
Agent	1,860	1,485
Sub-agent	4,535	4,740
Individually registered	11,668	11,059
Broker	8,514	8,290
Agent	2,429	2,101
Sub-agent	725	668
Total	18,063	17,284
Reinsurance intermediaries	31/12/2010	31/12/2011
Individually registered	12	13
Broker	11	12
Agent	1	1
Intermediaries in banking and investment services	31/12/2010	31/12/2011
Collectively registered	3,214	3,123
Agent	3,214	3,123
Individually registered	927	868
Broker	10	13
Agent	917	855
Total	4,141	3,991

In 2011, 1,981 new intermediaries were included in the register of insurance intermediaries (1,321 of them via collective registration). This was 291 more registrations than in 2010. Most of the deregistrations in 2011 related to collectively registered insurance intermediaries with whom the principal had terminated collaboration, or insurance intermediaries who had their registration cancelled at their own request.

In 2011, 164 agents and 3 brokers were entered in the register of intermediaries in banking and investment services.

Remedial actions

If the FSMA determines that an intermediary is not fulfilling the registration conditions, a deadline is set by which the intermediary must rectify the shortcoming.

If the intermediary fails to act on this warning, the FSMA may take administrative measures, such as the suspension of registration or withdrawal from the register, which then means a ban on the exercise of intermediation activity of a temporary or permanent nature respectively.

⁴⁹ The supervision of intermediaries is regulated by the Law of 27 March 1995 on insurance and reinsurance intermediation and the distribution of insurance and the Law of 22 March 2006 on intermediation in banking and investment services and the distribution of financial instruments.

While compliance with certain conditions (such as the arrangement of professional liability insurance) may be ascertained objectively, the FSMA has discretionary powers with regard to the assessment of suitability and professional reliability requirements.

In 2011, the FSMA took administrative remedial measures on several occasions in cases where an intermediary's suitability and professional reliability were under question. Examples include the misappropriation of customers' funds, collaboration with non-registered intermediaries, commercialization of unauthorized financial products and the issue of non-covered 'green cards'.

On-site inspections offer the FSMA the possibility of checking registration conditions which are hard to verify on the basis of the registration application, such as compliance with information requirements. 44 such inspections were carried out in 2011.

In 2010, the registration of 225 insurance intermediaries and 30 intermediaries in banking and investment services was cancelled or suspended by the FSMA because they no longer complied with the registration conditions. The figures include the automatic expiry of the registration of 14 insurance intermediaries on grounds of bankruptcy.

Professional knowledge - Continuing education

Insurance intermediaries, reinsurance intermediaries and intermediaries in banking and investment services are obliged to update their professional knowledge regularly⁵⁰.

In 2008, the sectors in question drew up rules of conduct and compiled a sectoral code in order to define this requirement in detail.

Now, three years later, the FSMA has evaluated the concrete application of this scheme. The checks it has performed indicate that the rules of conduct which apply to the insurance sector and the sectoral code for the financial sector in general offer a useful framework for compliance with the obligation to keep professional knowledge up to date on a regular basis.

However, the FSMA believes that certain aspects of these rules need to be clarified, namely regarding the training that is concerned, and the exact content of training programmes.

In the last quarter of 2011, the FSMA began talks with the sectors concerned in order to update the sectoral rules and make continuing education more efficient.

1.2.2.4.3. Supervision of institutions for mortgage credit

The FSMA's role with regard to mortgage credit companies mainly consists of supervising their provision to individuals of housing mortgages which are used for non-professional purposes, and the management of these mortgages.

The supervision relates to the way in which the mortgage companies comply with the provisions of the law of 1992 both when offering a mortgage (including in the precontractual phase) and during the execution and term of agreements, with a view to the protection of the borrower. In the case of companies without prudential status, the supervision also relates to the prevention of money laundering.

⁵⁰ Article 11, § 4bis, of the Law of 27 March 1995 on insurance and reinsurance intermediation and the distribution of insurance and Article 7, § 2, final section, of the Royal Decree of 1 July 2006 implementing the Law of 22 March 2006 on intermediation in banking and investment services and the distribution of financial instruments.

Movements in the number of registered and enrolled companies⁵¹

	31/12/2010 (*)	31/12/2011 (**)
Insurance companies and IORPs	26	26
Credit institutions	33	31
Public institutions	5	5
Other institutions	118	120
Total	182	182
Enrolled companies	19	22
Grand total	201	206

(*) Publication in the Belgian Official Gazette of 3 February 2011.

(**) Publication in the Belgian Official Gazette of 2 February 2012.

The supervision largely occurs by means of on-site inspections. In 2011, these inspections related more specifically to the application of the rules on the variability of interest rates, the charging of costs, the management of payment problems and the processing of complaints.

In the case of mortgage companies which are not credit institutions or insurance companies, the inspections also related to compliance with the obligations imposed by money laundering legislation.

In 2011 the inspections also focused on the application by the mortgage companies of the code of conduct issued by the Professional Lenders' Association in 2009. This defines a number of rules aimed at ensuring that loans are concluded and provided responsibly and tackling excessive debt.

Although a number of inspected companies were already applying the principles of the code of conduct, the FSMA encouraged them to become better acquainted with the principles and to pay particular attention to credit provision.

1.2.2.5. Supervision of supplementary pensions

The FSMA is responsible for supervising supplementary pensions that employees and self-employed persons build up through their professional activities (the so-called 'second-pillar pensions'). The FSMA oversees compliance of the second pillar pensions with social legislation. The FSMA also supervises the financial health of institutions for occupational retirement provision (IORPs), which manage pension plans.

1.2.2.5.1. Prudential supervision of institutions for occupational retirement provision (IORPs)

Follow-up of the recovery measures of institutions for occupational retirement provision (IORPs) (financial year 2010)

The FSMA continued to monitor the financial situation of IORPs as well as the execution of new recovery plans. The annual reporting for financial year 2010 indicated that among the 50 IORPs that had adopted recovery measures in order to pay off shortfalls from 2008 and 2009, the situation of 13 among them was totally redressed at the end of 2010; 28 of these institutions were still facing measures in 2011. Moreover, at the end of the year 2010, 13 IORPs reported a new deficit, among which 5 were facing an additional deficit with regard to ongoing recovery measures. The follow-up review of 4 IORPs is still going on.

The overall degree of coverage of the Belgian IORPs with regard to their short-term liabilities was 142% at the end of the year 2010; the average degree of coverage for the long-term liabilities was 118%.

Emergency measures

Due to developments on the financial markets, the FSMA conducted, at the end of the year 2011, a targeted study of the financial situation of a number of IORPs. The FSMA developed a methodology to evaluate, on the basis of the available figures about IORPs, the composition of their portfolios and markets trends during the year 2011, which of these institutions face the greatest risk of new or additional deficit.

On the basis of this methodology, fifty IORPs for which the risk of deficit seemed the highest received a notification in October 2011. The pensions department asked these institutions to present an overview of their situation as at 30 September 2011. In particular, the institutions concerned were asked to submit estimates of the technical provisions for the short and the long term, of the

⁵¹ Registered: companies governed by Belgian law. Enrolled: companies governed by the law of another Member State of the EEA.

solvency margin, of the own funds and of the degrees of coverage⁵².

This survey indicated that on the basis of the estimation done at the end of September 2011, 14 of the IORPs contacted had to introduce a recovery plan immediately or to take additional measures if recovery measures had already been taken and were still in force. For the other IORPs, it was deemed that the necessity to take recovery measures could be evaluated on the basis of the standard reporting at the end of 2011.

In 2011 the FSMA also carried out an overview of the situation of direct investments by IORPs in the debt securities of certain European countries (Greece, Spain, Portugal, Italy and Ireland). It appeared that for the Belgian IORPs investing in government securities of these countries, these debt securities represented 6.53% of their securities portfolio, or 5.82% of the assets. The FSMA also mapped these IORPs' investments in Belgian government securities. On average they represented 2.54% of their securities portfolio and 2.27% of their assets.

The FSMA also conducted a survey among certain institutions for occupational retirement provision to examine their exposure to Greek government securities on 30 June 2011. The survey was conducted in execution of the decision of the heads of state and of government of the European Union taken on 21 July 2011. The aim of this decision was to support Greece via a series of measures to make its national debt more sustainable. Within the framework of this decision the holders of Greek government bonds were inventoried and asked if they were disposed to take part in the so-called 'Private Sector Involvement', the voluntary participation of the private sector in the initiative. The survey among the Belgian IORPs has shown that direct exposure to Greek government securities is marginal.

Cross-border activity of IORPs

IORPs governed by Belgian law can develop their activities in other EU member states by managing foreign pension schemes from Belgium. In the case of such a cross-border activity, the Belgian prudential rules apply, but it is the social legislation of the member state where the pension commitment was made that applies. In this context the FSMA fully plays its role as home supervisor by paying attention to the prudential implications of the applicable foreign social and legal requirements, even though the FSMA is not responsible for supervising compliance with social legislation in another member state.

⁵² The proportion of net assets to the technical provisions plus the solvency margin. The degrees of cover are calculated for both the short and the long term.

1.2.2.5.2. Social supervision

Complaints and questions

The FSMA is the contact point for complaints and questions concerning supplementary pensions of the second pillar. In 2011 the FSMA received 182 requests for information or complaints concerning a pension institution (IORP or insurance company) or a sponsoring undertaking. This number is higher than the number for 2010, when 171 requests were treated, but lower than in 2009, when 268 requests were dealt with. The slight increase in 2011 is the result of the requests concerning Apra Leven (see below).

As in the previous years, the requests were sent by members or beneficiaries as well as by IORPs, sponsoring undertakings, lawyers or consultants. These requests concerned the compliance with social legislation (acquired rights, change of IORP, transfer of reserves, changes to the pension commitment, discrimination, individual pension commitments, etc.) and the interpretation of the prudential legislation (technical provisions, financing plan, sound governance, notification of a cross-border activity, liquidation procedure, etc.).

Database

Today the supervision of compliance with social legislation mainly happens on an occasional basis, when processing the application for authorization of an IORP, handling complaints or answering requests for clarifications and interpretations.

The development of the Database of Supplementary Pensions (DB2P) opens up perspectives for a more structured social supervision. The main objective of this database is to make the social, fiscal and parafiscal supervision of supplementary pensions more efficient and effective. In the long run, thanks to the database, people will for the first time have an overview of the benefits they have built up within the framework of their supplementary pension.

By mid 2011 the database was opened up for data input by pension institutions. In line with its former involvement in that project, the FSMA also participated in 2011 in the development of this database. This year the attention was devoted specifically to the development of search and exploitation tools, in order to facilitate an efficient use of the database for the social supervision by the FSMA.

When the database will be available for exploitation, the FSMA will have more possibilities to oversee the compliance of pension plans with the social legislation.

Biennial reports on sectoral pension schemes and voluntary supplementary pensions for self-employed persons

The FSMA must draw up a report every two years about sectoral pension schemes as well as about voluntary supplementary pensions for self-employed persons. These reports were published in 2011 and relate to the 2008-2009 period. These detailed reports contain many statistics and a lot of information about many aspects of the second pillar pensions. They can be consulted via the FSMA website.

Apra Leven

On 4 March 2011 the CBFA withdrew Apra Leven's authorization and the insurance company was declared to be in liquidation. On that date, the performance of current insurance contracts was frozen.

Since the very beginning the FSMA has put information via its website at the disposal of the persons insured at Apra Leven to give them more information about the situation and to provide them with the contact information of the institutions to which they could address their questions.

Moreover the FSMA also published FAQs on its website about the impact of the liquidation on the supplementary pensions insured by Apra Leven. It is indeed possible that the assets of Apra Leven will not be sufficient to honour its commitments relating to group insurance policies.

When the FSMA had the necessary information at its disposal, it answered the numerous questions of employees or employers. The FSMA also contacted them systematically to provide them with explanations about the specific consequences of the situation of Apra Leven. Finally, as soon as the correct and complete data will be at its disposal, the FSMA will undertake to contact each of the employers concerned to inform them of the consequences of the possible insolvency of Apra Leven for their pension commitments.

1.2.2.6. Relations with consumers of financial services

1.2.2.6.1. Financial education

Since 1 April 2011, the financial education of the public has formed an explicit part of the FSMA's set of competences. This new competence perfectly complements the FSMA's other roles in which the protection of investors and consumers of financial products is central.

For the compilation of its new programme, the FSMA takes as its basis the preparatory activities that have already been carried out in this area in the past. Specifically, these include the report to the government on the promotion of financial knowledge in Belgium and the open consultation conducted in 2009. The FSMA also takes

account of the feedback that it receives from professional actors who are in contact with the target groups and inform it about needs on the ground. The experience of neighbouring countries is also useful, as are the activities of the OECD and its INFE (International Network on Financial Education) network.

The FSMA has no intention of repeating work previously done by other organizations. On the contrary, it plans to build on existing initiatives, provided these can be regarded as objective and neutral. After all, collaboration with the representatives of the public and private institutions which are active in the promotion of financial knowledge is essential, given the scale of the project and the diversity of the target groups concerned.

As a result, the FSMA intends to carry out its role in practice by mobilizing, coordinating with and supporting external organizations active in the field of financial education, as well as through initiatives of its own aimed at informing and raising the awareness of certain target groups. With regard to its own initiatives, the development of a portal site for the general public and for teachers, drawing attention to the various materials available for financial education, definitely represents an important component in the development of its programme.

1.2.2.6.2. Consumer questions, perimeter and warnings

The FSMA answers consumer questions relating to financial topics. It also alerts the public and the judicial authorities when it identifies financial products being offered unlawfully.

In 2011, the FSMA dealt with a total of 530 written requests for information. This is an increase on the 418 requests in 2010. The FSMA also receives a large number of telephone requests.

On the basis of information received from third parties and its own observations, the FSMA opened 142 dossiers in 2011 relating to possible unlawful offers of financial services. In 2010, 157 such dossiers were opened for further investigation, and in 2009 the number was 128.

The FSMA issued 23 warnings in 2011 to alert the public to irregular offers of financial services. The corresponding figures in 2010 and 2009 were 25 and 18 respectively.

The FSMA also publishes warnings from its European counterparts. These are sent to it by the secretariat of ESMA-Pol, a part of ESMA within which the supervisory authorities exchange information about their activities. In 2011, the FSMA published 538 such warnings. Via a hyperlink, the FSMA now also publishes the warnings of foreign authorities which are members of IOSCO.

1.2.3. Administrative sanctions

1.2.3.1 New procedural rules and organization of the Enforcement service

The procedural rules for the imposition of administrative fines by the FSMA (Article 70 and following of the Law of 2 August 2002) were modified by Articles 16 to 20 of the Twin Peaks Law⁵³.

On 15 July 2011, the new procedure came into force⁵⁴, with transitional measures for cases which the Management Committee had already entrusted the investigations officer before that date in accordance with (the old) Article 70, § 1, of the Law of 2 August 2002. Where necessary, the applicable transitional measures confirm for current cases that these cases have been referred to the investigations officer⁵⁵, and that he should investigate both the charges and the defence in such cases⁵⁶.

Simultaneously with the entry into force of the new procedure, the Enforcement service was established, which brings together the employees who used to be responsible for the investigations conducted prior to the decision to refer the case to the Management Committee, and the investigations service employees, under the management of the Secretary General of the FSMA in his capacity as investigations officer. This new service has a total of eight employees, five of whom are lawyers or economists with university degrees.

1.2.3.2. Cases referred by the services and preliminary investigation phase

Under the new procedure, the investigations officer himself decides whether or not an investigation will be opened into circumstances that might give rise to the imposition of an administrative fine⁵⁷. He usually takes the decision on the basis of the evidence in the case referred by the services.

⁵³ For a presentation of the new procedure, see this report, p. 16.

⁵⁴ Article 1, Section 1, of the Royal Decree of 28 June 2011 setting the date of entry into force of a number of provisions of the Law of 2 July 2010 amending the Law of 2 August 2002 on the supervision of the financial sector and on financial services and of the Law of 22 February 1998 establishing the organic status of the National Bank of Belgium and containing various provisions (BS 5 July 2011).

⁵⁵ Article 1, Section 2, 1°, of the Royal Decree of 28 June 2011.

⁵⁶ Article 2, Section 2, 2°, of the Royal Decree of 28 June 2011.

⁵⁷ Article 70, § 1, of the Law of 2 August 2002.

In connection with the fight against market abuse, it should also be pointed out that on 31 December 2010⁵⁸ there were 33 investigations⁵⁹ still in progress at the Supervision of Financial Information and Financial Markets service. Between that date and the date of entry into force of the new sanction procedure, the service opened 5 new investigations and closed 28 dossiers. At the time of entry into force of the new procedures, there were thus 10 cases still in progress. Further investigation in these cases is being conducted in accordance with the new procedure and, on the basis of the conclusions from that investigation, the investigations officer will decide for each case whether or not to open an investigation within the meaning of the new Article 70, § 1, of the Law of 2 August 2002.

In addition to the cases still in progress, since the new procedure's entry into force on 15 July 2011 the investigations officer has received six new cases from the services of the FSMA with indications that might give rise to a decision to open an investigation.

Both the cases which had already been opened at the time of entry into force of the new procedure and those which were referred by the services after that date usually require the Enforcement service to organize additional preliminary investigations before a decision is taken about whether or not to open an investigation within the meaning of Article 70, § 1, of the Law of 2 August 2002.

During this preliminary investigation phase, for example, the Enforcement service identifies the originators of any suspicious transactions and makes a preliminary assessment of the facts.

Only if these facts actually seem likely to lead to the imposition of an administrative fine does the investigations officer decide to open an investigation within the meaning of Article 70, § 1, of the Law of 2 August 2002.

1.2.3.3. Decisions to open an investigation

In 2011, the investigations officer decided to open an investigation within the meaning of Article 70, § 1, of the Law of 2 August 2002 in one case concerning circumstances liable to give rise to an administrative fine. In early January 2012, it was also decided to open an investigation in two other cases.

As in the past, the term 'dossier' refers to the investigations officer's decision to open an investigation under Article 70, § 1, of the Law of 2 August 2002; such a decision may relate to serious indications that one or more persons has/have infringed one or more laws.

⁵⁸ See Annual Report 2009-2010, p. 56.

⁵⁹ This term refers here to the investigations which, in connection with the sanction procedure applicable before 15 July 2011, were conducted by the services prior to any referral decision by the Management Committee.

1.2.3.4. Summary of dossiers handled

The investigations officer's investigations relate to circumstances liable to give rise to an administrative fine. Under the investigations officer's management, the employees of the Enforcement service perform the investigation activities they consider necessary in connection with the dossiers entrusted to them in their capacity as rapporteur, and investigate the collected evidence in the light of applicable legislative provisions.

During the reporting period, the investigations officer also continued to investigate both the charges and the defence in the dossiers which had already been referred to him by the Management Committee before the new procedural rules came into force, under the transitional provisions in the Royal Decree of 28 June 2011 referred to earlier.

Proposed agreed settlements

The Law of 2 August 2002, in the form in which it was in force until 15 July 2011, provided for the possibility for the investigations officer to present a proposal for an agreed settlement to the person to whom the investigation had related if this latter did not dispute the factual evidence discovered. If the perpetrator agreed to the proposal, this was presented to the Management Committee⁶⁰.

The Management Committee could then either accept or reject the proposed agreed settlement⁶¹.

It should be noted that one dossier, under the provisions which came into force on 15 July 2011 organising the new procedure on the imposition of administrative fines, may still be concluded with an agreed settlement⁶².

In 2011, the investigations officer presented for acceptance by the Management Committee two proposals for agreed settlements to which the perpetrators in question had agreed.

Both proposals were accepted by the Management Committee and are described in this report under the decisions taken by the Management Committee⁶³.

Submission of findings to the Management Committee

After the investigation has been completed, a report is compiled. This states whether the ascertained facts may constitute an infringement liable to give rise to an administrative fine, or a criminal offence⁶⁴.

The new sanction procedure, which entered into force on 15 July 2011, stipulates that the investigations officer must submit the final investigation report to the Management Committee, which then decides how to proceed⁶⁵.

The transitional measures introduced in the Royal Decree of 28 June 2011 for dossiers already referred to the investigations officer at the time of entry into force of the new procedure confirm that these dossiers have been referred to the investigations officer, and that he should investigate the charges and the defence. In all other respects, they will be handled further in accordance with the new procedure.

In 2011, the investigations officer submitted twelve investigation reports to the Management Committee⁶⁶. These related to a total of 24 individuals or legal entities:

- 16 natural and 2 legal persons in connection with a total of 10 investigation reports containing serious indications of insider dealing within the meaning of Article 25, § 1, 1°, a), b), or c), of Article 25, § 1, 7°, and of Article 25, § 2, of the Law of 2 August 2002;
- 2 legal and 3 natural persons in connection with an investigation report containing serious indications of non-compliance with the requirement for all issuers to immediately disclose inside information that relates to them (Art. 10, § 1, of the Law of 2 August 2002), as well as of market manipulation within the meaning of Article 25, § 1, 4°, of the Law of 2 August 2002;
- 1 legal person in connection with an investigation report containing serious indications of market manipulation within the meaning of Article 25, § 1, 2°, b), of the Law of 2 August 2002.

In 2011, the Brussels Court of Appeal issued rulings in two cases of market abuse on which the FSMA's Sanctions Committee had earlier pronounced. In both cases, the Court confirmed that there had been an infringement. A detailed discussion of these rulings appears in Chapter 2 of this report⁶⁷.

⁶⁰ Article 71, § 3, section 1 (old text), of the Law of 2 August 2002.

⁶¹ Article 71, § 3, section 2 (old text), of the Law of 2 August 2002.

⁶² Article 71, § 3, of the Law of 2 August 2002. For the presentation of the new procedure, see this report, p. 16.

⁶³ See this report, p. 57 and 62-63.

⁶⁴ Article 70, § 2, of the Law of 2 August 2002.

⁶⁵ For a presentation of the new sanctions procedure, see this report, p. 16.

⁶⁶ Including the five reports that were completed by the investigations officer at the end of 2010 (Annual Report 2009-2010, p. 63) and that, in accordance with the new procedural rules and the transitional measures, he submitted to the Management Committee.

⁶⁷ See this report, p. 63 ff.

Between 1 November 2002, when the first provisions of the Law of 2 August 2002 on the procedural rules for the imposition of administrative fines entered into force, and 31 December 2011, there were a total of 58 cases which were referred to the investigations officer or where it was decided to open an investigation relating to the existence of one or more practices that might give rise to an administrative fine for one or more persons.

The investigations officer dealt with a total of 57 proposals for agreed settlements and completed investigation reports.

These agreed settlements and investigation reports made it possible to close 45 dossiers definitively. On 31 December 2011 there were thus 13 dossiers still in progress.

The dossiers handled by the investigations officer related to serious indications of infringements of one or more of the following laws⁶⁸:

OVERVIEW OF THE LAWS TO WHICH THE DOSSIERS HANDLED BY THE INVESTIGATIONS OFFICER RELATED Cumulative list (1 November 2002 - 31 December 2011)

Law of 11 January 1993 on preventing the use of the financial system for purposes of money-laundering and the financing of terrorism	7
Law of 27 March 1995 on insurance and reinsurance intermediation and on the distribution of insurance	1
Law of 6 April 1995 on the legal status and supervision of investment firms, on intermediaries and on investment advisers (including conduct of business rules)	3
Law of 2 August 2002 on the supervision of the financial sector and on financial services	
1. Insider dealing	27
2. Market manipulation	10
Law of 22 April 2003 on public offers of securities (prospectus)	2
Royal Decree of 31 March 2003 on the obligations of issuers of financial instruments admitted to trading on a regulated market, superseded by the Royal Decree of 14 November 2007	3
Royal Decree of 31 March 2003 on the reporting of transactions in financial instruments and on the storage of data	6
Royal Decree of 5 March 2006 on market abuse	1
Law of 16 June 2006 on public offers of investment instruments	3
Law of 2 May 2007 on the disclosure of significant interests in issuers whose shares have been admitted to trading on a regulated market and containing various measures	1

1.2.3.5. International cooperation

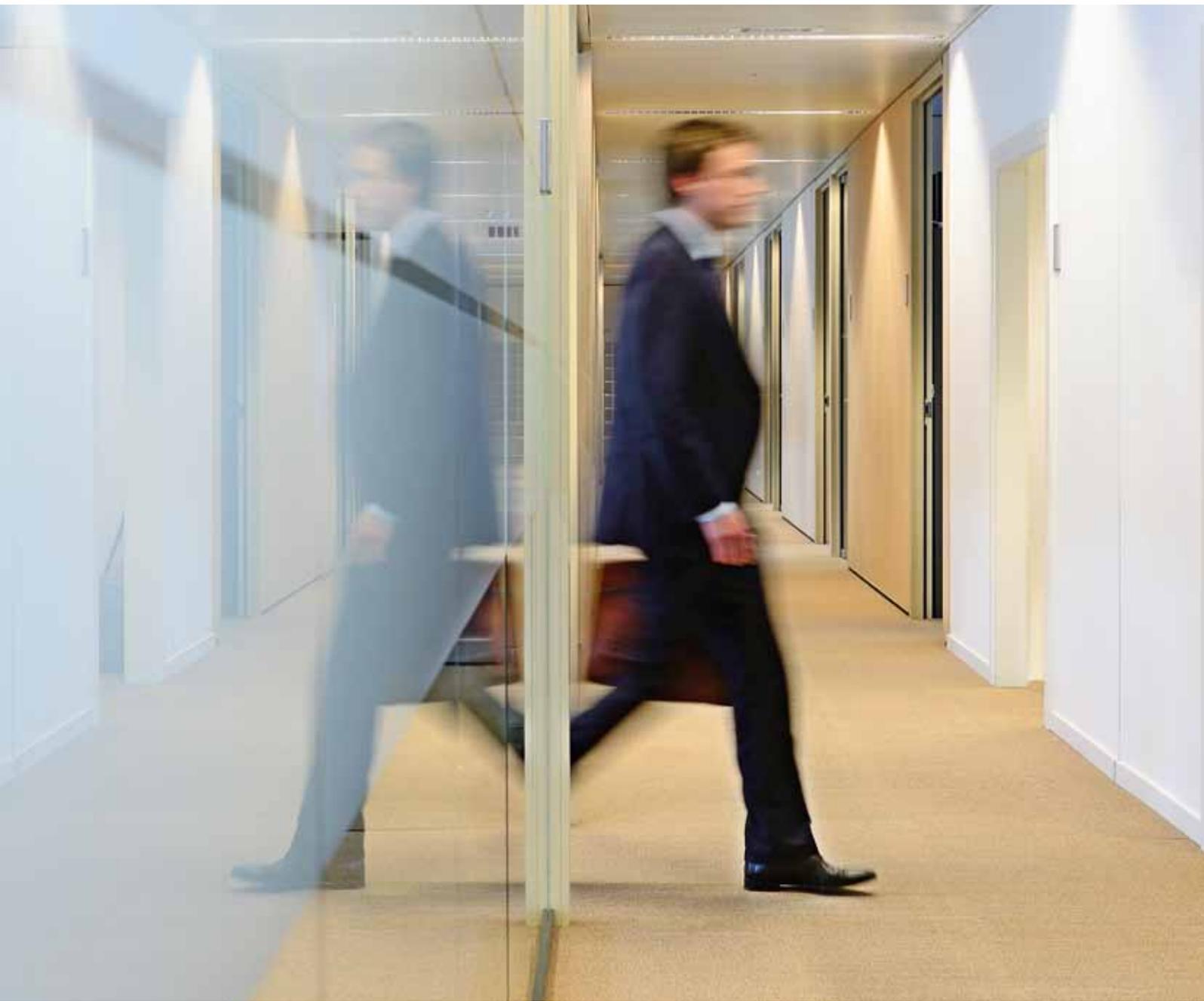
In future, requests for international cooperation in connection with dossiers relating to possible market abuses will all pass through the Enforcement service.

Since its formation, this service has received five cooperation requests from the competent authorities of European Union Member States or non-EU countries. It has

responded to all these requests within a period of one to four months, the turnaround time being determined by the nature and scale of the tasks to be completed.

The Enforcement service has also itself submitted six requests for international cooperation to the competent authorities of European Union Member States or non-EU countries.

⁶⁸ In four dossiers which were referred to the investigations officer or where it was decided to open an investigation, the serious indications related to infringements of the laws mentioned in the table. This explains why the total number of cases of application of the laws mentioned in this cumulative list is higher than the number of dossiers.



CHAPTER 2



Supervision

Pages 47-90 and footnotes 69-269 not translated into English, but available in French and Dutch on the FSMA website (www.fsma.be)

CHAPTER 3

The organization of the FSMA

3.1. ORGANIZATION

3.1.1. Structure

3.1.1.1. Governing bodies

Chairman: Jean-Paul Servais

Management Committee⁶⁹



Jean-Paul Servais, **Chairman** (3)

Wim Coumans, **Deputy chairman** (1)

Henk Becquaert (2)

Gregory Demal (5)

Secretary General: Albert Niesten (4)

²⁷⁰ Pursuant to the Royal Decree of 28 April 2011, Messrs Wim Coumans and Gregory Demal were appointed members of the Management Committee with effect from 2 May 2011 (Belgian Official Gazette of 5 May 2011). Mr Wim Coumans was named deputy chairman of the Management Committee by the Royal Decree of 28 April 2011 (Belgian Official Gazette of 5 May 2011).

3.1.1.2. Organization chart of the FSMA's departments and services



3.1.1.3. Supervisory Board²⁷¹

3.1.1.3.1. Membership



Dirk Van Gerven, Chairman (3)
Jean-François Cats (7)
Jean Eylenbosch (11)
Robert Geurts (10)

Hilde Laga (2)
Didier Matray (1)
Pierre Nicaise (9)
Jean-Paul Pruvot (6)

Michel Rozie (8)
Reinhard Steennot (4)
Marnix Van Damme (12)
Marieke Wyckaert (5)

²⁷¹ Situation as at 31 December 2011. Pursuant to the Royal Decree of 5 April 2011, the following were appointed members of the Supervisory Board: Messrs Jean-François Cats, Jean Eylenbosch, Robert Geurts, Reinhard Steennot, Madam Hilde Laga and Madam Marieke Wyckaert (Belgian Official Gazette of 11 April 2011).

3.1.1.3.2. Report on the performance by the Supervisory Board of its statutory tasks

During the period under review, the composition of the Board was modified by the appointment of Madam Marieke Wyckaert and Messrs Robert Geurts and Reinhard Steennot as members of the Board. The Board thanks Madam Martine Durez and Messrs Herman Cousy, Erik De Keuleneer and Christian Dumolin, whose mandates expired, for their commitment and professional contribution to the Board's activities.

Pursuant to the new Article 48, § 5 of the Law of 2 August 2002, stating that the Board elects its Chairman itself, the Board elected Mr Dirk Van Gerven as its Chairman on 11 April 2011.

In 2011, the Board met eight times and used the written procedure four times.

During the period under review, the Board mainly paid attention to the FSMA's start-up after the reform of financial supervision in Belgium pursuant to the Law of 2 July 2010 and the Twin Peaks Royal Decree of 3 March 2011. This legal reform also specified the legal tasks of the Board and in particular ensured that the Board would henceforth be assisted in its supervisory task by the newly-created audit committee of the FSMA, the Board having elected the members of this committee²⁷². As in the past, the general principle that the Supervisory Board does not examine individual dossiers still applies²⁷³.

In addition, the Board issued opinions on a number of regulations of the FSMA and exchanged views about numerous subjects which relate to the supervisory practice and to the internal operation of the FSMA. The Board thanks the Management Committee for its cooperation to the execution of the Board's tasks.

Start-up of the FSMA

The Board's activities during the period under review mainly concerned the start-up of the FSMA. In this context, the Board first provided advice, as provided for by law, on the appointment of the two new members of the FSMA's Management Committee and on the appointment of the Deputy Chairman of the FSMA. After having heard them, the Supervisory Board issued a favourable opinion to the competent ministers about the appointment of Messrs Wim Coumans and Gregory Demal as members of the Management Committee of the FSMA and about the

appointment of Mr Wim Coumans as Deputy Chairman of the FSMA.

The Board then took note of the organization chart drawn up by the Management Committee of the FSMA. The Board noted that this organization chart reflects the new statutory tasks of the FSMA and that it would require substantial rearrangements of the existing departments as well as the recruitment of new staff members. At the proposal of the Management Committee, the Board approved the new internal regulations of the FSMA during its meeting of 17 November 2011. These internal regulations lay down the essential rules concerning the functioning of the governing bodies of the FSMA and they are published on the website of the FSMA. The Board also confirmed that the code of ethics of the CBFA continues to apply unchanged to the FSMA.

Pursuant to Article 48, § 1, first subparagraph, 5° of the Law of 2 August 2002, the Board submitted to the King on 22 December 2011, at the proposal of the Management Committee, the general rules relating to the financing of the FSMA's activities through payment by the undertakings subject to the FSMA's supervision and remuneration received for the examination of dossiers concerning operations subject to its supervision; These rules will form the basis for a new Royal Decree to replace the Royal Decree of 22 May 2005 on the financing of the CBFA's operating expenses. The latter Decree regulates the funding of the CBFA as integrated supervisor and must be replaced by a Royal Decree regulating the coverage of the new FSMA's operating expenses so that the FSMA can give shape effectively to its supervisory tasks as well as to the other tasks entrusted to it.

Action plans of the FSMA's departments

On the basis of explanations given by the Management Committee, the Board learnt of the FSMA's plans for its future performance of the supervisory tasks and the other tasks of the FSMA. After the presentation by the Management Committee of its general action plan for the FSMA, the Board received specific explanations about the action plans of the "Financial Products", "Licensing & Conduct" and "Pensions & Education" departments. It followed with attention the FSMA's intention to evolve from purely transparency supervision to include product intervention, that is, to intervene at the product development stage to ensure that new products respond to clients' needs. The Board also received explanations about the intention of the FSMA to examine how the rules for the protection of the consumers of financial services are applied in practice. Furthermore, the Board was informed of the initiatives for the development of the new field of financial education.

These explanations of the Management Committee for the Board will continue in 2012 and the members of the Board expect a regular update of them, as well as a further explanation about the resources used, the initiatives taken and the results obtained.

²⁷² The Board appointed Madam Marieke Wyckaert, Mr Dirk Van Gerven, Chairman of the Board, and Mr Pierre Nicaise as members of the audit committee. Concerning the tasks of the audit committee and its activities in 2011, see this report, p. 97.

²⁷³ See the parliamentary preparation of the Law of 2 August 2002, Parl. Doc. Chamber, 2001-2003, 1842/001, p. 25, treating of the establishment of the Supervisory Board comprising external members who are not involved with individual dossiers treated by the Management Committee.

Supervisory practice

The Board had the opportunity to discuss the FSMA's important initiatives in the year under review. The Board was kept regularly informed about the moratorium on particularly complex products that the FSMA launched during the year under review. The Board welcomed this initiative and the positive response of the financial sector, since this initiative contributes to a more transparent range of products offered and a better protection of the consumers of financial services. The Board also appreciates that this initiative is horizontal in nature, so that the investor enjoys the same protection regardless of the kind of investment instrument. The Board also paid attention to other aspects of the FSMA's supervisory practice, among which its role with regard to corporate governance and the new procedure for imposing administrative sanctions.

Regulatory developments

On the basis of its statutory task mentioned in Article 49, § 3, of the Law of 2 August 2002, the Board makes recommendations to the Management Committee about a number of regulations by the FSMA. The Board deliberated about the draft regulation on the approval process for compliance officers, specifying on the basis of Article 87bis of the Law of 2 August 2002, among other things, the requirements regarding knowledge, experience, training and professional integrity of compliance officers at regulated financial institutions. The Board also issued an opinion about the draft regulation of the CBFA concerning the remuneration policy of financial institutions.

The Board additionally obtained explanations regarding certain international measures taken in the wake of the financial crisis. In this regard, the Board is particularly interested in the first initiatives of the European supervisory authorities having henceforth more power to ensure a consistent application of the European legislation.

Internal organization and functioning of the FSMA

In execution of its general task of supervising the functioning of the FSMA, the Board discussed on repeated occasions the internal operation of the different departments of the FSMA.

The Board and the audit committee also accomplished their statutory task set out in Article 48, § 1, first subparagraph, 4°, of the Law of 2 August 2002, pursuant to which the Board approves, at the proposal of the Management Committee and the audit committee, the annual budget, the annual accounts and the part of the annual report concerning the Board. The budget for 2011 was approved on 16 December 2010 for the first quarter of 2011, and on 13 July 2011 for the rest of 2011. After examination by the audit committee, the budget for 2012 was approved on 16 December 2011, with the proviso that it concerns only the expenses, since the income can only be budgeted after approval of the new Decree on the operating expenses

of the FSMA mentioned above. After approval of the new Decree, the budget for 2012 will again be examined by the Supervisory Board.

On 15 February 2011, at the proposal of the Management Committee, the Board approved the annual accounts for 2010. At the proposal of the Management Committee and the audit committee, the annual accounts for 2011 was approved on 31 May 2012.

The annual report 2009-2010 was approved on 24 May 2011, while the part of this report concerning the competences of the Supervisory Board was approved on 31 May 2012.

3.1.1.3.3. Audit committee of the FSMA

Since the Twin Peaks reform of financial supervision, the FSMA has an audit committee²⁷⁴. Article 48, § 1, of the Law of 2 August 2002 as amended by the Royal Decree of 3 June 2011, provides that the Supervisory Board exercises general supervision of the FSMA and that in order to ensure this supervision, it shall set up an audit committee from among its members. In accordance with the Law, this committee consists of three members selected from the Board who may not have holdings, within the meaning of Article 13 of the Code on Companies, in a company under the permanent supervision of the FSMA, nor hold a position or mandate in a company under the permanent supervision of the FSMA, or in a professional association representing the companies under the supervision of the FSMA.

Beside these general tasks, the Law also mentions specific tasks for the audit committee:

- the audit committee takes cognizance of the internal audit reports²⁷⁵ and of the response given to them by the Management Committee;
- it informs the Chairman of the Management Committee of every useful recommendation;
- it examines the draft version of the budget and of the financial statements as drawn up by the Management Committee before these are approved by the Board;
- the Management Committee and the audit committee propose to the Supervisory Board to approve the annual budget, the financial statements and the part of the annual report concerning the Supervisory Board;
- once a year, it reports to the Supervisory Board.

²⁷⁴ The CBFA's Supervisory Board did not have a permanent audit committee, but it had already set up a number of internal committees tasked with preparing the approval of the budget, the financial statements and the annual report (see the CBFA Annual Report 2008-2009, p. 20).

²⁷⁵ An internal audit service had been set up in 2005 by the CBFA, with the task of assisting the Management Committee in the management of the risks faced by the institution in the accomplishment of its tasks.

Article 12, fourth paragraph, of the internal regulations of the FSMA of 17 November 2011 also specifies that the audit committee examines the draft version of the budget and the financial statements as drawn up by the Management Committee and submits them to the Supervisory Board's approval. For that purpose, the audit committee reports to the Supervisory Board on its examination of the budget and of the financial statements and formulates a proposal to the Board. The proposal should be adopted by a majority of the members of the audit committee. If the members of the audit committee are unable to reach a common position, the report may mention the divergent points of view. Article 40, second paragraph, of the above-mentioned internal regulations also stipulates that the Supervisory Board, at the proposal of the Management Committee and upon the recommendation of the audit committee, determines the rules of valuation for the preparation of the accounts. Article 42, fourth paragraph of the internal regulations stipulates that the audit committee may decide to hear the auditor.

During the meeting of 11 April 2011, the Supervisory Board of the FSMA appointed Madam Marieke Wyckaert, Mr Dirk Van Gerven, Chairman of the Board, and Mr Pierre Nicaise as members of the audit committee.

The audit committee met three times in 2011 and used the written procedure once. The audit committee examined among other things the annual report of the CBFA for 2010 as well as the budget of the FSMA for 2011 and 2012. Pursuant to the above-mentioned legal provisions, the audit committee reported to the Supervisory Board on that subject and formulated a recommendation for approval.

The audit committee also formulated a number of suggestions regarding the draft internal regulations of the FSMA, which the Supervisory Board approved on 17 November 2011.

The members of the audit committee were also informed by the Chairman of the Management Committee and the Secretary General of the proposed main lines of the new Decree on the operating expenses of the FSMA²⁷⁶.

During one of their meetings, the members of the audit committee heard the FSMA's auditor. Finally, the committee began its examination of its mode of interaction with the internal audit department of the FSMA.

3.1.1.4. Auditor

André Killesse²⁷⁷

In accordance with Article 57, second paragraph, of the Law of 2 August 2002, the FSMA's accounts are verified by one or more company auditors. The auditors are appointed by the Supervisory Board for a renewable term of three years, on condition that they not be included on the list of auditors accredited by the FSMA and not hold any position at a company subject to the FSMA's supervision. The auditors verify and certify every element specified by the regulations on the coverage of the FSMA's operating expenses as referred to in Article 56 of the above-mentioned Law.

Moreover, within the framework of the reform of the supervisory architecture in 2011, the Royal Decree of 3 March 2011 stipulates that the auditor is required also to certify the statement of the debts, the receivables and the disputes that the CBFA must draw up on the date of the transfer of competences to the National Bank and which concern the competences, the members of the Management Committee and the staff members of the CBFA being transferred to the National Bank (see Article 335 of the Twin Peaks Decree).

²⁷⁶ See this report, p. 105.

²⁷⁷ Appointed in accordance with Article 57, second paragraph, of the Law of 2 August 2002 on the supervision of the financial sector and on financial services.

3.1.1.5. Sanctions Committee

Tasks of the Sanctions Committee

Pursuant to Article 48bis of the Law of 2 August 2002, as established by the Twin Peaks Law, the Sanctions Committee determines the imposition of administrative fines by the FSMA. It can impose an administrative fine in cases in which the legislation gives the FSMA the competence to do so. Pursuant to Article 47 of the Law, as amended by the Twin Peaks Decree, the Sanctions Committee is a body within the FSMA.

In accordance with the legal procedural rules for imposing administrative fines²⁷⁸, it is the Management Committee of the FSMA that must decide whether or not to start proceedings that may give rise to the imposition of an administrative fine. To that end, the Management Committee sends a notification of the charges to the persons concerned and submits this notification to the Chairman of the Sanctions Committee. The investigation report drawn up by the investigations officer, after completion of the investigation he launched and conducted, will be appended to this notification.

The Sanctions Committee may impose an administrative fine on the persons concerned after adversarial proceedings. No sanction may be pronounced without having heard the persons concerned or their representative or, if they fail to appear, without having appropriately summoned them to be heard. During the hearing, the Management Committee is represented by a person of its choice and may present its comments. The Sanctions Committee issues a reasoned decision. The Sanctions Committee publishes its decisions on the website of the FSMA mentioning the names of the parties unless such publication seriously risks disrupting the financial markets

or might cause disproportionate damage to the parties in question. In the latter case, the decision is published on the website of the FSMA without mentioning the names of the parties. If an appeal has been lodged against a sanction decision, the decision is published without mentioning the names of the parties, while awaiting the result of the court proceedings.

Composition of the Sanctions Committee

Pursuant to Article 48bis of the Law of 2 August 2002, the Sanctions Committee of the FSMA is composed of 10 members appointed by the King:

- 1° two justices or honorary justices, appointed on the recommendation of the senior president of the Council of State;
- 2° two justices of the Supreme Court (Cour de Cassation/Hof van Cassatie) or honorary justices of the Supreme Court, appointed on the recommendation of the senior president of the Supreme Court;
- 3° two judges who do not serve on the Supreme Court or the Brussels Court of Appeal;
- 4° four other members.

During the five years preceding their appointment, the members of the Sanctions Committee may not have been members of a body of the FSMA other than the Supervisory Board, or of its staff. The members are also subject to a number of legal incompatibilities and are bound by the obligation of professional secrecy.

Their mandate begins to run from the date of the first meeting of the Sanctions Committee²⁷⁹.

The Chairman is appointed by the members of the Sanctions Committee from among the people previously mentioned under 1°, 2° and 3°.

²⁷⁸ Articles 70 to 73 of the Law of 2 August 2002, as amended by the Twin Peaks Law. These rules came into effect on 15 July 2011 (Royal Decree of 28 June 2011 determining the date of application of certain provisions of the Law of 2 July 2010 amending the Law of 2 August 2002 on the supervision of the financial sector and on financial services and the Law of 22 February 1998 determining the organic status of the National Bank of Belgium, and containing various provisions (Belgian Official Gazette, 5 July 2011).

²⁷⁹ The first meeting of the Sanctions Committee was held on 15 October 2011.

On the basis of the Royal Decree of 26 September 2011, the composition of the Sanctions Committee is as follows:

Members

- Marnix **Van Damme**, chamber president at the Council of State, on the recommendation of the senior president of the Council of State (4)
- Philippe **Quertainmont**, chamber president at the Council of State, on the recommendation of the senior president of the Council of State (1)
- Luc **Huybrechts**, emeritus section president at the Supreme Court, on the recommendation of the senior president of the Supreme Court (8)
- Claude **Parmentier**, meritis section president at the Supreme Court, on the recommendation of the senior president of the Supreme Court (3)
- Michel **Rozie**, senior president of the Antwerp Court of Appeal, in his capacity as judge who does not serve on either the Supreme Court or the Brussels Court of Appeal (2)
- Hamida **Reghif**, additional judge for the jurisdiction of the Brussels Court of Appeal, in her capacity as judge who does not serve on either the Supreme Court or the Brussels Court of Appeal (9)
- Guy **Keutgen** (5)
- Pierre **Nicaise** (10)
- Reinhard **Steennot** (7)
- Dirk **Van Gerven** (6)

End date of the mandate

- 14 October 2017
- 14 October 2014
- 14 October 2014
- 14 October 2017



Mr Rozie was elected chairman of the Sanctions Committee by the members of the Sanctions Committee.

The Sanctions Committee can resolve validly when two members and the chairman are present. When the chairman is prevented from attending, the Sanctions Committee can resolve validly if three of its members are present.

Activities of the Sanctions Committee

Internal regulations

In 2011, pursuant to the aforementioned Article 48bis of the Law of 2 August 2002, the Sanctions Committee laid down the procedural rules and the rules of conduct for the treatment of the sanctions dossiers in a set of internal regulations, and submitted them to the King for approval²⁸⁰.

These internal regulations contain, among other things, the rules on the composition of the Sanctions Committee and on the possible grounds for objection against a member of the Sanctions Committee. These rules set down procedural rules and terms for the organization of the adversarial process before the Sanctions Committee, including the way in which the hearings by the Sanctions Committee will take place. The rules specify that during the deliberations by the Sanctions Committee on the decision to take, the sitting members of the Sanctions Committee and if necessary the Secretary of the Sanctions Committee should be present. The investigation officer and his rapporteur, the members of the Management Committee and the person representing the Management Committee at the hearing, and the party or his/her representative may under no circumstances be present during the deliberations.

The decision of the Sanctions Committee is approved, after deliberation, by at least the majority of the deliberating members and is signed by all the deliberating members. The internal regulations also contain specific rules concerning the notification and the publication of the decision.

Finally, a number of rules of conduct to be respected by the members are prescribed. Among other things, it is specified that a member of the Sanctions Committee who has a personal interest that could impair his independence must inform the Chairman of the Sanctions Committee of this and can not participate in the hearing or the deliberations about the decision.

Protocol

The internal regulations of the FSMA of 17 November 2011 lay down that the Management Committee provides the Sanctions Committee with the resources required, in both staff and material resources, for the execution of its legal task. The internal regulations lay down that the Sanctions Committee may conclude a protocol on that matter with the Management Committee. Such a protocol was signed on 13 December 2011 between the Management Committee and the Sanctions Committee, and is aimed

at establishing rules governing the aspects that concern the two bodies and at ensuring that the Sanctions Committee disposes of the resources and the support required to perform its duties in an appropriate manner. In that regard, the protocol is an extension of the aforementioned internal regulations of the Sanctions Committee, which states that the Sanctions Committee may make use of the assistance of one or more people for, among other things, preparing a draft decision of the Sanctions Committee. The protocol specifies that after joint consultation between the Chairman of the Management Committee and the Chairman of the Sanctions Committee, the Management Committee provides the Sanctions Committee with an experienced Dutch-speaking and an experienced French-speaking lawyer for the coordination of its secretariat. The aforementioned internal regulations and the protocol specify that in the performance of their tasks for the Sanctions Committee, the aforementioned people receive instructions only from the Chairman of the Sanctions Committee or from the sitting members of the Sanctions Committee. In the performance of its tasks, the Sanctions Committee may also, in special cases, call upon experts.

The protocol also specifies that when the Sanctions Committee mandates the investigations officer, in accordance with its internal regulations, to answer questions or to make an additional investigation, the investigations officer may, in accordance with Articles 51, § 4, juncto 70 of the Law of 2 August 2002, make use of the necessary staff resources of the FSMA. In the performance of these tasks, these persons do not receive instructions from the Management Committee.

The protocol also regulates a number of procedural matters, among other things concerning the collection of the administrative fines imposed by the Sanctions Committee. It is also agreed that the annual report of the FSMA must include a distinct part reserved for a report on the activities and the decisions of the Sanctions Committee. The text on the Sanctions Committee published in the annual report must first be approved by the Sanctions Committee.

Decisions of the Sanctions Committee about which a judgment in appeal has been pronounced

In 2010, the Sanctions Committee of the CBFA imposed a fine in two dossiers concerning market abuse (one concerned insider dealing and the second concerned market manipulation)²⁸¹. An appeal was lodged against these decisions, of 28 April 2010 and of 31 May 2010 respectively, with the Brussels Court of Appeal; the latter handed down its judgment in 2011²⁸².

²⁸⁰ These rules were approved by the Royal Decree of 12 March 2012 and published in the Belgian Official Gazette of 27 March 2012.

²⁸¹ See CBFA Annual Report 2009-2010, p. 69.

²⁸² See this report, p.63ff.

3.1.2. The organizational structure in practice

3.1.2.1. The internal audit function at the FSMA

The role of the internal audit function is to examine the entire field of auditing at the FSMA by means of operational, financial and compliance audits. The function was introduced in 2005 after the then-CBFA had developed, following the merger of the former CBF and the Insurance Supervisory Authority (OCA/CDV) and the acquisition of a number of new statutory roles, into an organization with a wide range of responsibilities. The purpose of the function is to inform the Management Committee about the state of the organization's internal controls and to formulate the necessary recommendations in this regard.

In addition to the traditional audit assignments, internal audit also focused in 2011 on activities in connection with the new organization resulting from the Twin Peaks reforms. As a result of those reforms, internal audit also operates in a changed legal framework, in that the FSMA now has a permanent audit committee. The supervisory board constitutes this committee from among its members in order to exercise its supervisory role²⁸³. The law specifies in this connection that the audit committee must examine the internal audit reports and the Management Committee's response to them. In view of these various considerations, a process of reflection was launched about, among other matters, internal audit's future role and the form of interaction between internal audit and the audit committee.

3.1.2.2. Code of professional ethics

The FSMA's code of professional ethics, as drawn up by the supervisory board of the then-CBFA, was confirmed by the FSMA's supervisory board in 2011.

The former code's provisions thus remain fully applicable to the FSMA, without alteration.

It should be noted that those companies for which prudential supervision has been exercised by the NBB since 1 April 2011 are regarded for the application of the code as 'companies under the FSMA's permanent supervision'. This means that the code's provisions on financial transactions, urgent requests, rules of conduct and rules for negotiations about a potential position a staff member may hold outside the FSMA remain applicable to these companies. The FSMA must not only see to it that these

companies comply at all times with the rules of conduct applicable to them, but can also, where applicable via the NBB, be notified of problems which pose an immediate threat to the company's continued survival.

In 2011, members of staff submitted seven requests to sell their shares or include them in an exchange or repurchase operation. For each of these requests for authorization, the Secretary General verified whether the proposed transaction was of a defensive character, and whether the FSMA services had any relevant information that could be deemed privileged.

3.1.2.3. Cooperation with the National Bank of Belgium

The reorganization of supervision of the Belgian financial sector - Impact on the structure of the FSMA

With the Twin Peaks Decree, financial supervision has been thoroughly reorganized. The impact of this on the structure and functioning of the FSMA, as the legal successor to the CBFA, is considerable.

As a result of the reform, around half of its personnel moved to the NBB, where they continue to fulfil the prudential supervision roles that now fall within the competence of the NBB. In order to shape its new competences, the FSMA needs new employees, and to some extent employees with different qualifications.

Important elements of its functioning have been restructured in order to give concrete form to the institutional principles of the Twin Peaks model. Thus the operational collaboration that used to exist with the NBB has been largely dismantled, with what remains being overhauled in line with the cooperation arrangements set out in the Twin Peaks Decree.

The financing of the FSMA's operating expenses needs to be revised in order to take account of the new supervisory set-up.

The FSMA's support services focused in 2011 on developing this new supervisory operational framework.

3.1.2.4. Developments in IT

The FSMA's activities in the IT field in 2011 were also dominated by the implementation of the new supervisory architecture.

In order to fully safeguard the continuity of prudential supervision at all times, the following steps were taken:

- the transfer to the NBB, which has assumed prudential supervision of credit institutions, stockbroking firms and insurance companies, of the IT applications specifically developed for such purposes which had

²⁸³ See this report, p. 97.

previously been used by the CBFA, as well as of the electronic records relating to the prudential supervision of these institutions;

- the separation of the applications for management, collection or analysis of high-quality information (eCorporate, eManex) and of financial information. These applications were developed for and had previously been used by the CBFA for the supervision of all sectors falling within its sphere of competence. In the future, they will be used both by the NBB for the prudential supervision of credit institutions and insurance companies, and by the FSMA for the exercise of its own supervisory competences.
- the introduction of the required procedures for the assumption by the FSMA as quickly as possible of its own IT infrastructure which had previously been held in common with the NBB. In this respect, the FSMA has opted to partially outsource the management of its IT infrastructure to an external partner. The actual transfer of the infrastructure to this new partner's data centre should take place in the first half of 2012. From then on, the FSMA's IT service will also resume responsibility for a number of support functions that have previously been taken care of by the NBB.

The FSMA also carried on work on its "eDossier" project for the automation of file management and tracking, by mapping its control and decision-making processes using a methodology known as BPM (business process management).

Finally, in 2011 the FSMA, in connection with the development of its new competences, focused its efforts on research and preparatory work in order to fine-tune its systems to the collection and analysis of new information of use for the supervision of rules of conduct and financial products.

3.1.2.5. Human resources management

Twin Peaks

In 2011, human resources management was largely dominated by the preparations for and consequences for the staff of the new division of competences between the supervisory authorities.

1 April 2011 was not just an important milestone at the institutional level: for the staff too, the new allocation of competences between the supervisory authorities meant significant changes. 191 staff members, who had previously been tasked at the CBFA with the supervisory roles that were assigned to the NBB from 1 April 2011, were transferred to the Bank, where they have continued their careers and retained their employment status.

Directly after this transfer, every effort was made to ensure that the FSMA, as the reorganized supervisory authority, could perform its tasks properly again as soon as

possible. New members of the Management Committee²⁸⁴ were appointed, as well as five new line managers. This was partly achieved by internal promotion of senior executives. The assistant director of the General Secretariat and the person in charge of the service responsible for financial education for consumers were recruited externally.

Recruitment

In order to boost its workforce further, the FSMA's Management Committee decided to use the services of recruitment agencies for a number of key management positions. They were given the assignment of finding suitable senior profiles as quickly as possible for immediate deployment as project managers in a number of new fields of competence. In the course of 2011, four project managers were recruited in this way, with specific knowledge and experience of rules of conduct and external communication.

In early September 2011, a major recruitment campaign was launched. Both via the traditional channels such as the specialized job supplements in the main newspapers and the FSMA's website, and via the social media, a search was conducted for profiles with several years of experience to reinforce the existing teams or those under construction.

Regardless of the channel used, all candidates underwent the same recruitment tests. The selection procedure consists of four stages. Initial selection on the basis of candidates' CVs is followed by an interview with the head of the human resources service and one or more representatives of the recruitment team²⁸⁵. There then follows a written test and an external assessment. The line management's direct involvement in both the initial interview and the written test is considerable. On the basis of these procedures and after taking advice from the secretary-general, the Management Committee takes the final decision whether to recruit an employee. The completion time for this procedure is around two months.

²⁸⁴ See this report, p. 93.

²⁸⁵ See CBFA Annual Report 2008-2009, p. 97. The recruitment team consists of representatives from the different departments. Usually, these are executives with considerable seniority and/or line managers.

In 2011, a total of 18²⁸⁶ talented new staff members signed an employment contract with the FSMA.

Like other employers looking for new talent on the employment market, the FSMA competes in a talent war. Certain profiles such as auditors, IT specialists and management assistants remain hard for the FSMA to find. Despite this, the institution deliberately chooses to set a high standard for the recruitment of new staff members. The FSMA looks for highly trained and motivated employees with a bachelor's or master's degree. Attractive candidates have a strong academic record and can preferably demonstrate relevant professional experience, and should have impeccable social values and credentials. Due to the requirement for relevant experience, the average 287 age at recruitment hovers around 30 for university-educated staff members.

The workforce in figures²⁸⁸

	31/12/2011
Number of staff members according to the staff register (units)	260 ²⁸⁷
Number of staff members according to the staff register (FTEs)	245.08
Operational staff members (FTEs)	237.69
Maximum staff members (FTEs)	275

The number of staff that the FSMA can employ is determined by the Royal Decree (Art. 346 § 1, 3°) on the development of the supervisory architecture for the financial sector, and is 275 full-time equivalents for 2011.

Characteristics of the workforce

The average employee age at the FSMA is 43.

Among both the administrative staff and the university graduates, women are in the majority (56%).

At the end of 2011, 46% of the FSMA's staff had university degrees. The qualifications of university graduate staff are in the following areas:

Law	53 %
Economics	32 %
Mathematics	5 %
Other	10 %
Multiple degrees / specializations	59 %

The integration of statutory and contractual staff from the former CDV

Of the staff members who opted for an integration contract²⁸⁹ after the integration with the Insurance Supervisory Authority (CDV /OCA) and for whom the transitional period had not yet been completed on 1 April 2011, seven joined the NBB. At present, the FSMA therefore still has eight employees with an integration contract. In the present circumstances, the final employee will complete the planned transitional period in 2017.

Management of the statutory and contractual staff of the former CDV

Following the transfer to the NBB of 19 statutory members of staff and 4 contractual employees with public sector employee status, the breakdown of staff members who had opted to retain their status as public officials was as follows:

31 December 2011	Executives	Administrative staff	Total
Statutory staff	6	13	19
Contractual staff with public official status		4	4

The average age of this group of employees is 50, and the youngest is 36.

Training

In autumn 2011, an extensive training cycle was organized to explain the new competences and services of the FSMA to the staff. After the chairman had led off with an account of the FSMA's general action plan, each line manager described the competences, structure and action plan of his or her service.

²⁸⁶ 13 employees started in 2011 and 5 at the beginning of 2012.

²⁸⁷ Calculated over the last four years and not including project managers.

²⁸⁸ In 2011, 13 staff members joined and 8 retired.

²⁸⁹ See CBFA Annual Report 2006, p. 91 and 92, and the sectoral CLA of 25 May 1995.

In addition, extra attention was paid in both internal and external training programmes to various aspects of the FSMA's new competences. Staff members' training remains a priority.

New working method

In 2011 the possibilities for teleworking were also extended, in the light of the new working practices which are becoming more widespread. Following a successful trial project²⁹⁰, staff members were able in the first instance to work a small number of days at home on an occasional basis²⁹¹.

After a positive evaluation of occasional teleworking by the line management, structural teleworking was introduced in September 2011. This form of work organization gives staff members the possibility, under certain conditions, to work up to 13 days per quarter at home.

3.1.2.6. Consultation on social matters

Together with the National Bank of Belgium, the National Delcredere Office, the Participation Fund, the Federal Participation and Investment Corporation and Credibe, the FSMA is part of Joint Committee 325. Within this Committee, a sectoral collective labour agreement (CLA) for 2011-2012 was concluded on 5 September 2011; as in previous years, job security, the right to training and cost of living increases were central.

At institution level, the social dialogue agenda was, as in 2010, largely dominated by the reforms to the supervisory architecture.

The social elections, the preparations for which were started in autumn 2011, will be held on Thursday 10 May 2012. On that day, the staff representatives will be chosen for the Works Council, the Committee for Occupational Health and Safety and the trade union delegation.

3.1.2.7. Financing of the FSMA's operating expenses

In the light of the reform carried out on 1 April 2011²⁹², the Royal Decree of 22 May 2005 on the financing of the CBFA's operating expenses (the 'Financing Decree') has to be read in conjunction with the following provisions of the Royal Decree of 3 March 2011 on the financing of the FSMA for the operating year 2011²⁹³:

- the operational surplus or shortfall for the operating year is calculated over two separate periods²⁹⁴: a first period from 1 January to 31 March 2011, and a second from 1 April to 31 December 2011;
- the contributions payable by companies whose prudential supervision has been transferred to the National Bank of Belgium (NBB) are charged on a pro-rated basis by the NBB and FSMA²⁹⁵ for the year in question, apart from the contributions to the financing of the FSMA's headquarters and those intended to cover the costs of the audit service and consumer protection, which remain payable in full to the FSMA²⁹⁶;
- following the transfer of a number of employees to the NBB, the FSMA's workforce, expressed in full-time equivalents, has been increased to a maximum of 275.

It should also be noted that the Royal Decree of 22 May 2005 remained applicable until it was replaced by the Royal Decree of 17 May 2012 on the financing of the FSMA's operating expenses in execution of Article 56 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services²⁹⁷.

²⁹⁰ See CBFA Annual Report 2008-2009, p. 98.

²⁹¹ 10 days to be chosen freely on an annual basis.

²⁹² The date of entry into force of the Twin Peaks legislation.

²⁹³ See Article 346 of the Twin Peaks Decree.

²⁹⁴ The calculation is ratified by the FSMA's auditor.

²⁹⁵ One quarter goes to the FSMA and three-quarters to the NBB.

²⁹⁶ Especially with a view to covering operating expenses for supervision of the rules referred to in Article 45, § 1, Paragraph 1, 3°, and § 2, of the Law of 2 August 2002.

²⁹⁷ See Article 345 of the Twin Peaks Decree.



Pages 107-115 and footnotes 298-303 not translated into English, but available in French and Dutch on the FSMA website (www.fsma.be)



3.3. COMPOSITION OF THE DEPARTMENTS AND SERVICES

Situation as at 30 April 2012

Reporting to Mr Jean-Paul Servais, Chairman

Press Officer

Jim Lannoo

Policy, international relations and market infrastructures

Jean-Michel Van Cottem, **director**

Lieven Baert	Antoine Van Cauwenberge ^{*305}
Guillaume Bérard	Hendrik Van Driessche
Aimery Clerbaux ³⁰⁴	
An De Pauw	
Ann Devos	
Christophe Majois	
Didier Niclaes	
Renée Spierings	

* Serves as coordinator

Internal audit

Herman De Rijck, Els Lagrou

Supervision of listed companies and surveillance of financial markets

Thierry Lhoest, **director**

Luk Behets	Annick Lambrighs
Vincent De Bock	Johan Lembreght*
Mélanie De Rook	Martine Nemry
Luk Delboo	Stefaan Robberechts
Geoffrey Delrée	Koen Schoorens
Valérie Demeur	Katrien Van De Poel
Sonja D'Hollander*	Lynn Van Thillo
Kristof Dumortier	Dieter Vandelanotte*

Reporting to Mr Henk Becquaert

Supervision of funds and product promotion

Gaëtan Laga, **deputy director**

Nathalie Flamen*	Koen Verstraete
Séverine Fratta	Benoit Zinnen
Ivan Roisin	
Sabine Schönangerer	

* Serves as coordinator

Supervision of financial products compliancy

Veerle De Schryver, **deputy director**

Cyrielle Allard	Johan Lammens
François Bayi	Bregtje Van Bockstaele
Bénédicte Clerckx*	Nathalie Van Duyse
Philippe Despontin	Luc Vynckier

Reporting to Mr Gregory Demal

Supervision of financial service providers

Georges Carton, **first director**

Christian Janssens	Marc Van de Gucht*
Philippe Leirens	Gertjan van Gastel
Annick Mettepenningen	Glenn Van Noten
Christine Pécasse	

Supervision of intermediaries

Georges Carton, **first director**

Herlinde Boogaerts*	Christophe Viaene
Nathalie Gigot	Rosanne Volckaert
Nicole Peeters	
Marie-Ange Rosseels	

Supervision of rules of conduct (MiFID)

Hein Lannoy, **deputy director**

Stéphanie Brandt	Isabel Lopez Martinez
Pascale Coulon	Maryline Serafin*
Els De Keyser*	Aldo ten Geuzendam

* Serves as coordinator

³⁰⁴ Seconded to the Permanent Representation of Belgium to the European Union.

³⁰⁵ Also serves as Secretary of the Supervisory Board and the Sanctions Committee. Also serves as internal coordinator for the activities relating to the European Securities and Markets Authority (ESMA).

Reporting to Mr Wim Coumans, Deputy Chairman

Relations with consumers of financial services

Marie-Sheila Bastians
Jan De Pagie
Annick Dewulf³⁰⁷
Brigitte Leën
Monique Siscot
Luc Van Cauter*
Lutgarde Vandermassen

Financial education

Danièle Vander Espt, deputy director

Cécile Van Leeuw

* Serves as coordinator

Reporting to Mr Albert Niesten, Secretary General

Enforcement

Albert Niesten, Secretary General,
in his capacity as investigations officer

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Conny Croes	Patrick Van Caelenberghe
Stéphane De Maght	

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Reception, Facilities & Infrastructure

Egwin Schoolmeesters*

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Marie-Josèphe Léonard	

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Greet T'Jonck, director

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Caroline Gillain	Ingrid Trouillez ³⁰⁸
Bertrand Leton	Diederik Vandendriessche
Fabienne Maudoux	Caroline Vandavelde*
Marc Meganck*	

Juridische dienst

Annemie Rombouts, director

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Sylvie Decoster	Hans Seeldrayers
Antoine Greindl	Annelies Verrijdt

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Monica Sandor	

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IT services

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Véronique Léonard*	Jan Vyverman
Jeroen Rits	

³⁰⁶ Also serves as Secretary of the Commission for Voluntary Supplementary Pensions for the Self-employed and of the Board for Voluntary Supplementary Pensions for the Self-employed.

³⁰⁷ Also serves as Secretary of the Insurance Commission.

³⁰⁸ Also serves as Secretary of the Supplementary Pensions Commission and of the Supplementary Pensions Board.





Abbreviations

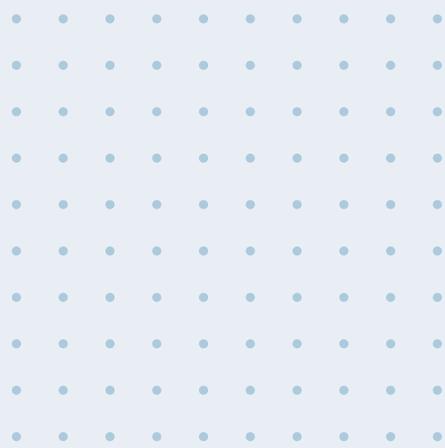
For purposes of readability we have used abbreviations throughout the annual report, for which the full official names are given below:

CBFA	Banking, Finance and Insurance Commission
CBF	Banking and Finance Commission (before its merger with the Insurance Supervisory Authority (CDV/OCA))
ISA	Insurance Supervisory Authority (before its merger with the Banking and Finance Commission CBF)
FSMA	Financial Services and Markets Authority
Insurance Supervision Law	Law of 9 July 1975 on the supervision of insurance companies
LCAT / WLVO	Law of 25 June 1992 on terrestrial insurance contracts
Money-laundering Law	Law of 11 January 1993 on preventing the use of the financial system for purposes of money-laundering and the financing of terrorism
Banking Law	Law of 22 March 1993 on the legal status and supervision of credit institutions
Law of 27 March 1995	Law of 27 March 1995 on insurance and reinsurance intermediation and on the distribution of insurance
Law of 6 April 1995	Law of 6 April 1995 on the legal status and supervision of credit institutions
Law of 2 August 2002	Law of 2 August 2002 on the supervision of the financial sector and on financial services
LPCI / WAPZ	Title II, Chapter 1, Section 4 of the Programme Law (I) of 24 December 2002 (Law on supplementary pensions for the self-employed)
LPC / WAP	Law of 28 April 2003 on supplementary pensions and their tax regime, and on certain additional social security benefits
UCI Law	Law of 20 July 2004 on certain forms of collective management of investment portfolios
Law of 22 March 2006	Law of 22 March 2006 on intermediation in banking and investment services and on the distribution of financial instruments
Prospectus Law	Law of 16 June 2006 on the public offering of investment instruments and the admission of investment instruments to trading on a regulated market

LIRP	Law of 27 October 2006 on the supervision of institutions for occupational retirement provision
Takeover Law	Law of 1 April 2007 on takeover bids
Transparency Law	Law of 2 May 2007 on disclosure of major holdings in issuers whose shares are admitted to trading on a regulated market and laying down miscellaneous provisions
Reinsurance Supervision Law	Law of 16 February 2009 on reinsurance
Twin Peaks Law	Law of 2 July 2010 amending the Law of 2 August 2002 on the supervision of the financial sector and on financial services and of the Law of 22 February 1988 determining the organic status of the National Bank of Belgium, and containing various provisions
General insurance regulation	Royal Decree of 22 February 1991 containing general regulations on the supervision of insurance companies
Life Regulation	Royal Decree of 14 November 2003 on life insurance activities
LPC / WAP Decree	Royal Decree of 14 November 2003 implementing the Law of 29 April 2003 on supplementary pensions and their tax regime and on certain additional social security benefits
UCI Decree	Royal Decree of 4 March 2005 on certain public undertakings for collective investment
Takeover Decree	Royal Decree of 27 April 2007 on takeover bids
Squeeze out Decree	Royal Decree of 27 April 2007 on squeeze out bids
Royal Decree of 14 November 2007	Royal Decree of 14 November 2007 on the obligations of issuers of financial instruments admitted to trading on a regulated market
Transparency Decree	Royal Decree of 14 February 2008 on disclosure of major shareholdings
Twin Peaks Decree	Royal Decree of 3 March 2011 on developments in the supervisory architecture for the financial sector
UCITS Directive	Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)
Market Abuse Directive (MAD)	Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 insider dealing and market manipulation
IORP Directive	Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision
Prospectus Directive	Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC
MiFID Directive	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC

Takeover Directive	Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids
Recast Banking Directive	Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)
UCITS IV Directive	Council Directive 2009/65/EEC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)
Prospectus Regulation	Regulation (EC) No 809/2004 of the Commission of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements
Real Estate Investment Companies	Royal Decree of 7 December 2010 on real estate investment Decree companies (bevals / sicafis)
Assuralia	Professional association of insurance companies
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
CESR	Committee of European Securities Regulators
EBA	European Banking Authority
EECS	European Enforcers Coordination Sessions
EEA	European Economic Area
EFRAG	European Financial Reporting Advisory Group
EIOPA	European Insurance and Occupational Pensions Authority
ESMA	European Securities and Markets Authority
FASB	Financial Accounting Standards Board
FATF	Financial Action Task Force
FEBELFIN	Belgian Financial Sector Federation
FPS	Federal Public Service
IAASB	International Auditing and Assurance Standards Board
IAIS	International Association of Insurance Supervisors
IAS	International Accounting Standards
IASB	International Accounting Standards Board
IORP	Institution for occupational retirement provision
UCI	Undertaking for collective investment

UCITS	Undertaking for collective investment in transferable securities (which has a European passport)
IFRS	International Financial Reporting Standards
IOSCO	International Organisation of Securities Commissions
MoU	Memorandum of Understanding
MTF	Multilateral trading facility
NBB	National Bank of Belgium
OFP	Organisation for Financing Pensions
CC	Code on Companies



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