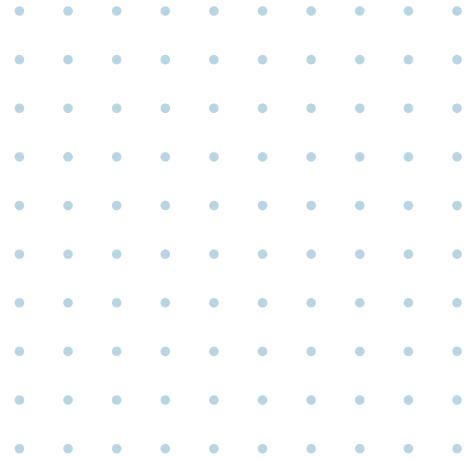


# ANNUAL REPORT 2012

FSMA



FINANCIAL  
SERVICES  
AND MARKETS  
AUTHORITY





# Annual Report 2012





# Table of Contents

<b>Foreword</b>	7
<b>2012 at a glance</b>	11
<b>I. Significant developments in supervision by the FSMA</b>	15
<b>1. Development of the regulatory framework</b>	16
<b>1.1. National</b>	16
1.1.1. Regulated savings accounts	16
1.1.2. Short selling	16
1.1.3. Prospectus Directive	16
1.1.4. Transposing UCITS IV	16
<b>1.2. European</b>	17
1.2.1. ESMA activities	17
1.2.2. EIOPA activities	18
1.2.3. ESRB activities	18
1.2.4. Financial Sector Assessment Programme (FSAP)	19
<b>1.3. International</b>	19
1.3.1. International Organization of Securities Commissions (IOSCO)	19
1.3.2. Bilateral co-operation	20
<b>2. Main developments by area of competence</b>	21
<b>2.1. Supervision in figures</b>	21
<b>2.2. Areas of supervision</b>	24
2.2.1. Supervision of listed companies and surveillance of financial markets	24
2.2.2. Supervision of financial products	29
2.2.3. Supervision of compliance with rules of conduct	38
2.2.4. Supervision of financial service providers and intermediaries	40
2.2.5. Supervision of supplementary pensions	44
2.2.6. Relations with consumers of financial services	47
<b>2.3. Financial education</b>	47
<b>2.4. Administrative sanctions</b>	48
2.4.1. Cases referred by the departments and preliminary investigation phase	48
2.4.2. Decisions to open an investigation	49
2.4.3. Summary of dossiers handled	49
2.4.4. International co-operation	51



<b>II. Supervision</b>	53
<b>III. The organization of the FSMA</b>	105
<b>1. Organization</b>	106
<b>1.1. Structure</b>	106
1.1.1. Governing bodies	106
1.1.2. Organization chart	107
1.1.3. Supervisory Board	108
1.1.4. Auditor	110
1.1.5. Sanctions Committee	111
<b>1.2. The organizational structure in practice</b>	113
1.2.1. The internal audit function at the FSMA	113
1.2.2. Code of professional ethics	113
1.2.3. Co-operation with the National Bank of Belgium	114
1.2.4. Developments in IT	115
1.2.5. Human resources management	115
1.2.6. Consultation on social matters	116
1.2.7. Financing of the FSMA's operating expenses	116
<b>2. Annual accounts 2012</b>	119
<b>3. Composition of the departments and services</b>	129
<b>Abbreviations</b>	133





# Foreword



Jean-Paul Servais, chairman

Dear readers,

Two years have now passed since the Financial Services and Markets Authority (FSMA) was created and the new organization for the supervision of the Belgian financial sector came into operation. Since then, Belgium has benefited from what is called a 'Twin Peaks' supervision model. In this model, the National Bank of Belgium (NBB) is competent for the prudential supervision of banking and insurance groups and of stockbroking firms. The FSMA, for its part, has been entrusted with a range of competences aimed at promoting consumer protection and maintaining market integrity.

After two years, the results are proving decidedly positive for the FSMA. At its inception, the FSMA launched a number of initiatives that have in the meantime come to fruition. In the summer of 2011, the FSMA promulgated a moratorium on the distribution of particularly-complex structured products which at the time was a market worth EUR 85 billion. The vast majority of distributors of such products signed on voluntarily to this moratorium. By doing so, they committed to no longer distributing structured products that are deemed particularly complex on the basis of the criteria defined by the FSMA.

Two years on, the effects of this moratorium are clear to see. As will be detailed further on in this report, since the launch of the moratorium, 414 structured products were distributed on the Belgian retail investment market. All of these products strictly comply with the rules of the moratorium. The products distributed since the moratorium include in most cases only two mechanisms to determine yield. Prior to the launch of the moratorium, products could often include more than ten mechanisms.

At the same time, we have observed an upward trend in the number of structured products as well as the issue volume of these. The moratorium therefore has not proven to obstruct growth in the Belgian market for structured products, and developers of structured products have managed to reconcile the product simplification imposed by the moratorium with the interests of consumers.

When the FSMA started up, a new specialized department was set up to oversee compliance by financial institutions with rules of conduct. In 2012, this department carried out a number of on-site inspections on the subject of 'conflicts of interest'. The purpose of these inspections was to monitor whether rules of conduct were adhered to in cases where the institution could have interests in conflict with those of its clients. These inspections - which were conducted on-site all the way down to branch level

- covered institutions representing 53.5% of the assets of retail clients that are invested in Belgium through investment services.

It has emerged from these inspections that a policy on conflicts of interest is, in practice, not often sufficiently conspicuous in day-to-day operations. Employees with a client-facing role are not always aware of potential conflicts of interest, and adherence to rules of conduct is often insufficiently monitored at an internal level.

Based on the findings during the inspections, the FSMA has issued 24 orders to meet the necessary measures by a deadline set by the FSMA. Alongside this, 85 recommendations were made relating to shortcomings that needed to be remedied. One overall conclusion gleaned from these inspections was the need for the highest levels of management in institutions to instil a culture of compliance at all levels. The inspection reports were also sent directly to the highest level of management of the institution inspected.

In 2012, the political authorities, Febelfin and the FSMA concluded an agreement in principle for the reform of regulated savings accounts. These savings accounts are by far the most popular savings products on the Belgian market with over EUR 230 billion in these accounts. The aim of this reform is to improve the transparency of regulated savings accounts and make them easier to compare against each other. The FSMA has participated in drawing up regulatory texts to put this agreement into practice.

The FSMA has also developed a savings account simulator as part of the implementation of this agreement. This simulator allows savers to calculate the return from the different savings accounts available on the Belgian market. In this way, Belgian consumers can benefit from an independent tool, devoid of commercial interests, for making a like-for-like comparison of returns from regulated savings accounts.

As a result of the Twin Peaks reform, the FSMA has been expressly entrusted with contributing to the financial education of consumers. Improving financial education - along with the other supervisory tasks of the FSMA - can contribute to making consumers more discerning. To put this statutory task into practice, the FSMA has launched its own brand devoted to financial education: Wikifin. The aim is for this brand to become a reference for financial education.

The financial education programme has three components. The first component is a website where consumers can find trustworthy, neutral, useful and accessible information on all money- and finance-related matters. The site also contains several practical tools, such as the savings account simulator. This site will continue to be added to, including the addition of an approach based around stages of life. The second and third components of the programme involve co-operation with schools, and co-operation with other partners who work in the area of financial education respectively.

All of these initiatives illustrate the extent to which the FSMA has worked towards delivering on its supervisory tasks in the first two years of its existence. This conclusion is shared by the International Monetary Fund (IMF). The IMF has evaluated the Belgian financial sector as part of its Financial Sector Assessment Program (FSAP), and this also involved examining the new Belgian supervisory model.

The IMF refers in its report to the swiftness with which the FSMA has delivered on its new supervisory tasks. The report states that the FSMA has used the reform of the financial supervision architecture in Belgium as an opportunity to respond to changes in the sector. The FSMA comes out of the report as an institution that is open, proactive and dedicated. The IMF pinpoints in that respect the quality of the initiatives that the FSMA has developed such as the moratorium, the MiFID inspections and the financial education programme.

The supervision by the FSMA of Belgian Institutions for Occupational Retirement Provision (IORPs) has also been evaluated positively by EIOPA, the European Insurance and Occupational Pensions Authority. EIOPA carried out a peer review on the supervision of IORPs and its evaluation report gave a positive assessment of the organization and performance of supervision by the FSMA. The report also identified several good practices which will be promoted by EIOPA among other supervisory authorities.

\*  
\* \* \*

The publication of this annual report is also an opportunity to look towards the following months. The FSMA will naturally continue to implement the initiatives that have already been launched. A new round of MiFID inspections are being put in place, focused around the principle of the 'duty of care'. In the area of product supervision, the possibility is also being explored of more strictly curtailing

- or forbidding - the distribution of some other products on the Belgian market in addition to the moratorium on structured products. Certain routes are being explored for the implementation of stricter rules for advertising insurance products, particularly for Class 21 life insurance products. In addition, campaigns will be launched on the subject of financial education with the aim of converting the Wikifin brand into a household name.

Alongside this, work is being done at a political level on the draft bill to reinforce the powers of the FSMA and in that way to contribute to offering enhanced protection to users of financial products and services. The provisions of this draft bill include a legal basis for mystery shopping for the FSMA, and extending the rules of conduct to insurance companies and intermediaries.

The legislator has entrusted the FSMA with important duties, and the competences of the FSMA will continue to be expanded further. In order to accommodate this, the FSMA has held an active recruitment drive. In 2013 there will be further recruitment to reinforce the teams and to enable us to continue to fully perform our tasks. In addition, I am counting on the continued dedication and efforts of all the FSMA employees in the fulfilment of our duties and I would like to take this opportunity to thank everyone for all their hard work in 2012.

Jean-Paul SERVAIS  
Chairman





# 2012 at a glance



**10 January:** The FSMA starts its programme of on-site visits and inspections at financial institutions as part of its supervision of MiFID conduct of business rules. The first topic that the inspection teams focus on is that of the rules relating to conflicts of interest.

**13 February:** The FSMA decides to modify the rules on short selling shares in Belgian financial institutions by replacing the interim ban on the holding of net short positions with a reporting obligation for significant net short positions and with the 'locate rule'. This rule determines that people who sell shares without possessing or having borrowed them, must make certain arrangements to ensure that they may have a reasonable expectation that the shares sold can be delivered in a timely manner.

**26 March:** The FSMA introduces mandatory approval for compliance officers who are responsible for ensuring compliance with rules of conduct within financial institutions. These compliance officers must henceforth fulfil a certain number of conditions as regards knowledge, experience and training.

**27 March:** The Royal Decree approving the internal regulations of the Sanctions Committee of the FSMA is published in the Belgian Official Gazette. These regulations lay down the rules of ethics and procedure for the new Sanctions Committee and enable the Sanctions Committee to come into operation.

**1 April:** The FSMA is tasked with supervising transactions in Belgian government securities. This task had previously been the remit of the Belgian Securities Regulation Fund (Fonds des Rentes/Rentenfonds). The FSMA is also henceforth tasked with obtaining statistics on the volumes traded and with supervising the data on transactions executed by market makers (primary dealers) on government securities with a view to forwarding monthly reports to the Belgian Debt Agency.

**16 April:** The FSMA draws up a notification of charges for the Crown Prosecutor in the dossier relating to the external communications of Fortis SA/NV during the first half of 2008.

**16 May:** The FSMA is re-elected for a second term to the Board of the International Organization of Securities Commissions (IOSCO). The FSMA also increases its presence within the organization's working groups.

**20 June:** The FSMA conducts a public consultation on the introduction of a new legal status for financial planners and on setting out the rules of conduct that apply to providers of financial planning services. The new status sets out the conditions that must be met to be allowed to act as an independent financial planner.

**26 June:** The FSMA publishes its 2011 Annual Report. The Annual Report explains the FSMA's activities and the initiatives taken over the course of the past year. It also provides details on the institution's new organization.

**10 July:** The FSMA publishes the results of the consultation on a new regulatory framework for distributing structured products to retail investors. Based on these results, several topics are selected for a more in-depth analysis: transparency in the expected value of structured products as an alternative to transparency in the structuring costs; the extension of the application of certain aspects of the moratorium to other financial products; a feasibility study on a labelling system for financial products.

**12 July:** The FSMA clarifies the rules that apply to promoters of crowdfunding projects as well as those that apply to consumers wishing to invest in these. The term crowdfunding relates to initiatives consisting in collecting funds from the public, often via the Internet, in order to finance a specific project.

**13 July:** The political authorities, the FSMA and Febelfin reach an agreement in principle for the reform of regulated savings accounts. The aim of this agreement is to increase the transparency of these savings accounts and make them easier to compare against each other. The agreement determines, inter alia, that the FSMA shall provide a savings account simulator on a website managed by the FSMA.

**1 September:** The new rules of conduct on continuing professional education of intermediaries enter into force. The new rules were drawn up by the FSMA and the professional associations concerned, and aim to increase training requirements for intermediaries.

**6 September:** The Task Force on Unregulated Markets and Products of the International Organization of Securities Commissions (IOSCO) meets in Brussels by invitation of the FSMA. During this meeting, the supervisory authorities concerned shared experiences on the subject of structured products. The Task Force will draw up a report on structured products in 2013 based on this work.

**24 September:** A delegation from EIOPA visits the FSMA for the purposes of a peer review on the supervision of Institutions for Occupational Retirement Provision (IORP). EIOPA's evaluation report assesses the organization and execution of the FSMA's supervision in a positive light and identifies numerous good practices.

**1 November:** The European Regulation on short selling comes into force. In all EU Member States, investors with significant short positions in companies or in sovereign debt are obliged to report these to the relevant competent authorities. In Belgium, the relevant competent authority for this is the FSMA. Short positions of more than 0.5% of the issued share capital must be disclosed to the public.

**6 November:** The Financial Sector Assessment Program (FSAP), an in-depth analysis of the stability of the Belgian financial sector, is launched by the IMF. The focus of the IMF for this is, inter alia, on the supervision of the financial sector. The IMF determines that the new supervisory

structure is working well and welcomes the Memorandum of Understanding between the NBB and the FSMA.

**6 & 7 November:** In the presence of Her Royal Highness Princess Mathilde, the FSMA holds at its offices the regional meeting of Child & Youth Finance International (CYFI), the aim of which is to promote the financial education of young consumers all over the world. The FSMA intends to develop activities in the area of financial education by co-operating with Belgian and foreign partners such as the CYFI.

**13 November:** The Supervisory Board of the European Securities and Markets Authority (ESMA) re-elects the FSMA as Chair of its Investor Protection and Intermediaries Standing Committee (IPISC).

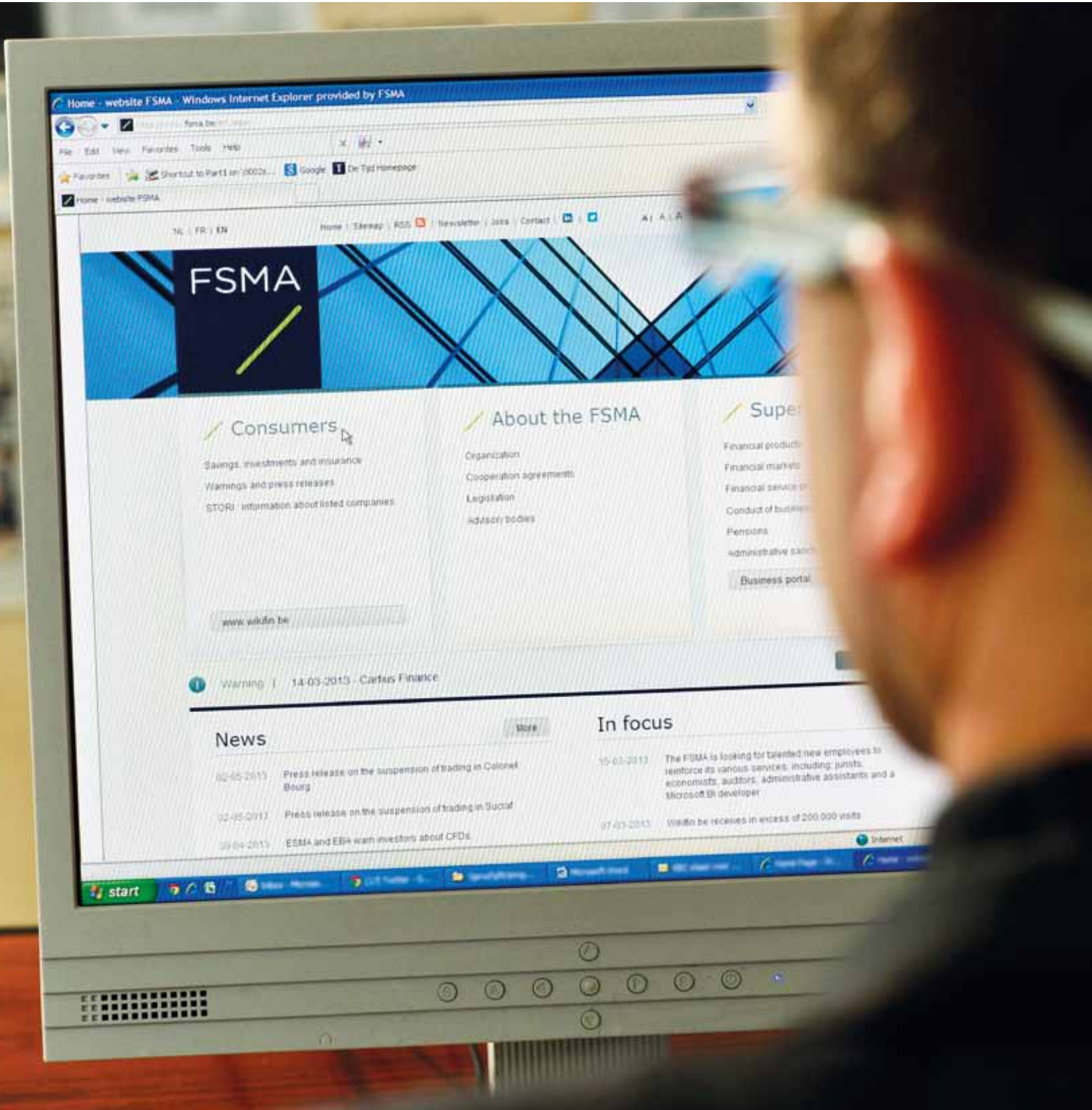
**21 December:** The FSMA and the NBB publish a new circular on the compliance function. This circular describes the principles that the compliance function must satisfy in order to supervise compliance by financial institutions with the rules of conduct.





I.

# Significant developments in supervision by the FSMA



## 1. Development of the regulatory framework

### 1.1. National

#### 1.1.1. Regulated savings accounts

In July 2012, an agreement in principle was concluded between the political authorities, the FSMA and Febelfin for the reform of regulated savings accounts. This agreement included measures on the provision of information and advertising for regulated savings accounts, and on the calculation and method of payment of interest. The aim of the measures contained in the agreement in principle is to improve the transparency of regulated savings accounts and to make them easier to compare against each other.

The specific measures contained in the agreement include:

- the development of a savings account simulator that gives savers an overview of the potential return on their savings, per savings account and per institution, based on a set of parameters that they have entered;
- the development of a standardized information document for regulated savings accounts;
- the drawing up of new rules on advertising and on the supervision thereof;
- the development by the financial institutions of a calculator to enable savers to establish the current status of the interest earned on their savings account.
- the introduction of a ban on the offers with the most conditions attached;
- a limit to the number of savings formulas;
- a standardized interest calculation method;
- the quarterly payment of loyalty premiums.

In 2012, the FSMA has actively contributed to drawing up and defining this agreement in principle. As part of this, the FSMA has developed a savings account simulator, which has been in operation since January 2013 on the Wikifin.be<sup>1</sup> website. The FSMA has also assisted in drawing up the necessary legislative texts for the implementation of the agreement in principle.

#### 1.1.2. Short selling

The regulations in Belgium regarding short selling have been amended as a result of the entry into force of the EU regulation<sup>2</sup> on short selling on 1 November 2012. The regulation imposes a new reporting obligation<sup>3</sup> for net short positions in Belgian issuers. The regulation imposes a rule called the 'locate rule', on the basis of which persons who sell shares without possessing or having borrowed them must make certain arrangements to ensure that they may have a reasonable expectation that the shares sold can be delivered in a timely manner.

#### 1.1.3. Prospectus Directive

In 2012, a number of implementing measures from the Prospectus Directive came into effect. The FSMA published a communication on the subject that is explained in more detail in Chapter 2 of this report<sup>4</sup>. The implementation measures of the Prospectus Directive are included in two regulations. One regulation establishes the design and content of the prospectus, the base prospectus, the summary, and the definitive terms & conditions and information requirements. The second regulation relates to the information on the permission to use the prospectus, information on underlying indices, and the requirement of an independent accountant's report.

#### 1.1.4. Transposing UCITS IV

In the year under review, the work for transposing the UCITS IV Directive and the implementing Directives, 2010/43/EU<sup>5</sup> and 2010/44/EU<sup>6</sup>, has completed. This work has led to the adoption of the Law of 3 August 2012 on certain forms of collective management of investment portfolios, which replaces the UCI law. Furthermore, two Royal Decrees serve to execute the provisions of this Law: the Royal Decree of 12 November 2012 on the management companies of undertakings for collective investment, and the Royal Decree of 12 November 2012 on certain public undertakings for collective investment<sup>7</sup>.

<sup>1</sup> See the present report, p. 47.

<sup>2</sup> Regulation (EC) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps.

<sup>3</sup> For more information on reporting thresholds, see p. 28 in the present report.

<sup>4</sup> See the present report, p. 54

<sup>5</sup> Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organizational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company.

<sup>6</sup> Commission Directive 2010/44/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure.

<sup>7</sup> For a description of the procedure put in place for this, please see the FSMA Annual Report 2011 p. 32.

## 1.2. European

### 1.2.1. ESMA activities

The FSMA contributes substantially to the work of ESMA. Since 2011, ESMA is the European authority responsible for developing European Community supervisory standards and for the convergence of supervisory practices for securities and markets. It is also tasked with the supervision of registered credit rating agencies<sup>8</sup>.

In the year under review, ESMA has been particularly active in bringing about an integration of European regulations. That is done through promulgating proposals for binding technical standards and issuing recommendations to the European Commission. ESMA's principal regulatory activities concerned the implementing measures for EMIR and for the short selling regulation<sup>9</sup>.

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. Competent authorities must make every effort to comply with these guidelines and recommendations pursuant to Article 16 of the Regulation establishing ESMA. On 22 December 2011, ESMA published such guidelines on the use of automated environments for trading in financial instruments<sup>10</sup>. Other guidelines published in 2012 concerned ETFs<sup>11</sup>, the suitability of investment advice<sup>12</sup> and the compliance function within investment firms<sup>13</sup>. The methods for implementing each of these guidelines in Belgium are detailed further in this report.

Within ESMA, the FSMA chairs the Investor Protection and Intermediaries Standing Committee. This Chair was renewed for two years from 1 January 2013. This group prepared the aforementioned guidelines that ESMA issued in 2012 in connection with the provisions of MiFID on the subject of the compliance function and the duty of care, which were based on the two supervisory briefings that were published on 14 December 2012 regarding suitability and appropriateness within the framework of MiFID. Under this working group, an operational working group was set up that serves as a forum for supervisory authorities to share their experiences of supervision of the MiFID rules.

In the area of investor protection, in 2012, ESMA used the option to publish a warning as they did in the previous year<sup>14</sup>. Article 9 of the Regulation establishing ESMA provides the option of publishing a warning where a financial activity constitutes a serious threat for one of the tasks of ESMA. In this context, ESMA warned in September 2012 of the distribution of financial instruments over the internet, which can entail risks for retail investors. ESMA and EBA also drew attention to the risks associated with contracts for differences in a joint warning<sup>15</sup>.

ESMA also contributed to the convergence of supervisory practices in a number of other areas. In 2012, ESMA for the first time published the key points that the national supervisory authorities in Europe will focus on when supervising 2012 financial statements of listed companies. These key points were established in a consultation between ESMA and the national supervisory authorities in Europe, in order to encourage the consistent application of IFRS. ESMA also published a public statement on the Treatment of Forbearance Practices in IFRS Financial Statements of Financial Institutions.

Within ESMA, the Review Panel is a permanent committee responsible for determining the extent of supervisory convergence by way of peer reviews. Topics covered so far include the application of the Prospectus Directive and the CESR/ESMA Money Market Fund Guidelines. In addition, an overview was drawn up on the use of sanctions under the Market Abuse Directive.

<sup>8</sup> For more information on the supervision of credit rating agencies, see the ESMA Annual Report on the manner in which ESMA has applied Regulation (EC) 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies. Until now, credit rating agencies have been the only financial sector for which supervision is centralized at a European level. Based on EMIR, ESMA will also in the future supervise trade repositories. For more information on this, see Regulation (EC) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories OJ. L. 201 of 27 July 2012.

<sup>9</sup> Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps. OJ. L. 86 of 24 March 2012.

<sup>10</sup> Systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities (ESMA/2012/122).

<sup>11</sup> Guidelines on Exchange-Traded Funds (ETFs) and other UCITS issues (ESMA/2012/832).

<sup>12</sup> Guidelines on certain aspects of the MiFID suitability requirements (ESMA/2012/387).

<sup>13</sup> Guidelines on certain aspects of the MiFID compliance function requirements (ESMA/2012/388).

<sup>14</sup> See the warning about unauthorized firms offering foreign exchange investments in the FSMA annual report 2011, p. 18.

<sup>15</sup> Contracts for difference (CFDs), 28 February 2013.

In the year under review, ESMA began work in connection with benchmarks that are used as a reference for financial markets. This is due to a concern about the existing practices when setting such benchmarks. A joint EBA-ESMA Task Force was formed, in which the FSMA is also involved. On 11 January 2013, ESMA and EBA published a consultation document containing principles for benchmark-setting. These principles are conceived as a first step to possible formal regulation and EU supervision of benchmarks<sup>16</sup>.

In 2012, ESMA also played a leading role in negotiating Memorandums of Understanding on its members' behalf with supervisory authorities from third countries. This led to an agreement being reached at the end of 2012 between the EU supervisory authorities and the Swiss supervisory authority, FINMA, for the supervision of alternative investment funds. Other similar agreements will follow over the course of 2013.

Cross-sector topics are dealt with by the three European supervisory authorities in the Joint Committee. The FSMA participates in a subcommittee of the Joint Committee that is involved with consumer protection and financial innovation and in that respect focuses on the potential rules for PRIIPs and the aspects of product supervision that occur across all sectors.

Finally it can be revealed that over the course of 2013, an evaluation will be made of ESMA and the other European authorities based on Article 81 of the Regulation establishing the ESAs. This will result in a European Commission report in 2014. This evaluation will occur in parallel with the introduction of the Single Supervisory Mechanism (SSM), under the European Central Bank, which concerns the eurozone and is open to all Member States.

This latest development is an important step because the ultimate responsibility for the prudential supervision of all banks in the future will lie with the single supervisory authority, even though supervisory tasks will be shared with the national supervisory authorities<sup>17</sup>. It is important too to touch on the fact that this banking union reform has no impact on the supervision of the financial markets, the supervision of conduct, and other aspects for which ESMA has a co-ordinating role.

<sup>16</sup> See also the consultation from the European Commission: Consultation Document on the Regulation of Indices (A Possible Framework for the Regulation of the Production and Use of Indices serving as Benchmarks in Financial and other Contracts), 5 September 2012.

<sup>17</sup> The SSM will be composed of the ECB and the national competent authorities. The ECB will acquire the responsibility for the general operation of the SSM. Based on the proposals that will be completed in 2013, the ECB will exercise direct supervision on all banks in the eurozone, albeit in a differentiated way and in close co-operation with the national supervisory authorities. Member States from outside the eurozone who want to take part in the SSM can enter into collaboration to this effect.

## 1.2.2. EIOPA activities

The FSMA made an active contribution within EIOPA to a number of publications and activities. These included a report on the current state of affairs with regard to national training standards for insurance intermediaries, a report on good practices for disclosure and selling of variable annuities, a report on the role of insurance guarantee schemes, and a report on the methodology for collecting, analysing and reporting on consumer trends. Moreover, the FSMA took part in the completion of the guidelines for complaints handling by insurance companies, and a report detailing good practices on this subject.

The FSMA actively participated in the completion of the EIOPA Recommendation of February 2012 on the review of the IORP Directive. The call for advice from the European Commission concerned the scope of the Directive, the clarification of certain notions within the framework of cross-border activities, information to members, and notably the introduction of a solvency policy for IORPs based on the effects of the Solvency II Directive for insurance companies. The FSMA held the Chair of one of the four working groups on this subject.

The FSMA also played an active role in the working group that accompanied the Quantitative Impact Study (QIS) by EIOPA for the review of the IORP Directive, in which Belgian pension funds participated. The results of this study will be published by EIOPA in 2013.

EIOPA's Review Panel has carried out a peer review in 2012 on the supervision of IORPs, and more particularly on the ability by the national supervisory authorities to access information from IORPs as well as to take the measures as referred to in Articles 13 and 14 of the IORP Directive. The FSMA, along with every member of EIOPA, has taken part in this review. EIOPA's evaluation report views the organization and execution of the FSMA's supervision in a positive light and identifies many good practices.

## 1.2.3. ESRB activities

The European Systemic Risk Board (ESRB) is tasked with the macro-prudential supervision of the financial system in the European Union. Its main objective is to prevent and mitigate systemic risks that could threaten financial stability in the EU. The FSMA attends the meetings of the General Board of the ESRB, which is that institution's main governing body.

Pursuant to Article 3, paragraph 2, points d) and f) of Regulation (EU) No. 1092/2010, the ESRB can issue recommendations for remedial action to be taken in response to the risks identified, and monitor follow-up of these recommendations. These recommendations may be either of a general or a specific nature and can be addressed to the Union as a whole or to one or more Member States, or to one or more of the ESAs, or to one or more of the national supervisory authorities.



In this context, in December 2012, the ESRB issued a recommendation relating to Money Market Funds (MMFs), specifically on public disclosure by MMFs and the use of variable net asset values.

In December 2012, the FSMA implemented the ESRB recommendations on lending in foreign currencies. These recommendations (ESRB 2011/C 342/01) were issued as a result of an increase being identified in foreign currency lending in a number of EU Member States, with an excess of foreign currency loans potentially presenting a significant systemic risk in these Member States. The FSMA considers that these recommendations contribute useful details concerning the application by financial institutions of the duty to disclose information when granting mortgage loans.

#### 1.2.4. Financial Sector Assessment Programme (FSAP)

The International Monetary Fund's primary purpose is to ensure the financial stability of the international monetary system. To do so, the IMF regularly evaluates the stability of the financial sector in its member countries, in certain cases in conjunction with the World Bank. The recent financial crisis has demonstrated that the health of the financial sector in a country has wide-ranging implications for its economy and that of other countries. The Financial Sector Assessment Programme (FSAP) enables the IMF to obtain a comprehensive and in-depth analysis of a country's financial sector and to identify the main sources of risk that exist in the country concerned.

In order to evaluate the stability of the financial sector, IMF teams examine the soundness of banks as well as that of the other components of the financial sector by carrying out stress tests, evaluating the quality of the supervision of banks, investment firms, insurance companies and the financial markets based on internationally-recognized standards, and by measuring the ability of supervisory authorities, decision-makers and financial safety nets to efficiently tackle a systemic crisis.

At the invitation of the Belgian authorities, the IMF carried out an evaluation of the stability of the Belgian financial system in 2012 (Financial Sector Assessment Programme - FSAP). As the supervisory authority for the financial sector in Belgium, the FSMA took part in this evaluation alongside the National Bank of Belgium (NBB).

In Belgium, the following components of supervision were subjected to an in-depth examination:

- the banking sector, based on the Basel Core Principles for Effective Banking Supervision;
- the insurance sector, based on the IAIS Insurance Core Principles.

The evaluation of the securities markets was carried out in the form of an update to the evaluation carried out in 2006. This evaluation was carried out on the basis of the IOSCO Objectives and Principles of Securities Regulation. Finally, the evaluation of the sector of systems for clearing and settlement of securities based on the CPSS/IOSCO Recommendations for Securities Settlement Systems was carried out within a parallel exercise jointly undertaken by several European countries.

The FSMA and NBB first carried out a self-evaluation on the basis of questionnaires, which was followed by the first on-site evaluation carried out by a team of IMF experts in November 2012 accompanied by interim conclusions. At the end of January 2013, the first stage was supplemented by a second on-site evaluation with the aim of analysing the macro-prudential framework as well as the crisis management system in place in Belgium.

The FSAP closes in May 2013 with the publication of the Financial System Stability Assessment (FSSA), a report on the official conclusions of this exercise.

### 1.3. International

#### 1.3.1. International Organization of Securities Commissions (IOSCO)

IOSCO's new governance took shape during the IOSCO 2012 AGM. This governance strengthens IOSCO's organizational structure and enables it to fulfil its role as the leading international regulator for financial markets, as well as to properly satisfy requests that come from the G20 and the Financial Stability Board (FSB).

Within the new organizational structure, the most important functions of the organization (drawing up international standards and promoting the implementation of these standards) were integrated to form a single Board that is also responsible for most of the administrative aspects. This Board is composed of 32 members and acquires the functions that were in the past performed by the Executive Committee, the Technical Committee and the Emerging Markets Committee Advisory Board.

The FSMA was elected to the Board of IOSCO by IOSCO's European Regional Committee during the 2012 AGM. In this way, the FSMA maintains the membership that it previously had of the Executive Committee. The FSMA was also re-elected by the Board to the IOSCO Audit Committee. That Committee assists the Board in auditing the organization's budget and accounts.

The FSMA also increased its participation in the IOSCO Policy Committees in 2012. These are responsible for preparing the standards and best practices that the organization sets. The FSMA is also henceforth a member of the Committee on Multinational Disclosure and Accounting, the Committee on Enforcement and the Exchange of In-

formation, and the Committee on Investment Management<sup>18</sup>.

In November 2012, the IOSCO Task Force on Unregulated Markets and Products met in Brussels by invitation of the FSMA. This meeting offered the supervisory authorities concerned an ideal opportunity to share experiences in the area of structured products. IOSCO will publish a report on structured products in 2013 based on the work of this Task Force.

In the year under review, IOSCO embarked upon several initiatives to contribute to the transparency and integrity of financial markets, as well as to investor protection. IOSCO and the Committee on Payment and Settlement Systems jointly published 'Principles for Financial Market Infrastructures' on 16 April 2012, with a view to strengthening the infrastructures that support the financial markets, including clearing and settlement institutions. Other important activities by IOSCO focused on Credit Default Swaps, securitization, and margin requirements for transactions in OTC derivatives that are not cleared via a central counterparty. Principles were also published on the subject of 'Ongoing disclosure for Asset-Backed Securities'. IOSCO also published a report on investor protection with respect to the distribution of complex financial instruments<sup>19</sup>.

In connection with a request from the FSB, IOSCO undertook activities relating to money market funds. This resulted in the 'Policy Recommendations for Money Market Funds', which were published on 9 October 2012. This document is in line with the approach for the shadow banking system and includes recommendations on the subject of valuation and on liquidity management, in order to avoid risks being suffered to financial stability as regards money market funds.

In 2012, IOSCO also started work in connection with Financial Benchmarks within the IOSCO Board Level Task Force on Financial Markets Benchmarks, in which the FSMA is also involved. This led to the publication on 11 January 2013 of a consultation report which proposes measures to address potential issues concerning benchmark-setting.

In the year under review, IOSCO also set up an Assessment Committee which is responsible for assessing the full and consistent compliance with IOSCO principles and standards by the members of the organization. The Assessment Committee will conduct thematic audits and put particular countries under the microscope. With this, IOSCO responds to an appeal by the G20 to monitor the implementation of the reforms that were brought into force in the wake of the financial crisis.

The Secretary General of IOSCO proposed measures to further strengthen the operation of the organization in the future, in particular by gathering additional funds from different sources for particular projects via a specific foundation<sup>20</sup>. The precise governance of this foundation and the activities that are to be financed with it will be determined in 2013.

### 1.3.2. Bilateral co-operation

As mentioned in the previous report, the FSMA signed a Memorandum of Understanding in 2012 with the Emirates Securities and Commodities Authority, its fellow supervisory authority in the United Arab Emirates.

On 27 November 2012, the FSMA also entered into a bilateral Memorandum of Understanding with the Federal Financial Markets Service from the Russian Federation. This agreement determines the assistance that both authorities will offer each other - in particular with respect to the sharing of information - within the scope of their respective legal tasks. The MoU has a wide area of application. The co-operation agreed upon is not limited to the supervision of financial markets and to market abuse but also covers regulations that apply to entities authorized or supervised by one of the signatories.

<sup>18</sup> Read more about the restructure of these working groups in 2012 and their tasks: IOSCO, Annual Report 2011, p. 24 et seq.

<sup>19</sup> IOSCO, Suitability Requirements with Respect to the Distribution of Complex Financial Products, 21 January 2013.

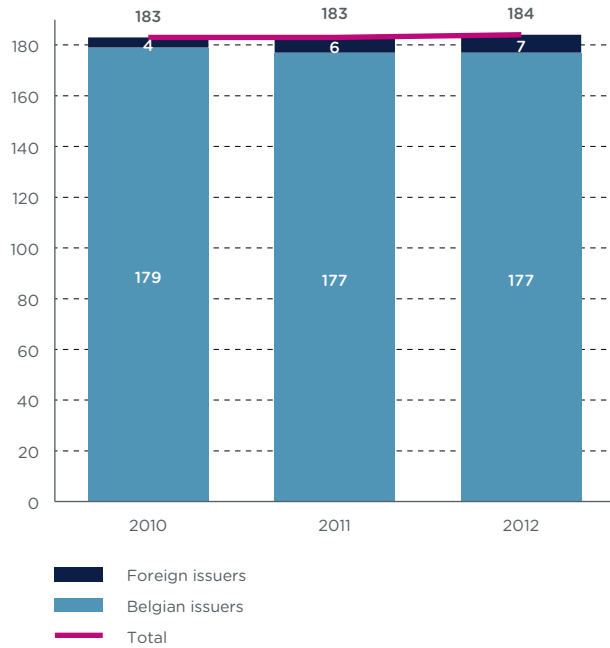
<sup>20</sup> See on the subject: IOSCO, Annual Report, 2011, Report by the Secretary General, p. 20.

## 2. Main developments by area of competence

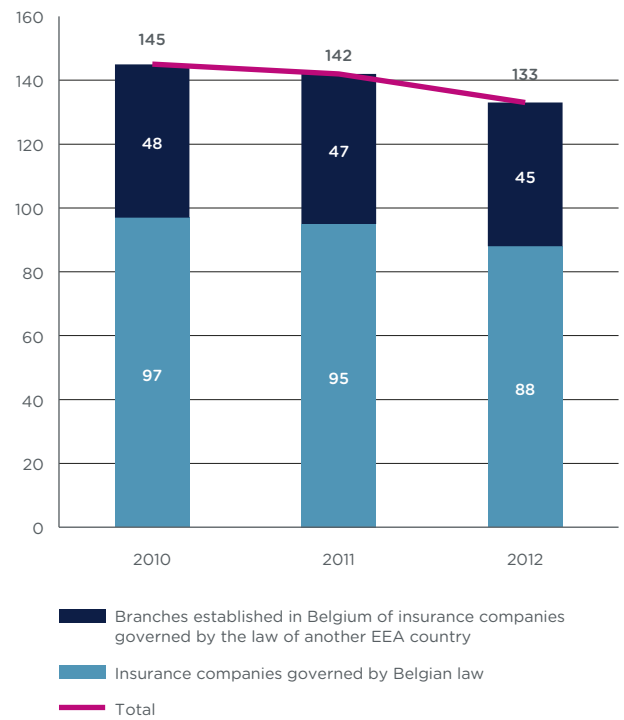
### 2.1. Supervision in figures

#### Listed companies (as at 31 December 2012)

Graph 1: Listed companies

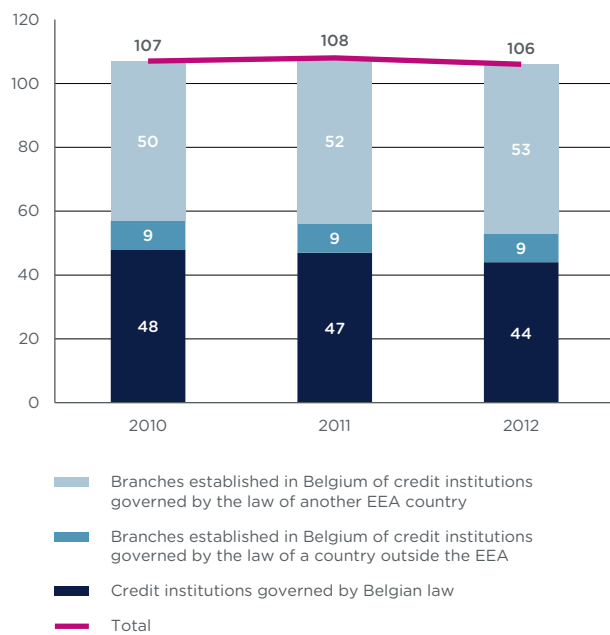


Graph 3: Insurance companies

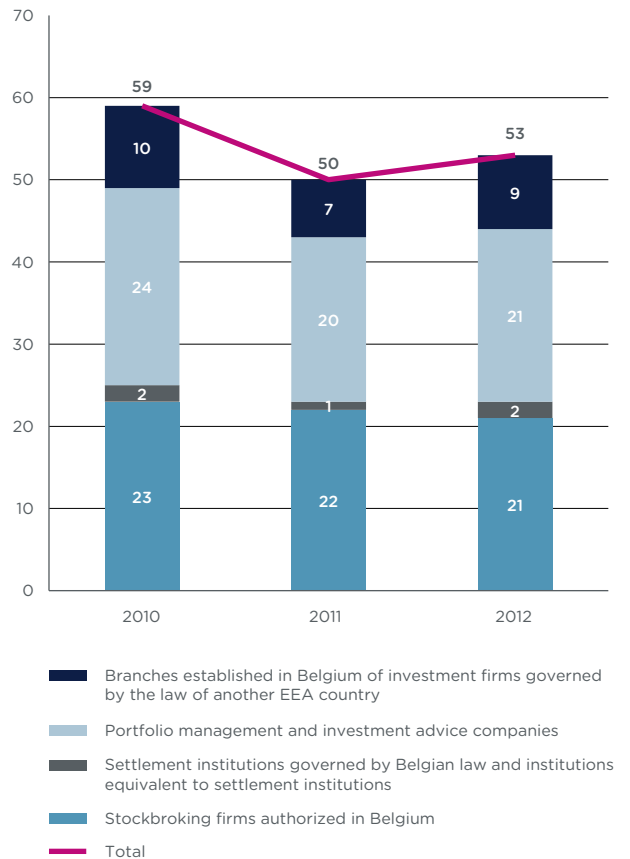


#### Institutions under product and conduct of business supervision

Graph 2: Credit institutions

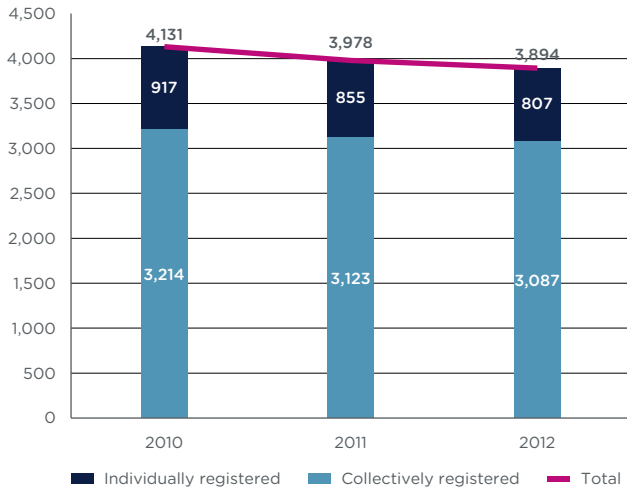


Graph 4: Other

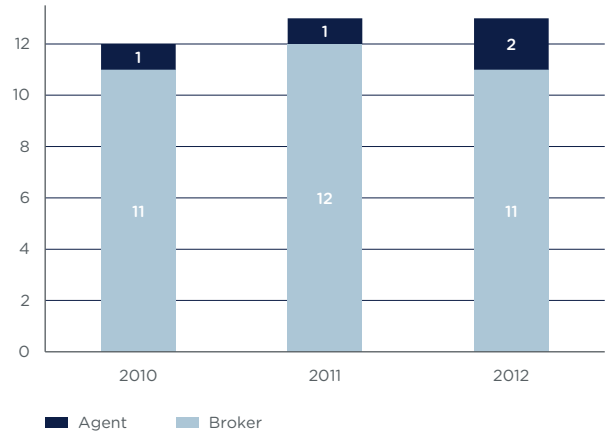


## Intermediaries

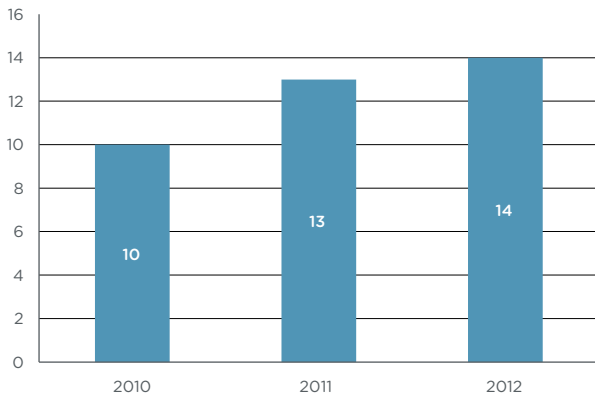
Graph 5: Intermediaries in banking and financial services (agents)



Graph 8: Reinsurance intermediaries

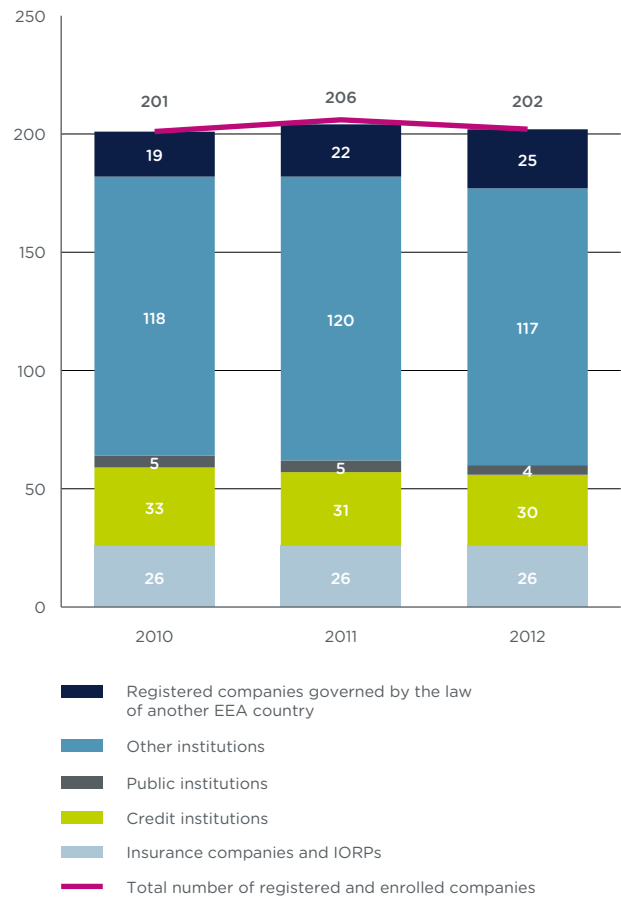


Graph 6: Intermediaries in banking and financial services (brokers)



## Mortgage companies

Graph 9: Mortgage companies



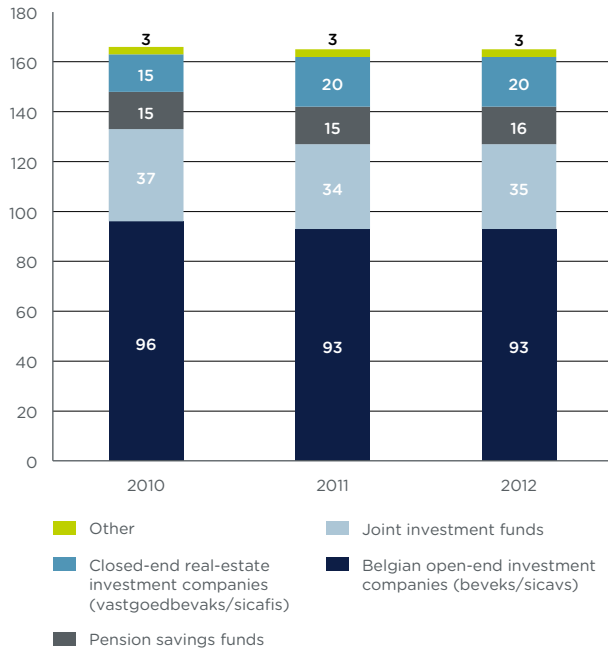
Graph 7: Insurance intermediaries



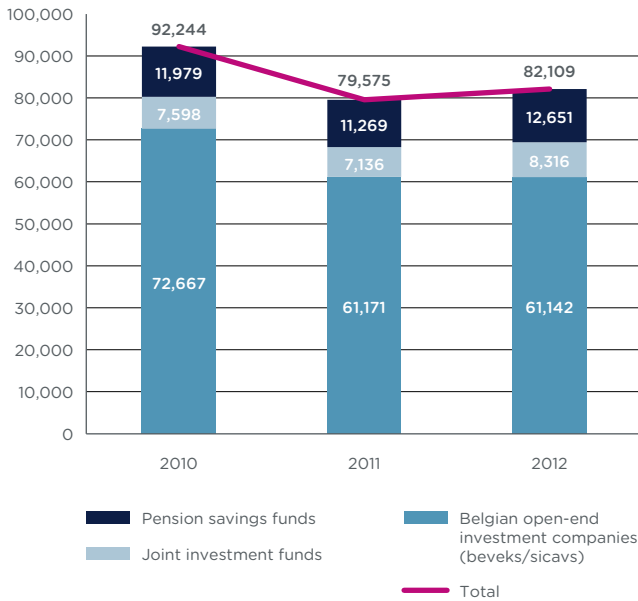


## Undertakings for collective investment

Graph 10: Number of Belgian institutions

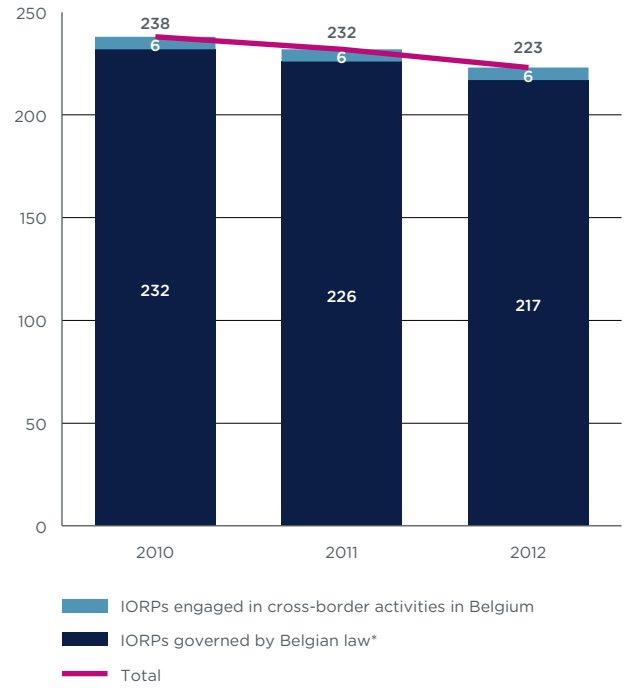


Graph 11: Asset value (in EUR million)



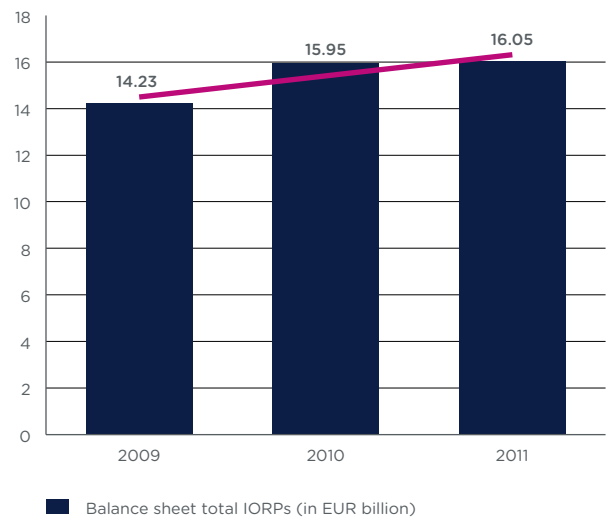
## Institutions for occupational retirement provision (IORPs)

Graph 12: Number of IORPs



\* In contrast with previous years, internal funds are not included.

Graph 13: Balance sheet total IORPs (in EUR billion)



## 2.2. Areas of supervision

### 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 on 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 both the financial markets themselves and market infrastructures.

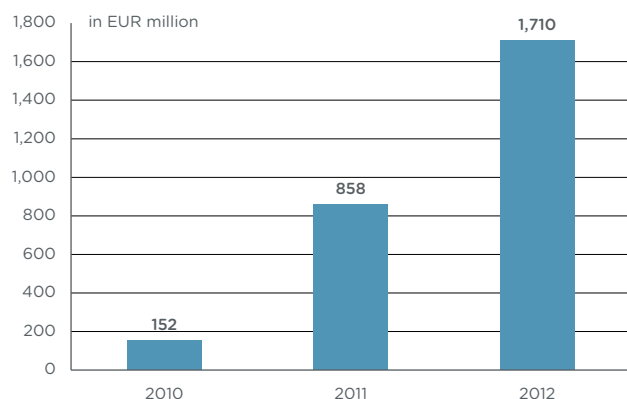
#### 2.2.1.1. Supervision of listed companies

##### 2.2.1.1.1. Supervision of financial transactions

In 2012, several issuers with shares listed on Euronext Brussels made private capital increases. Three of these issuers also drew up a listing prospectus for this purpose. A listing prospectus is necessary to list the shares where newly-created shares represent more than 10% of the number of shares that had until present been admitted to listing.

Alongside this, a number of listed companies<sup>21</sup> issued bonds over the course of 2012. An overview of the amounts raised via these bond issues is shown in graph 14<sup>22</sup>.

Graph 14: Bond issues 2010-2012; amounts raised



<sup>21</sup> This concerns both companies with shares already listed and companies that became listed as a result of the listing of the newly issued bonds.

<sup>22</sup> This graph includes only the amounts raised from bond issues for which the FSMA has approved the prospectus.

The FSMA approved eight prospectuses<sup>23</sup> for bond issues. This is an increase on previous years. In 2011, four prospectuses for bond issues were approved; in 2010 there were three.

Of the eight prospectuses that were approved in 2012, six were handled with the accelerated procedure. This procedure<sup>24</sup> was introduced in order to expedite the handling of prospectuses for bond issues and approve them within a period of five working days. In order to qualify for the accelerated procedure, companies must meet certain requirements, including those of the ongoing supervision of financial information by the FSMA and the certification of accounts by the statutory auditor with no reservations.

In 2012, the FSMA handled five takeover bid dossiers. In all five cases, these were voluntary bids. In three of the five cases of takeover bids handled in 2012, a simplified squeeze-out followed at the start of 2013. Alongside this, the FSMA has examined three more dossiers to establish whether a proposed transaction would in its opinion trigger the obligation to launch a bid on a Belgian listed company<sup>25</sup>.

More than five years ago, the new legislation on takeover bids<sup>26</sup> entered into force. The Law on Takeover Bids provided for the possibility of exemptions under certain circumstances from the obligation stipulated by the Law to launch a bid upon exceeding the threshold of 30% of the voting securities in a listed company. Holders of securities who, either alone or in concert, held more than 30% of the voting securities in a Belgian listed company on 1 September 2007 could voluntarily proceed to issue a notification for exemption from the obligation to launch a bid.

Upon entry into force of the Law, notifications were made with respect to 98 companies listed on the regulated market, Alternext or the Vrije Markt. In the meantime, the notifications for around a fifth of these companies lapsed. This is the case where the companies in question were no longer listed or where the shareholders concerned dropped below the 30% threshold.

<sup>23</sup> Also see the present report, p. 33.

<sup>24</sup> Communication CBFA\_2010\_28 of 20 December 2010 on public offers and admission to trading of bonds on a regulated market and establishment of an accelerated procedure for approving prospectuses. See CBFA Report DC 2009-2010, p. 65 and FSMA annual report 2011, p. 56.

<sup>25</sup> See Chapter II, p. 59-63.

<sup>26</sup> Law of 1 April 2007 on takeover bids; Royal Decree of 27 April 2007 on takeover bids; Royal Decree of 27 April 2007 on squeeze-out bids.

Table 1: Issuers under supervision<sup>28</sup>

	2011	2012	2013
<b>Belgian issuers</b>	<b>179</b>	<b>177</b>	<b>177</b>
Euronext Brussels <sup>29</sup>	164	161	163 <sup>30</sup>
Alternext	10	12	11
Foreign regulated markets	5	4	3
<b>Foreign issuers</b>	<b>4</b>	<b>6</b>	<b>7</b>
Euronext Brussels <sup>31</sup>	4	5	6
Alternext	0	1	1
<b>Total</b>	<b>183</b>	<b>183</b>	<b>184</b>

The circular<sup>27</sup> with practical guidelines for the submission and handling of dossiers relating to public offers was updated in 2012. This update simplifies procedures.

#### 2.2.1.1.2. Supervision of disclosure of financial information

As detailed in Table 1, the number of issuers under supervision saw a slight increase despite a number of issuers being delisted. One of the motives for this increase is the listing of bonds by a number of companies on NYSE Euronext Brussels and the choice of Belgium as a home Member State by Belgian issuers that list bonds abroad.

The supervision of listed companies, which in principle is ex post, occurs with reference to a selection model based on risk and rotation. This is the same selection model as that used in previous years and determines which companies undergo more thorough supervision. 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 for the supervision.

In certain cases, the FSMA adapts the supervision plan already established in light of events on the market or in the companies themselves. Companies that have not been selected do not in principle undergo more thorough supervision. However, it is possible that a company becomes

subject to ad hoc supervision 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 provided by listed companies. In 2012, it identified five particular points for attention for the supervision of 2011 annual accounts.

The points for attention stem on the one hand from the priorities determined by ESMA, and on the other hand from priorities determined by the FSMA.

One of the first points for attention was the application of IAS 39 (IAS 39: Financial Instruments: Recognition and Measurement). Here, special attention was paid to the impairment booked on government securities and capital instruments. Analysing the accounting treatment of the exposure of financial institutions to government debt was one of ESMA's priorities for 2012. The FSMA took part in an ESMA working group on the subject and provided the necessary information.

A second point for attention was the application of IAS 36 (Impairment of assets). In 2012, the FSMA published a study and a follow-up study<sup>32</sup> on the application of IAS 36 with regard to the provision of information on goodwill. A third point for attention was the application of IAS 19 (Employee benefits). Alongside this, attention is also paid to the effect of the evolution of the financial markets in 2011 on the accounting treatment of pension liabilities.

<sup>27</sup> Circular FSMA\_2012\_20, previously Circular CBFA\_2008\_28.

<sup>28</sup> Situation as at 1 January.

<sup>29</sup> Including real-estate certificates and undertakings for investment in debt securities.

<sup>30</sup> Including 15 closed-end investment funds (bevak), 1 private equity closed-end investment fund (privak), and 2 undertakings for investment in debt securities.

<sup>31</sup> Issuers that have chosen Belgium as their home Member State as part of their obligations with respect to periodic and certain ongoing information.

<sup>32</sup> This follow-up study is explained further in this report, p. 26.

The fourth point for attention was the application of IAS 1, (Presentation of financial statements), where the focus was directed on the classification of liabilities, compliance with covenants, information on continuity, key sources of estimation uncertainty and the most significant opinions on the principles of provision of financial information used by the entity. A fifth and last point for attention was the application of IAS 24 (Related party disclosures).

ESMA set priorities at the end of 2012 for the supervision of 2012 financial statements. These priorities are the supervision of IFRS 7 (Financial instruments), IAS 39 (Financial Instruments: Recognition and Measurement), IAS 36 (Impairment of assets), IAS 19 (Employee benefits) and IAS 37 (Provisions, contingent liabilities and contingent assets).

### Disclosure of information

In 2012, the FSMA received 253 transparency notifications. These are notifications regarding upward or downward crossing of certain statutory or regulatory thresholds with regard to the shareholding of a listed company. That number is on an even keel with the 260 transparency notifications received in 2011.

Since the beginning of 2011, all regulated information received by the FSMA from companies listed on Euronext Brussels and Alternext is available on a database (STORI) created by the FSMA. STORI can be accessed by anyone via the website<sup>33</sup> and makes it possible to conduct online searches with different search criteria. STORI already contains more than 5,000 documents.

The FSMA strictly supervises compliance with the statutory deadlines for publishing periodic information. Publishing this information on time is very important to ensure the transparency, integrity and proper functioning of the market. For this reason, the FSMA has taken action in 2012 in two cases relating to the publishing of annual financial reports, which must be published at the latest four months after the end of each financial year.

Issuers for which the financial year ended on 31 December 2011 must publish their annual financial report at the latest on 30 April 2012. Shortly after the deadline, the FSMA published a warning with the names of the four issuers that had not complied with the statutory deadline.

On 15 May 2012 three of these four companies still had not published their annual financial reports for 2011. As a result, FSMA took further action. The FSMA ordered them to publish their reports at the latest by 30 May and notified them that it would consider suspending their shares from trading from 31 May as well as imposing a penalty for each additional day of delay.

<sup>33</sup> [Stori.fsma.be](http://Stori.fsma.be)

Two companies subsequently complied with the deadline imposed and the FSMA therefore did not need to proceed with implementing these orders with regard to them. For the other company, which is also admitted to trading on Alternext Paris (for which the FSMA has no competence for suspension), the FSMA asked NYSE Euronext Paris and the AMF to proceed with suspension but they did not immediately act on this request. Suspension was, however, ordered later. The penalty was not imposed because the company brought forward new arguments and the FSMA took this into account.

Over the course of 2013, the FSMA will adapt its procedure for publishing warnings for late publication of periodic information. Instead of sending a bulk reminder letter, from now on, only issuers who have not complied with the publication deadline will be written to. The aim is to simplify the procedure and increase accountability.

### Publication of studies

#### Goodwill

The FSMA published a follow-up study in 2012 on 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 the Belgian law on financial statements - which provides for the amortization of goodwill - and IFRS, where goodwill is subject to an impairment test. To establish how Belgian listed companies treat 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).

From the first study it emerged that the provision of information by these companies in the 2010 financial statements was fully compliant with IFRS requirements in only a small number of cases. The FSMA has indicated the results of the study to the companies concerned and their statutory auditors. Subsequently, the FSMA carried out a follow-up study based on the annual accounts of 2011.

An improvement to the provision of information was revealed in this follow-up study. This improvement related in many cases to the discount rate and growth rate used and the sensitivity analysis carried out for the impairment test that must be conducted on goodwill. For a number of companies, the provision of information continues to be too general. These companies were individually written to, to inform them of the outcome of the follow-up study. The auditors were also informed as well as the Institute for company auditors (Institut des réviseurs d'entreprises/ Instituut van de Bedrijfsrevisoren).

The FSMA is insistent on the need for companies to improve their provision of information on goodwill and impresses upon them the fact that the FSMA is able to take measures, such as the publication of a warning, should this information not be suited to requirements.

## Sound governance

The FSMA also published a follow-up study in 2012 on the compliance with a number of disclosure requirements on sound governance by listed companies. The focus of this study was an investigation into the compliance with legal requirements on corporate governance in the 2011 financial reports.

The improvement that the FSMA had identified to the application of - and compliance with - the disclosure requirements examined in the 2010 annual financial reports, has continued for the 2011 annual financial reports. The most significant improvement was observed in the application of the provisions regarding the compensation report. Starting from the 2011 reports, the compensation report had to be included in the company's declaration on sound governance, and comply with the legal requirements.

The compensation reports in 98% of cases (89% in 2010 and 84% in 2009) included individual information on the compensation of non-executive directors, as required by the law on sound governance. In 88% of cases (70% in 2010 and 61% in 2009), the compensation reports included information on the basic salary and variable compensation of the CEO and the other members of the management.

Individual evaluation cards were provided to the companies in question based on this study. Where necessary, the companies were also expressly required to make an additional effort for the 2012 reports.

## Dialogue at a 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 takes part in the permanent working group of the Committee for Corporate Governance and consults with the Institute of company auditors (Institut des réviseurs d'entreprises/Instituut van de Bedrijfsrevisoren). The FSMA also works with the academic research project on 'Efficient Management of Private Organizations' (Efficiënt Bestuur van Private Organisaties).

At an international level, the FSMA participates in a series of working groups within ESMA. The FSMA participates actively in:

- the Corporate Finance Standing Committee (CFSC), which coordinates all activities relating to corporate governance, prospectuses and notifications by major shareholders;
- the Corporate Reporting Standing Committee (CRSC), where the topics of discussion include bookkeeping, audit, periodic reporting, and the storage of regulated information;
- the European Enforcers Coordination Sessions (EECS), the standing group within ESMA where emerging issues and decisions by supervisory authorities regarding the application of IFRS are discussed. In 2012, the FSMA presented three Belgian cases to the EECS.

Alongside this, the FSMA participates in permanent and temporary working groups within ESMA.

## Submission of findings to the investigation officer

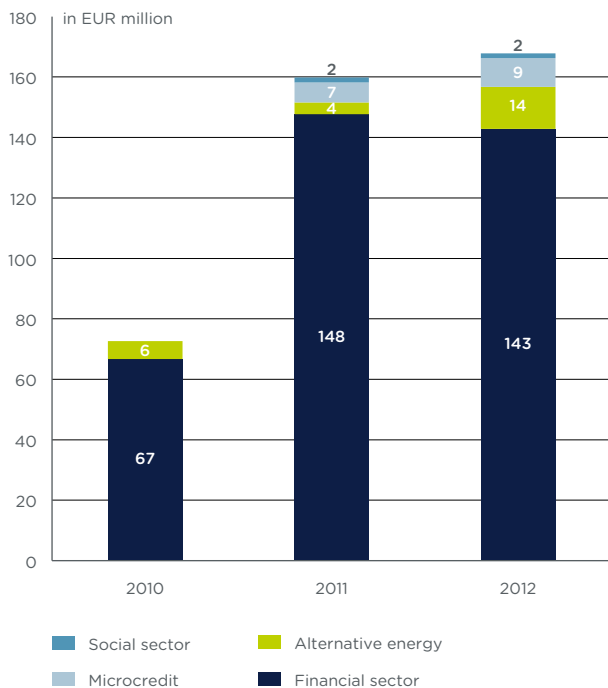
In 2012, as part of the supervision of listed companies, a dossier was submitted to the FSMA's investigation officer relating to the non-publication of privileged information by a listed company.

### 2.2.1.2. Supervision of certain financial transactions by non-listed companies<sup>34</sup>

Alongside dossiers of listed companies, the 'Supervision of Listed Companies and Surveillance of Financial Markets' department also handles dossiers of non-listed companies that raise venture capital or are in the process of being taken over. This primarily concerns public offers by co-operative partnerships. Graph 15 shows the recent evolution of amounts raised by co-operative partnerships through share issues. There were also two dossiers for tax shelters and two takeover bids for non-listed companies.

<sup>34</sup> See also the present report in Chapter I "2.2.2. Supervision of financial products", p. 29.

Graph 15: Issues by co-operatives 2010-2012; amounts raised



In 2012 a dossier was submitted to the investigation officer in connection with an irregular public appeal for funds by a non-listed company.

### 2.2.1.3. Supervision of financial markets

#### Market supervision of sovereign debt

On 1 April 2012, the FSMA took over the market supervision of Belgian sovereign debt from the Securities Regulation Fund (Fonds des Rentes/Rentenfonds).<sup>35</sup> This transfer of supervision went smoothly. One of the outcomes of this transfer was that the primary dealers in Belgian government securities now have to communicate their transactions directly to the FSMA. The FSMA published a memo on the subject detailing the reporting process.

#### Short selling

Since 1 November 2012, investors must notify the FSMA of their net short positions in Belgian shares that represent more than 0.2% of the issued share capital. Above that level, additional reporting thresholds apply for every interval of 0.1%. Where a net position exceeds the threshold of 0.5% over and above that figure, the positions are published on the FSMA website.

During the first two months of application of these rules, the FSMA received 248 notifications of upward and downward crossing of thresholds. Of these, 77% related to positions of 0.5% or less; these notifications were not published. In total, 68 separate investors took short positions in 22 Belgian listed companies. Of these 22 companies, there were 7 for which the net short positions all remained under 0.5% with the result that no positions were published.

Net short positions in government securities must be notified from a certain threshold. This threshold is expressed in absolute figures and is updated quarterly and published on the website of the FSMA. These notifications are not published.

#### Monitoring market transparency

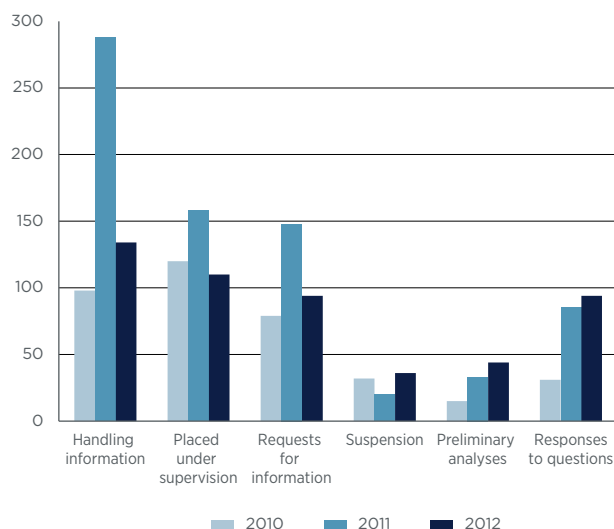
The FSMA supervises financial market transparency and has a room especially designed for this purpose (market surveillance unit). This room is equipped with all the traditional information instruments that are used in market rooms. This includes real-time access to the Euronext markets and the European MTFs on which Belgian shares are traded, a link to the major electronic distributors of financial information, the financial press, studies by financial analysts on listed companies, and the information published by those companies.

The market surveillance unit ensures the proper provision of information to the markets. It does so by supervising compliance by listed companies with their obligations as regards the disclosure of privileged information both with respect to its completeness and to the correct dissemination of that information. Alongside this, the task of the market surveillance unit includes detecting situations or behaviour that may constitute market abuse.

As can be seen on graph 16, the market surveillance unit of the FSMA has had to intervene on fewer occasions in 2012 than in 2011. The lower number of interventions is a sign of more calm in the financial markets. Despite this, the FSMA has had to suspend trading of shares more often in 2012. There are also more preliminary analyses carried out by the market surveillance unit. Over the course of 2012, the FSMA received 42 communications of a delay in the publication of privileged information. That represents an increase on the 33 communications in 2011 and the 31 communications in 2010.

<sup>35</sup> See FSMA annual report 2011, p. 48.

Graph 16: Market surveillance unit activity 2010-2012



## Analyses

The Supervision of Financial Markets department carries out a preliminary analysis where there are indications of potential market abuse. These indications may come from the market surveillance unit's own means of detection, but also from communications by intermediaries (investment firms), from other supervisory authorities, or from market operators. In 2012, 29 preliminary analyses were started. Of these, 13 were submitted to the investigation officer and 11 were filed.

## Transaction reporting

The proportion of intermediaries registered in Belgium within the total transactions in securities by Belgian issuers amounted to 3.77% in 2012, which is in line with previous years. The decrease in the average value per transaction was also confirmed in 2012. That is a result of the increased use of algorithms which divide orders with a view to obtaining the best execution.

The European supervisory authorities continue to exchange reports on transactions in non-listed derivative instruments of which the underlyings are admitted to trading on a regulated market in Europe. The United Kingdom is the biggest market for such instruments. With the current position of the MiFID Directive, this gathering and exchange of information occurs on a voluntary basis based on the regulations of each Member State.

Belgium has expanded its own system for collating local information on derivative products on 1 July 2011. That occurred on a voluntary basis pending an amendment to the Belgian legislation on the subject. To date, three Belgian intermediaries have notified of transactions in non-listed derivative instruments. In 2012, the FSMA received 822,195 reports on these instruments from its European counterparts.

The European supervisory authorities have worked further on the preparation for the entry into force of the new version of the MiFID Directive, anticipated to be in 2015, as well as of its amending regulation, MiFIR. The intention of these provisions is to achieve greater harmonization of the national systems for information gathering, inter alia through the widespread use of an identification code for the party who submits the order. This will be a valuable tool for the supervisory authorities in their supervisory tasks.

### 2.2.1.4. Supervision of market infrastructures

#### Acquisition by InterContinentalExchange of NYSE Euronext

On 20 December 2012, InterContinentalExchange (ICE) announced a friendly takeover bid for NYSE Euronext. NYSE Euronext is the operator of the Belgian regulated market for shares and derivatives. ICE is based in the United States and is primarily known as a commodity market operator. ICE holds the Brent Crude futures contract and is active in trading and clearing energy and emissions contracts in London.

Over time, ICE intends to pull out of the continental regulated markets via a takeover bid.

The supervision of NYSE Euronext is carried out by the Euronext College of Regulators ('College') in which each Euronext regulated market is established. The College has set up a task force that is entrusted with monitoring the takeover. The FSMA scrupulously monitors the following points within this task force:

- the effect of the takeover on the continuity, organization, management and resources of the Belgian regulated market as well as on the supervision by the FSMA, given the matrix organization that cuts across all business units of NYSE Euronext.
- the application of the commitments undertaken by NYSE Euronext at the time of the merger of NYSE and Euronext in 2006;
- the adequate representation of the continental regulated markets within ICE;
- the continuity of the Belgian regulated market after the takeover bid by ICE of the continental regulated markets.

### 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.**



Table 2: Structured products distributed since the launch of the moratorium

Legal form	Number of products issued	Issue volume (in EUR million)
Class 23 - Under the moratorium	114	6,342.80
Class 23 - Opt-out	1	N.A.
Debt instrument (Note) - Under the moratorium	186	2,090.93
Term deposit - Under the moratorium	5	88.63
UCI - Under the moratorium	80	2,273.39
Private Note - Under the moratorium	28	N.A.
Private Note - Opt-out	142	N.A.
<b>Total</b>	<b>556</b>	<b>10,795.75</b>

### 2.2.2.1. Moratorium

The supervision of financial products is intended to contribute to better and more understandable information, better protection for the consumers of these products, and improved functioning of the markets by making it easier to compare products against each other. 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 or to consult this information.

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 of the FSMA. In June 2011, the FSMA called upon the financial sector not to distribute to retail investors structured products which could be considered particularly complex. This moratorium on the distribution of particularly-complex structured products, which institutions sign on to entirely voluntarily, (hereinafter the 'Moratorium') entered into force on 1 August 2011<sup>36</sup>.

By way of reminder, a structured product - for the application of the moratorium - qualifies as particularly complex for retail investors if it does not meet the four criteria referred to in the moratorium, one of which is the accessibility of the underlying asset of the derivative component.

Since the launch of the moratorium, the FSMA keeps an updated overview<sup>37</sup> of structured products distributed in Belgium that come under the moratorium without ever commenting on the quality of the products issued. This overview does not include financial products that do not come under the moratorium, nor those which do come under the moratorium but are distributed by a distributor<sup>38</sup> which has not signed on to the moratorium.

It appears from this overview that since the start of the moratorium, 556 products<sup>39</sup> have been launched. Of these, 143 have done so under the opt-out regime. This opt-out regime allows distributors not to apply the moratorium to retail investors who hold deposits and financial instruments with these distributors, the value of which at the time of distribution is more than EUR 500,000, with the understanding that this opt-out only applies to the part of the assets that exceeds EUR 500,000. The remaining 413 products, with the exception of the 28 Private Notes<sup>40</sup>, the issue volume of which has not been communicated to the FSMA for all products, represented an issue amount of EUR 10.796bn.

<sup>36</sup> See FSMA 2011 annual report, pages 13-15.

<sup>37</sup> In order to determine volumes of issues, the FSMA has in the first instance used the information provided by the issuers/distributors. Where this information has not been communicated to the FSMA, the data available on the website [www.structuredretailproducts.com](http://www.structuredretailproducts.com) is used. Certain tables do not contain the volumes for issues of Private Notes, as the amount of issues has not been communicated to the FSMA.

<sup>38</sup> A large majority of distributors of structured products active on the Belgian market have signed on to the moratorium. The full list of participants can be consulted on the website of the FSMA.

<sup>39</sup> A reference to the number of products corresponds with the number of issues or launches.

<sup>40</sup> Private Notes are debt instruments issued as part of an offer that is not of a public nature within the meaning of Article 3, § 2, of the Prospectus Law.



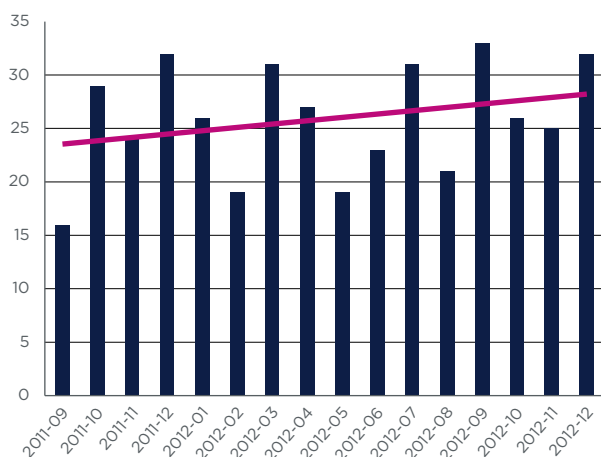
The global issue amount<sup>41</sup> was represented up to 59% by products from class 23, up to 21% by UCIs, up to 19% by Notes and up to 1% by structured deposit accounts. In terms of the number of products distributed, 48% of them were Notes, 30% were products from Class 23, 21% were UCIs and 1% were structured deposit accounts. On average, the volume issued through products from Class 23 (EUR 55.64m) is five times higher than that issued through Notes (EUR 11.24m).

The distribution of particularly-complex products under opt-out was principally via Private Notes (99%). Only one product from Class 23 was distributed under opt-out.

### Evolution since the launch of the moratorium

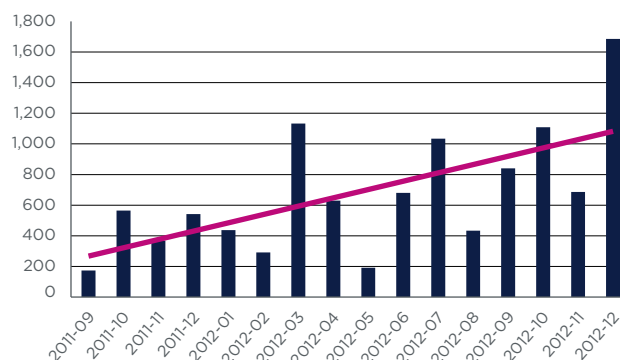
The number of structured products not considered particularly complex that came under the moratorium and were distributed per month since the launch of the same did not decrease between September 2011 and December 2012, going from 15 to 32 respectively. On average, 26 structured products that come under the moratorium are distributed each month in Belgium.

Graph 17: Evolution of the number of structured products distributed\*



\* The straight line represents the trend

Graph 18: Evolution of the issue volume of structured products distributed (in EUR million)\*\*



\*\* The straight line represents the trend

### Analysis since the launch of the moratorium

#### Underlying value

The moratorium aims to promote the distribution of simpler structured products. For this reason, the moratorium dictates that the underlying assets of the derivative component must be accessible. This means that the retail investor should be able to view the data for the market concerned through the usual channels (internet, written press).

Certain underlying assets are not considered accessible, such as for example credit default swaps, commodities (with the exception of gold) or aleatory contracts. A combination of underlyings can however be considered accessible if a certain number of cumulative conditions are met (diversification, composition on the basis of economic grounds and in the interest of the client, and transparency at the time of distribution as well as for the entire product lifetime).

In terms of issue volume, 47% of the global amount issued has been invested in products with a basket of shares, currencies, UCIs or indices for underlying assets, and this percentage reaches 92% for UCIs.

In addition, 36% of the structured products launched had an interest rate as an underlying asset, 10% had an index and 6% had an inflation rate.

The majority of the Notes and the products in Class 23 had an interest rate as an underlying asset whilst no UCI distributed had an interest rate as an underlying asset.

#### Right to repayment of the capital at maturity

The Belgian public has invested 97% of these amounts in products for which the capital invested was repaid at maturity, where applicable after deduction of entry charges and taxes. This percentage is 97% for Notes and 98% for products in Class 23 whilst it is only 78.06% for UCIs.

<sup>41</sup> This amount does not take into account the products distributed under opt-out.

Table 3: Maturity of the structured products distributed

	Less than 2 years	From 2 years and up to 5 years	From 5 years and up to 8 years	8 years or more	Total
Number of products	-	42	239	104	385
Total issues (in EUR million)	-	588.43	5,971.88	4,235.44	10,795.75

Products that do not offer capital protection had baskets as underlying assets (89%) or indices (10%). All structured products with interest rates or inflation rates as underlying assets offered the right to the repayment of capital at maturity.

### Product maturity

More than half the products distributed (55.29% of the total amount issued) had a term of between 5 and 8 years.

A link can be seen between the term of a structured product and its legal form. As a result, 58.56% of the total issues linked to products from Class 23 had a term of over 8 years. The other products had a term of between 5 and 8 years. 84% of UCIs had a term of between 5 and 8 years.

In terms of issue volume, 95% of products that do not offer capital repayment at maturity mainly had a term of between 5 and 8 years. 53% of products that offer capital repayment at maturity had a term of between 5 and 8 years.

More than 80% of the amount invested in products that had interest rates as underlying assets was invested in products with a term of over 8 years.

### Mechanisms

In accordance with the moratorium, the formula for calculating product yields must not incorporate more than three mechanisms. The principle is to take into account all the mechanisms that imply a calculation relating to the performance of the underlying value. However, as an exception, the mechanisms that provide tangible added value for the client are not taken into account. The exhaustive list of these mechanisms is available on the FSMA website.

Since the launch of the moratorium, it appears that the products are less complex with respect to the mechanisms used. 29% of the amounts invested were invested in products with 3 mechanisms, 41% of the amounts invested were invested in structured products with 2 mechanisms, and 28% in products that used only 1 mechanism.

The products distributed without mechanisms represented 2% of the market and offered 100% of the positive performance of an index<sup>42</sup> as well as the right to repayment of capital on maturity. These products were distributed either via Notes or via UCIs. All products from Class 23 contained at least one mechanism.

The statistics also reveal that the products with no mechanism have either inflation or interest rates as underlying assets.

Finally, UCIs are generally more complex and contain more mechanisms than the other legal forms of structured products. In terms of issues, 45.07% of UCIs distributed used more than 3 mechanisms. This phenomenon can be explained by the fact that the majority of structured UCIs have a basket as an underlying asset, which is counted as one mechanism.

Within the context of the moratorium, frequent meetings were held with professional associations and with distributors of structured products. On the occasion of meetings with distributors and also in e-mail communications, numerous products were presented to test their compliance with the moratorium. To clarify even further the application of the moratorium, the FAQs on the FSMA website were expanded. With a view to obtaining a consistent approach to the questions on the application of the moratorium, thorough internal reviews of the moratorium analysis were carried out, irrespective of the legal form under which the product was distributed.

<sup>42</sup> This concerns more particularly a securities index that is common knowledge with a track record and sufficient transparency and which is considered a benchmark.

Table 4: Number of transactions in debt instruments

	2010	2011	2012	% difference compared to the previous year	% compared to the total number of dossiers
<b>Issues and/or admissions of investment instruments in which the capital is subject to market risk</b>	<b>116</b>	<b>45</b>	<b>23</b>	<b>-48.89 %</b>	<b>8.78 %</b>
issued from within Belgium	23	9	8 <sup>43</sup>	-11.11 %	3.05 %
issued from within another EEA country or non-EEA country	93	36	15	-58.33 %	5.73 %
<b>Issues and/or admissions of investment instruments in which the capital is not subject to market risk</b>	<b>208</b>	<b>221</b>	<b>238</b>	<b>7.69 %</b>	<b>90.84 %</b>
issued from within Belgium	35	38	50	31.58 %	19.08 %
issued from within another EEA country or non-EEA country	173	183	188	2.73 %	71.76 %
<b>Bank savings certificates, subordinated liabilities and capitalization bonds</b>	<b>5</b>	<b>4</b>	<b>1</b>	<b>-75.00 %</b>	<b>0.38 %</b>
<b>Total</b>	<b>329</b>	<b>270</b>	<b>262</b>	<b>-2.96 %</b>	<b>100.00 %</b>

#### 2.2.2.2. Transactions in debt instruments

The FSMA has applied the new European Regulation on the format and content of base prospectuses, of the summary and of the final terms. This has in particular led the FSMA to approve base prospectuses that contain the formulas to allow calculation of yields that are linked to the different products to be issued. These prospectuses also contain a summary, the headings of which - as well as their order - are fixed and enforced by the Regulation.

In 2012, the two first issues of covered bonds took place. During the approval of the prospectus, particular attention was paid to the provision of information on the nature of the product.

In 2012, there were a total of 262 transactions in debt instruments (see table 4). That represents a slight decrease of 2.96% compared with 2011, when the amount of transactions was 270. Within the global amount of transactions, the number of transactions in which the capital was subject to market risk fell sharply (-48.89%), which can partly be ascribed to the moratorium. Conversely, the transactions in which the capital was not subject to market risk saw an increase in 2012 (7.69%).

<sup>43</sup> See also this report, p. 24.

Table 5: Number of incoming approval declarations per type of instrument

	Shares	Investment instruments with/without capital risk	Warrants	Total
Base prospectus	0	150	5	157
Prospectus	3	6	0	7
<b>Total</b>	<b>3</b>	<b>156</b>	<b>5</b>	<b>164</b>

Table 6: Number of incoming approval declarations per supervisory authority

	Base prospectus	Prospectus	Total
AFM (Netherlands)	25	0	25
AMF (France)	19	0	19
BAFIN (Germany)	16	1	17
CSSF (Luxembourg)	54	5	59
FSA (United Kingdom)	35	1	36
IFSRA/Central Bank of Ireland	8	0	8
<b>Total</b>	<b>157</b>	<b>7</b>	<b>164</b>

### 2.2.2.3. European passports

The tables above (numbers 5 and 6) show how many foreign (base) prospectuses were used in 2012 in connection with a bid programme in Belgium for the various types of financial instruments, and how many notifications the FSMA received from foreign supervisory authorities of (base) prospectuses approved by them.

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.

The FSMA granted a passport at the issuer's request in 2012 to 13 transactions for which it had approved the prospectus. These passports were for 15 countries, including the Grand Duchy of Luxembourg (8), the Netherlands (5), Germany (4), and the United Kingdom (3).

### 2.2.2.4. Supervision of advertising

The FSMA in general aims to obtain a more level playing field with regard to advertising for the various types of financial products. For this reason, an exercise was conducted across sectors to establish the current state of affairs across all areas with regard to the advertising rules that apply for the various products.

Furthermore, the FSMA has focused particular attention on the notification of risks with respect to its supervision of advertising of debt instruments. The FSMA has also required that the risk factors be indicated prominently in the advertising for the products concerned.

Another point that remains to be considered in the supervision of advertising of structured products is the information provided on the circumstances in which a particular product will return a particular yield and on the objectives of a particular product.

Table 7: Closed-end real-estate investment funds

	2011	2012
Issues and/or admissions of shares, bonds or convertible bonds (for which a prospectus or a securities note with a reference document must be approved)	5	3
Number of registration documents approved by the FSMA (the annual report of a closed-end real-estate investment fund can, in the context of a transaction, be used as part of the prospectus)	7	7

#### 2.2.2.5. Closed-end real-estate investment funds

During the supervision of closed-end real-estate investment funds, the FSMA has paid particular attention to the issue of the valuation of property. Investors must always possess the requisite information to enable them to evaluate the risks of a property investment. For this reason, the FSMA is aiming to obtain greater transparency from companies on these risks, including talking through the valuations used. In 2012, the FSMA sent letters to the closed-end real-estate investment funds with a series of specific questions and the request to include any relevant information or significant trends regarding the valuation of properties in their following periodic financial report or, where relevant, their next prospectus.

In accordance with the Royal Decree of 7 December 2010 on closed-end real-estate investment funds, at least 30% of the securities conferring access to voting rights of a closed-end investment fund must be continuously and permanently placed in the public domain within one year of the fund's registration on the list referred to in Article 33 of the Law of 3 August 2012 on certain forms of collective investment schemes. Given that no public offer of securities was made by two closed-end real-estate investment funds within the space of a year, their authorization was revoked and they were eliminated from the list in question.

#### 2.2.2.6. Insurance

In 2012, the FSMA was contacted by Assuralia, the professional organization for the insurance sector, and by the federations of intermediaries Feprabel, UPCA/BVVM and FVF, in connection with an amended code of conduct for advertising and provision of information on individual life insurance policies. The FSMA is of the view that the proposed code of conduct doesn't go far enough.

Since then, the FSMA has initiated a process with the aim of improving and supplementing information for life insurance consumers.

This process aims to establish fact sheets on life insurance products offered to the public, following the example of the European model of the Key Investor Information Document ('KIID'). This standardized summary document furnishes investors with essential information on UCITS with the aim of augmenting their transparency. The methodology pursued aims to allow the consumer to make an

informed choice from comparable investment products as per a model that is as standardized as possible.

These fact sheets will contain essential elements of these life insurance contracts, notably in terms of objectives, risks, performance and costs, in order to permit consumers to make informed investment decisions. These fact sheets will, of course, always take into account the idiosyncrasies particular to insurance contracts.

The process for this reform will continue during 2013 in consultation with the key players in this market. In the first phase, fact sheet templates will be devised for the types of life insurance contracts that are the most prevalent on the market.

Moreover, the FSMA has set up a working group that has explored the sticking points relating to the application of the legislation on health insurance contracts. In this context, one of the things examined is the increase in prices and premiums for health insurance contracts, the medical index, and the issue of chronic illnesses and disabilities. The FSMA has also delivered input for the drafting of the Royal Decree on debt balance insurance for 'persons with increased health risks'.

As a result of a number of complaints with respect to Class 23 life insurance products, the FSMA has subjected such insurance contracts to a thorough analysis in the year under review. The primary goal of this analysis was to assess whether the pre-contractual and contractual information provided to the insurance consumer meets the legal requirements and whether it is sufficiently understandable, complete and not misleading.

This primarily concerned products from Luxembourg insurance companies that were sold in Belgium, either via an authorized intermediary or under the free provision of services regime.

In certain cases, it was established that the information provided to the insurance consumer was misleading or incorrect or contained incomplete information.

In one concrete case it was claimed that the insurance consumers were offered a guarantee for the repayment of capital with no mention of the risk of losing (a part of) the capital initially invested upon early redemption of the financial instrument which was the underlying asset

of the insurance policy. On a number of occasions it was revealed that not all relevant information - such as the prospectus of a structured product that was the underlying asset of the insurance policy - was provided to the insurance consumers.

The FSMA made the Luxembourg supervisory authorities aware of the errors committed by one Luxembourg insurance company in a particular dossier and asked that they take all the measures necessary to prevent such errors from being repeated in the future.

Where the FSMA identifies such errors or breaches by insurance companies, it has no legal measures available to it to oblige the insurance company to compensate for damage caused by the error or the breach. This authority belongs exclusively to the courts and tribunals. In addition, the FSMA cannot impose sanctions with regard to a foreign insurance company that commits such errors.

#### 2.2.2.7. Savings accounts

In 2012, the FSMA contributed to the reform of the regulated savings accounts for which an agreement in principle was reached between the political authorities, the FSMA and Febelfin in July. That agreement included the introduction of a savings account simulator. This simulator gives savers an overview of the return they can obtain from their savings with different banks. 32 of the 34 banks that offer regulated savings accounts acceded to the protocol for the savings account simulator. In this way, they commit to providing all the information necessary for the savings account simulator. This simulator is available since 31 January 2013 on the new website for financial education ([www.wikifin.be](http://www.wikifin.be)).

Other parts of the agreement concern developing a standardized fact sheet with all essential information on regulated savings accounts and ex ante supervision by the FSMA of all 'touting' advertising for savings accounts. Drafts of a Royal Decree on the fact sheet and advertising, as well as on other aspects of the reform were forwarded by the FSMA to the political authorities.

#### 2.2.2.8. Undertakings for Collective Investment

Overall, the market for UCIs governed by Belgian law closes 2012 with a total net asset value of a little more than EUR 82bn, which represents a growth of 3.2% on the figures for the end of 2011.

In general, the year 2012 saw the UCI sector obtaining significant appreciation on portfolios which has compensated for the net outflows registered for Sicavs (Belgian open-end investment companies), which amount to EUR 2.25bn and, to a lesser extent, for pension savings funds (EUR 91m).

More particularly, growth in the sector is sustained by the net subscriptions to joint investment funds and by the healthy financial results obtained by pension savings funds.

It must also be noted that, despite growth in the market, the sector was able to globally reduce UCI costs from EUR 991.7m at the end of 2011 to EUR 963.2m at the end of 2012.

Finally, we highlight the strong reduction in amounts outstanding in money funds, which went from EUR 4.4bn at the end of 2011 to EUR 968m at the end of 2012. This drop is due to a mass exodus from these funds, most probably due to weak interest rates.

In 2012, the FSMA carried out targeted checks on the websites of those who offer UCIs. These checks included an assessment of whether the content of the website complied with the rules on advertising and on public offers. These checks have on several occasions led to changes being made to the information on a website. These checks shall continue into 2013.

Following the entry into force of the UCITS IV Directive, the FSMA has applied the necessary measures to ensure that product documents comply with the new rules. Primarily this relates to the approval of the KIID for more than 1,800 sub-funds of UCIs. The FSMA has also begun work on the transposition of the AIFM Directive.

Table 8: Change (in number) of Belgian undertakings for collective investment<sup>44</sup>

	2010	2011	2012
Belgian open-end investment companies (bevek/sicav)	96	93	93
Number of sub-funds at end of period	1,938	1,936	1,618
of which money sub-funds	16	13	13
Joint investment funds	37	34	35
Pension savings funds <sup>45</sup>	15	15	16
<b>Total</b>	<b>148</b>	<b>142</b>	<b>144</b>
Closed-end real-estate investment companies <sup>46</sup>	15	20	20
of which institutional closed-end real-estate investment companies <sup>47</sup>	0	3	5
Undertakings for investment in receivables <sup>48</sup>	2	2	2
Number of sub-funds at end of period	0	0	0
Private equity closed-end investment companies (privaks) <sup>49</sup>	1	1	1
<b>Grand total</b>	<b>166</b>	<b>165</b>	<b>167</b>
Number of sub-funds at end of period	1,938	1,936	1,619

Table 9: Change in capital (open-end UCIs - in EUR million)<sup>50</sup>

Asset value at end of year	2010	2011	2012
Belgian open-end investment companies (bevek/sicav)	72,666.6	61,170.8	61,141.8
Joint investment funds	7,597.7	7,135.7	8,316.1
Pension savings funds	11,979.2	11,268.7	12,650.8
<b>Total</b>	<b>92,243.5</b>	<b>79,575.3</b>	<b>82,108.7</b>
of which money sub-funds	1,881.0	4,361.9	967.8

<sup>44</sup> On 31 December of each year.

<sup>45</sup> Pension savings funds recognized under Article 14516 of the Income Tax Code 1992.

<sup>46</sup> Investment companies investing in real estate and regulated by the Royal Decree of 7 December 2010.

<sup>47</sup> Institutional investment companies investing in real estate and regulated by the Royal Decree of 7 December 2010.

<sup>48</sup> Undertakings for investment in receivables, regulated by the Royal Decree of 29 November 1993.

<sup>49</sup> Investment companies investing in unlisted companies and growth businesses and regulated by the Royal Decree of 18 April 1997.

<sup>50</sup> On 31 December of each year.



### 2.2.3. Supervision of compliance with rules of conduct

**The FSMA is responsible for supervising compliance with rules of conduct by regulated undertakings. 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. The rules of conduct require regulated undertakings to have a suitable organizational structure and use the required procedures to ensure correct and diligent treatment of consumers of financial services. This includes correct information provision, suitable management of possible 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 was assigned the role of specialized conduct supervisor. A new department was created to meet the requirements of this task, which grew in 2012 to include new economists and in-house lawyers. Over the course of 2012, this team has put into practice the methodology set out in 2011 for the supervision of compliance with the MiFID rules of conduct.

#### Programmes

At the start of 2012, the FSMA began performing regular on-site checks of regulated undertakings. In parallel, work was carried out for setting up audit programmes for all 14 MiFID 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 FSMA has published part of these programmes on its website. Within the programmes, alongside the legal frame of reference, a detailed overview is provided of the procedures and guidelines that the regulated undertakings must have at their disposal. Based on this list of procedures and guidelines, checks must be carried out on the one hand on the quality, efficiency and design of these procedures and guidelines, and on the other hand on the effectiveness of the same. These checks that the undertakings have to conduct are based on tests that they must develop themselves in accordance with the nature and extent of their services. The FSMA has also developed the requisite tests to assist with conducting its inspections on the various themes. These tests are not published.

The audit programmes contribute to a correct implementation of the legal frame of reference by the regulated undertakings involved. They also 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.

#### Audit methodology

The use of the audit programmes is integrated into a custom audit methodology that the FSMA has developed. This methodology is based on a targeted risk assessment of the regulated undertakings, for which various elements are taken into account.

One of the primary factors for risk assessment relates to the nature of the regulated undertaking and its importance to - and impact on - the investment services market. To that end, the regulated undertakings were subdivided into five different categories based on their risk:

- the four large banks;
- the other 32 Belgian banks and branches of banks from third countries;
- the 21 Belgian stockbroking firms;
- the 25 Belgian portfolio management and investment advice companies and the management companies of undertakings for collective investment;
- the 52 European branches.

In this subdivision, the four large banks were regarded as the first category. The FSMA focuses particular attention on them during supervision given that in Belgium, they control more than half of the investment services market. The other banks are differentiated from the stockbroking firms based on their nature and legal status. A number of banks and branches do not offer investment services in Belgium and therefore also fall outside the supervision by the FSMA on the MiFID rules of conduct.

The portfolio management and investment advice companies as well as the management companies of undertakings for collective investment are in a specific category because the FSMA is also in charge of their authorization and their prudential supervision.

Finally, the European branches are regarded as the fifth and last category because the FSMA has more limited competence for their supervision. Its competences are in fact shared with the supervisory authority of the country of origin.



A second determining factor in the risk assessment is the information that comes from the documents that the regulated undertakings must provide to the FSMA<sup>51</sup>. This concerns the many policy documents such as the best order execution policy or the conflicts of interest policy that the companies must put in place pursuant to the applicable legislation. The determination of the quality of these documents enables the FSMA departments to trace specific risks that exist in a number of companies without needing to carry out an on-site inspection.

Complaints that the FSMA receives from clients are a third important source of information on companies. Although intervening in individual disputes between clients and regulated undertakings does not fall under the FSMA's legal competences, these complaints often contain relevant information on the manner in which the regulated undertakings concerned work with their clients.

The risk assessment of regulated undertakings is further determined by previous inspection reports by the FSMA as well as by regular contact with the companies concerned.

The FSMA has developed a specific reporting template for this purpose called the 'Map', which will be described in greater detail below and which gives the FSMA an insight into the specific investment services that the companies in question offer their clients.

## Mapping

The purpose of 'Mapping' is to provide the FSMA with quantified data. This information concerns the investment services and ancillary services provided by the regulated undertakings, the type of distribution network and clients they have, the profile of their investors, the type of management they do, the sort of advice they supply, their income from investment services, their co-operation with brokers and depositaries, complaints etc.

The information in the Map gives the FSMA a clear overview of the conduct risk profile of the regulated undertakings concerned. Mapping also allows trends within the sector to be identified, for example with regard to 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. A benchmark can also be established via this Mapping for the application of the MiFID rules of conduct.

Based on the Mapping by the regulated undertakings in 2012, the FSMA has been able to form a clearer picture of the sector and more clearly map the risks involved. This has made it possible to carry out targeted inspections and consequently to use resources in a way that is as efficient as possible.

## Inspections

In 2012, the FSMA commenced its inspections on the theme of conflicts of interest.

Through these on-site inspections, the FSMA makes sure that the clients of regulated undertakings obtain the honest, fair and professional treatment that they are entitled to. Such inspections can be focused on whether the regulated undertakings in question have a suitable organization or on compliance with the rules for the protection of consumers.

For any infringement, shortcoming, or weakness identified during an inspection, the FSMA will take measures from one of the following categories:

- An '**order**' is a measure with which the FSMA orders the senior management of an undertaking to take remedial action by a deadline set by the FSMA. The FSMA takes these measures when it has identified an infringement of the MiFID rules of conduct or a shortcoming in the undertaking's organization. This remedial action must be approved by the FSMA, and how the undertaking implements it is meticulously monitored. Orders are based on Article 36, and/or Article 36*bis*, of the Law of 2 August 2002 on the supervision of the financial sector and on financial services.
- A '**recommendation**' targets shortcomings in internal audits. The FSMA expects an undertaking to set up an action plan where it describes in detail how these shortcomings shall be remedied and who is responsible for the execution of the action plan. The FSMA looks into whether the measures planned are pertinent and reviews their efficiency.
- The FSMA can bring '**points for attention**' to the fore with the management without requiring an action plan for these in the short term. The FSMA can review these points for attention in a subsequent inspection and then decide whether the measures that the undertaking has taken are pertinent.

The investigation officer of the FSMA can also decide that it is appropriate to apply a sanction and impose an administrative fine alongside the aforementioned remedial action. In such a case, the Sanctions Committee of the FSMA has to endorse this.

In 2012, the FSMA carried out around 30 site visits and on-site inspections. The inspections on the theme of 'conflicts of interest' concerned 53.5% of the assets of retail clients using investment services in Belgium.

Every inspection involves several steps. The first step is the preparation of the inspection in order to gather information, assess risks and assign resources. The second step is the audit procedure itself in order to identify the extent to which the undertaking complies with the requirements of the MiFID themes under investigation. The third step is to list the findings. The last step is to draw up an inspection report that is first presented to the Man-

<sup>51</sup> See Communication FSMA\_2012\_02 of 19 January 2012 on the list of documents relating to the MiFID rules of conduct.

agement Committee of the FSMA and then sent to the undertaking.

'Conflicts of interest' means situations in which the regulated undertaking has an interest which is in conflict with that of its clients. An example of this could be where a regulated undertaking commits - by way of an agreement with a third financial institution - to placing a certain number of investment products with its clients. Upon achieving this amount, a significant commission is to be paid by the institution concerned. As a result of this agreement, the interest of the regulated undertaking concerned lies in selling as much of this product as possible. If this product is not suitable for the client, the interest of the client, conversely, is not to buy it. Conflicts of interest are to a certain extent inherent to the provision of services. The undertaking always has an interest in obtaining the highest possible commission with an investment service, whereas the client would rather keep this commission as low as possible. The regulations are also based on the general rule that these conflicts of interest should - where possible - be prevented, or - where prevention is not possible - managed appropriately through transparency with the client about their existence.

### Conclusions from inspections on conflicts of interest

A number of conclusions can be drawn from the inspections on the theme of 'conflicts of interest'. First of all, it should be noted that a significant number of undertakings do not sufficiently apply the rules on conflicts of interest.

Most undertakings have developed a policy as required by law, but in practice, this policy is not always carried over to the day-to-day work of the operations departments. Employees with a client-facing role are often insufficiently aware of potential conflicts of interest. Internal audits, also called 'first line supervision', which should supervise the compliance with rules of conduct within the operations and commercial departments, do not often attain the required level. This ensues in significant responsibility falling upon the compliance function, also called 'second line supervision'. It also transpires from the inspections that the compliance function is not always involved with the operational and commercial decisions that lead to conflicts of interest.

In order for an active compliance culture to be developed within a regulated undertaking, the most senior management of this undertaking should shape this culture and transfer it to all the members of the undertaking.

A positive change can be seen in a number of undertakings towards extending this compliance culture within the undertaking. It is no coincidence that the FSMA has established that in these undertakings there is a clear structure in place to protect the interests of clients.

As a result of these inspections, 85 recommendations were made. Alongside this, the FSMA has issued 24 orders to the regulated undertakings concerned to take the

necessary remedial action by a deadline set by the FSMA. Upon closing this overview of the year, all undertakings have so far taken all the action requested.

### Compliance

The FSMA has published a joint circular with the NBB on the compliance function. This clarifies the job description of the compliance officer and a number of recommendations are made to protect the independence of the compliance officer, inter alia through a number of provisions regarding the governance of the institution. The circular also places emphasis on the expectations of supervisory authorities with regard to the monitoring by the compliance officer and the involvement of the compliance officer with operations. The circular also provides details on the possibility for smaller financial institutions to outsource the compliance function.

#### 2.2.4. Supervision of financial service providers and intermediaries

##### 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 analyzing 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 authorization and business practice conditions.**

**The FSMA is also tasked with the supervision of bureaux de change. The focus here is on the prevention of money-laundering, the professional integrity of managers, and the qualities necessary for shareholders.**

This year, on-site inspections were carried out of management companies of undertakings for collective investment. The emphasis here was placed on evaluating the operation of the management bodies and, where applicable, the operation of the audit committees. Given the trend towards outsourcing, it is also verified whether the management companies of undertakings for collective investment retain sufficient "substance".

Through the new regulatory framework that applies to the management companies of undertakings for collective investment (UCITS IV was transposed into Belgian law through the Law of 3 August 2012 and the Royal Decree

Table 10: Change in the number of firms

	31/12/2011	31/12/2012
Portfolio management and investment advice companies	20	21
Branches established in Belgium of investment firms governed by the law of another EEA country and falling under FSMA supervision	7	9
Investment firms governed by the law of another EEA country and operating in Belgium under the free provision of services	2,576	2,606
Investment firms governed by the law of a country that is not in the EEA, which have notified of their intention to provide investment services in Belgium under the free provision of services	80	79
UCI management companies governed by Belgian law	7	7
Branches established in Belgium of management companies of UCIs governed by the law of another EEA country	UCITS III: 4	UCITS III: 3 UCITS IV: 2
Management companies of UCIs governed by the law of another EEA country and operating in Belgium under the free provision of services	UCITS III: 53 UCITS IV: 4	UCITS III: 49 UCITS IV: 7
Bureaux de change authorized in Belgium	13	13

of 12 November 2012), auditors of these companies were tasked, in accordance with Article 247, § 1, 3°, of the Law of 3 August 2012, with verifying that they comply with these provisions.

The purpose of the inspections carried out in bureaux de change was to monitor compliance by these bureaux de change with the rules relating to preventing the use of the financial system for the purpose of money laundering.

In terms of the change in the number of firms, the trend of recent years is continuing, due in part to the financial crisis. This is manifested in a stabilization in the number of Belgian portfolio management and investment advice companies and in an increase in the number of foreign investment firms offering investment services in Belgium under the free provision of services.

The legal framework imposed to implement the Twin Peaks reform provides for an obligation to consult the FSMA to establish the professional integrity of the persons nominated as directors for the first time of a financial institution under the supervision of the National Bank of Belgium. The FSMA provides its recommendation on professional integrity to the National Bank of Belgium within one week from the receipt of the consultation request. In 2012, the FSMA sent the National Bank of Belgium its recommendations regarding 227 persons.

Table 11: Registrations

Intermediaries (insurance)	31/12/2011	31/12/2012
<b>Collectively registered</b>	<b>6,225</b>	<b>6,219</b>
Agent	1,485	1,228
Sub-agent	4,740	4,991
<b>Individually registered</b>	<b>11,059</b>	<b>10,933</b>
Broker	8,290	8,215
Agent	2,101	2,071
Sub-agent	668	647
<b>Total</b>	<b>17,284</b>	<b>17,152</b>

Reinsurance intermediaries	31/12/2011	31/12/2012
<b>Individually registered</b>	<b>13</b>	<b>13</b>
Broker	12	11
Agent	1	2

Intermediaries in banking and investment services	31/12/2011	31/12/2012
<b>Collectively registered</b>	<b>3,123</b>	<b>3,087</b>
Agent	3,123	3,087
<b>Individually registered</b>	<b>868</b>	<b>821</b>
Broker	13	14
Agent	855	807
<b>Total</b>	<b>3,991</b>	<b>3,908</b>

#### 2.2.4.2. Supervision of intermediaries

The FSMA's role with regard to intermediaries<sup>52</sup> essentially involves overseeing access to the profession of intermediary in banking and investment services or insurance. 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 retaining such registration.

<sup>52</sup> 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.

In 2012, 1,844 new intermediaries were included in the register of insurance intermediaries (1,192 of them via collective registration). One new intermediary in reinsurance was included in the register. There were 145 intermediaries included in the register for banking and investment services (120 of them via collective registration).

Most of the deregistrations in 2012 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.

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 this does not occur, the FSMA can retract this intermediary's registration. In 2012, 199 intermediaries were struck off from the register. This can occur for example where intermediaries have not insured themselves against professional liability risks, have not answered questions posed by the Ombudsman, have failed to update their administrative

dossier, have not paid their registration fee or have been convicted of a particular offence. The registration of 20 intermediaries automatically expired due to bankruptcy.

Non-compliance with the aforementioned conditions can be ascertained objectively. In the area of assessing suitability and professional integrity requirements, the FSMA has discretionary powers. Depending on the case in question, the FSMA may take administrative remedial action such as suspension of registration or striking off from the register. This leads to a temporary or permanent ban respectively on the exercise of intermediation activity. The FSMA determines suitability and professional integrity on a case-by-case basis, taking into account the protection of the public and the reputation of the sector as a whole.

In 2012, the FSMA took remedial action for 21 dossiers because the suitability and professional integrity of intermediaries were called into question. Examples include the misappropriation of customer funds, non-payment of insurance premiums, creation of false (policy) documents, making false statements and falsifying client signatures.

## Professional knowledge

### 1. Continuing education

Insurance intermediaries, reinsurance intermediaries and intermediaries in banking and investment services are obliged to update their professional knowledge<sup>53</sup>.

In 2012, the FSMA and the sectors in question drew up a sectoral code in order to define this requirement in detail and harmonize and clarify the rules with the aim of increasing the efficiency of the same and applying them across the board<sup>54</sup>.

### 2. Exam rules

In order to demonstrate their professional knowledge, holders of a certificate of higher secondary education are currently required to successfully complete a specialized course that is recognized by the FSMA. Article 11, § 3, 2° of the Law of 27 March 1995 provides that this requirement is replaced by the requirement to pass an exam recognized by the FSMA.

<sup>53</sup> 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.

<sup>54</sup> Read more about this in Chapter 2, p. 94.

In 2012, the FSMA led discussions with the sectors concerned to define the legislator's requirement in detail in order to obtain a level playing field regarding this requirement of professional knowledge via one or more similar exam systems.

## 3. Anti-money laundering legislation

The anti-money laundering legislation imposes a set of obligations to insurance intermediaries who are not tied agents and who deal with life insurance products. One of the most important obligations is that of co-operating with the CTIF-CFI.

In 2012, the FSMA began talks with the CTIF-CFI and the professional associations concerned to remind insurance intermediaries of their obligations. At the beginning of 2013, a Communication was sent to all registered insurance intermediaries and brokers with an authorization for the 'life' class of products.

### 2.2.4.3. Mortgage companies

**The task of the FSMA with regard to mortgage companies is essentially to oversee how these companies grant and manage non-commercial residential mortgage loans to natural persons.**

**This consists in supervising the manner in which the mortgage companies comply with the provisions of the Law of 4 August 1992 on mortgage loans during the offer of contracts (including in the pre-contractual stage), their performance and progress, with a view to protecting the borrower. The supervision also encompasses the prevention of money laundering for companies which do not come under prudential supervision.**

The supervision mainly concerns the legality of the documents provided to consumers. These include application forms, prospectuses, offers in principle and the mortgage contract. These documents are approved by the FSMA prior to being offered to the market. Complaints handling is also a precious source of information which enables the FSMA to detect potential problems.

On-site inspections are an important method that allows the FSMA to oversee compliance with, and correct application of, the Law of 4 August 1992. In 2012, certain particular points of the Law were brought to the fore such as the variability of interest rates, charging fees to clients and managing disputes.

The inspections have highlighted certain shortcomings relating to undue claims for administrative fees, management fees and solicitor fees for the management of dossiers, or errors in the calculation of early redemptions. Emphasis has also on certain occasions needed to be placed on meeting deadlines for sending registered letters in the event of arrears.

Table 12: Change in the number of registered and enrolled companies

	31/12/2011*	31/12/2012**
Insurance companies and IORPs	26	26
Credit institutions	31	30
Public institutions	5	4
Others	120	117
<b>Total</b>	<b>182</b>	<b>177</b>
Enrolled companies	22	25
<b>Grand total</b>	<b>206</b>	<b>202</b>

\* Publication in the Belgian Official Gazette on 2 February 2012.

\*\* Publication in the Belgian Official Gazette on 4 February 2013.

The companies in question have been asked to redress this situation and, depending on the case:

- to reimburse clients for solicitor fees and administrative fees unduly charged;
- to claim only the postage costs for sending a registered letter;
- to reimburse the surplus received for early redemptions;
- to meet the deadlines for sending registered letters; and to keep the FSMA informed of the follow-up to the dossiers.

In 2012, the inspections also focused on compliance with the anti-money laundering legislation in mortgage companies which are not credit institutions or insurance companies.

And finally, the inspections were also focused on the application by mortgage companies of the code of conduct issued by the Professional Lenders' Association (UPC-BVK) in 2009. This code defines a number of rules relating to responsible lending and tackling over-indebtedness. Mortgage companies voluntarily apply various principles of this code, although knowledge of this code could be more widespread. Because it is a code, the fact that it is based on voluntary and non-restrictive involvement does not encourage companies to become acquainted with it, nor to systematically apply all of its principles.

The draft European Directive on housing credit, with which the FSMA is assisting, will certainly contribute to a better application of the principles of responsible lending and tackling over-indebtedness. Over the course of 2012, the work of the European Council and European Parliament on this draft Directive has continued under the Danish and Cypriot presidencies.

Although progress is slow, some advance has been seen, notably in the following areas:

- responsible lending;
- information to provide to the consumer;
- product tying and combined offers;
- variable interest rates;
- arrears and procedures therefor.

## 2.2.5. Supervision of supplementary pensions

The FSMA is responsible for supervising supplementary pensions that employees and the self-employed build up through their professional activities ('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.

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

#### International

The FSMA has actively participated in EIOPA debates to formulate an opinion for the European Commission on a number of pathways that the European Commission had outlined for the possible review of the IORP Directive. The FSMA held the Chair for one of the four working groups on this subject.

Within the scope of the plans for reviewing the IORP Directive, the European Commission has entrusted EIOPA with carrying out a Quantitative Impact Study (QIS). This Impact Study aims to obtain a better overview of the effects of the aforementioned pathways regarding the solvency requirements for IORPs.



The FSMA was actively involved in drawing up technical specifications for the implementation of the QIS. Belgium was, in addition, one of the eight countries which participated in this QIS. 14 Belgian IORPs took part which gave Belgium a good level of participation. Within the framework of this Impact Study, the FSMA took part in a working group with the Belgian Association of Pension Institutions (BVPI-ABIP), and the Institute of Actuaries in Belgium (IABE) to give guidance to the sector for this exercise. The final results of the QIS are expected to be released towards mid-2013; interim reports of provisional findings were published in April 2013.

In 2012, EIOPA carried out a peer review on the supervision of IORPs. In this review, more particular attention was paid to the options available to the national supervisory authority relating to requesting information and measures to be taken with respect to IORPs. The EIOPA evaluation report gives a positive assessment of the organization and exercise of supervision by the FSMA. In addition, it identifies a number of good practices that will be more strongly advocated within EIOPA.

### Points for attention

Within the prudential supervision of IORPs, the FSMA wants to pay particular attention to the estimated discount rate used for IORPs with a large bond portfolio. In this context, ad-hoc reporting was requested from a selection of IORPs. The low interest rates and the resulting increase in the market value of the existing fixed income securities or instruments always leads to a sharp drop in the average expected yield on these securities. Unless there is a parallel reduction in the discount rate for the calculation of the long-term provisions, this can give a distorted picture of the actual level of coverage of the obligations and an underlying funding gap can fail to be appreciated.

### Monitoring the recovery and reorganization measures of IORPs

At the end of 2011, there were 66 IORPs with a funding gap. In 46 of the cases, these were IORPs which were already implementing recovery and reorganization measures; in 20 of the cases, the IORPs had to submit new

recovery and reorganization plans<sup>55</sup>. The global level of coverage of the Belgian IORPs in relation to their short-term obligations amounted at the end of 2011 to 136.96%; the average level of coverage of the long-term obligations was 114.92%.

The FSMA has further monitored the financial position of the IORPs and the implementation of the current and new recovery and reorganization measures. For this supervision, the FSMA has set up a new method in 2012 for monitoring the recovery and reorganization measures. A clear distinction is made for this between IORPs with measures underway and IORPs with new measures.

The FSMA has in particular set out a number of new principles and highlights for recovery and reorganization plans<sup>56</sup>, with which the FSMA wishes to place emphasis on taking into account, upon submission of a recovery plan, potential additional funding shortfalls while the plan is underway. Therefore it is recommended that all future recovery plans provide for a recovery roadmap with set maximum nominal shortfalls or minimum levels of coverage per financial year.

Where a shortfall remains, the FSMA in addition asks that sponsoring undertakings engage to pay an annual minimum recovery fee, even where this is no longer necessary because of favourable market conditions and where the recovery plan could be fulfilled with no further contribution. In this way, the recovery can occur faster under favourable market conditions. These principles will also be used by the FSMA in 2013 for the determination of recovery and reorganization measures for IORPs.

### Cross-border activities

IORPs governed by Belgian law can carry on activities in other countries by managing foreign pension schemes from Belgium. At the end of 2012, there were ten IORPs carrying on these cross-border activities in nine countries. Eight of these were Member States<sup>57</sup> of the European Union and the other was Switzerland.

<sup>55</sup> IORPs that do not meet the requirements on the composition of the solvency margin or the coverage of the technical reserves with covering assets, or whose realizable assets are not sufficient to cover all the commitments, must submit a recovery plan to the FSMA. The legislation does not set the content of the measures to be taken. The recovery plan must however be tangible and achievable and a deadline must be set by which the shortfalls identified must be put right.

Sometimes there is no reason to impose a recovery plan but there is reason to lever up the institution's financial situation. In such cases, a reorganization plan is asked for. This is for example in cases where the IORPs manage the pension commitments of several employers and work with sub-funds per sponsoring undertaking. A reorganization plan can in such a case be set out if one or more sub-funds show a shortfall without the IORP showing a shortfall in a global sense.

<sup>56</sup> See also Communication FSMA\_2013\_01 of 15 January 2013: Communication of the financial statements, statistics and documents that must be included for the financial year 2012.

<sup>57</sup> The Netherlands, the United Kingdom, Ireland, Italy, Cyprus, Lithuania, the Grand Duchy of Luxembourg, and Malta.



In the event of such cross-border activities, the Belgian prudential rules are in force, but the social and labour laws of the country in which the pension commitment is made apply. The FSMA aims to fully fulfil its role as home supervisory authority in these cases. This is why it has undertaken initiatives through bilateral contact with host supervisory authorities to obtain sufficient oversight of the applicable overseas social and labour laws. Even though the FSMA does not supervise compliance with the social and labour laws of another Member State, it must take into account the potential prudential implications of this legislation. The FSMA also oversees that activities which are transferred from overseas are fully financed at the time of transfer.

#### 2.2.5.2. Social supervision

##### Complaints and questions

The FSMA is the central point of contact for questions and complaints in connection with second-pillar supplementary pensions. In 2012, the FSMA received 176 requests for information or complaints concerning a pension institution (IORP or insurance company), or in connection with a sponsoring undertaking. 34 of these questions or complaints were made via the FSMA's website. The total number of questions and complaints was somewhat lower than in 2011, when 182 requests were handled. The slight drop in 2012 is the result of the reduction in the number of questions in connection with Apra Leven<sup>58</sup>.

As in previous years, the requests were sent by members or beneficiaries as well as by IORPs, sponsoring undertakings, lawyers or consultants. These requests concerned compliance with social legislation (acquired rights, change of pension institution, 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 cross-border activities, liquidation procedure etc.)

##### Database

Nowadays, 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 for their supplementary pension.

<sup>58</sup> See opposite.

The database was opened up for data input by pension institutions in 2011. In line with its former involvement in that project, in 2012, the FSMA also participated in the development of this database. This year, the attention was devoted specifically to declaration instructions for regulations that were not yet included in the existing declaration instructions, and the development of IT applications to enable data to be consulted in the database. As part of this work, the sector was regularly consulted on a number of technical aspects.

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

##### Apra Leven

On 4 March 2011, the CBFA withdrew Apra Leven's authorization and the insurance company was declared in liquidation. From the outset, the FSMA provided information on its website for the persons insured at Apra Leven to inform them about the situation and about the impact of the liquidation on the pension commitments that were managed by Apra Leven. This included a list of FAQs on the liquidation of Apra Leven and the legislation on supplementary pensions. This list of FAQs is composed of three sections.

The first section explains what has happened with Apra Leven, contact details are provided for the various institutions to which those affected can direct their questions, and some background information is given on the legislation for supplementary pensions.

The second section covers the situation of members of a group insurance policy managed by Apra Leven. A differentiation is made here between the active members, the members who have exited, and those who are retired or are on the verge of retiring. In particular, answers are provided to questions on the impact of the company's liquidation on pension rights accumulated with Apra Leven and what members can do to ensure their rights are observed.

The third section offers employers who had a group insurance policy with Apra Leven more information on their obligations relating to the pension commitment that they have with their (former) employees and on the possibilities they have at their disposal to make good any potential shortfalls.

In 2012, the FSMA also responded to the numerous individual questions from employees or employers and kept them informed of specific consequences of the situation with Apra Leven.

##### Memo on sticking points

In 2012, the FSMA drew up a memo for the competent Ministers with an overview of the sticking points in the legislation with regard to second-pillar pensions. This

memo included the statutory minimum investment return guarantee, the manner in which supplementary pensions are paid out, the discount rate that is used for determining the vested reserves in defined benefit plans, the definition of the mutual rights and the obligations of parties involved in a pension commitment, the accumulation of pension in proportion to length of service, and the impact of crisis situations for supplementary pensions. In the extension to the memo on sticking points, the FSMA provided technical advice on the request of the competent Ministers on a number of the subjects handled therein.

### Consultation with the sector

Given the changes in both the regulatory and economic context, within the scope of its social supervision of second pillar pensions, the FSMA works in close consultation with the sector, both with social partners and with Assuralia and the Belgian Association of Pension Institutions (BVPI-ABIP). With the BVPI-ABIP, this consultation also occurs within the scope of prudential supervision of IORPs.

#### 2.2.6. Relations with consumers of financial services

**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 2012, the FSMA dealt with a total of 774 written requests for information. This is an increase on the 530 requests in 2011. The FSMA also receives a large number of telephone requests.

On the basis of information received from third parties and its own observations, in the year under review, the FSMA opened 161 dossiers relating to possible unlawful offers of financial services. In 2011, 142 such dossiers were opened for further investigation, and in 2010 the number was 157. In 2012, the FSMA issued 18 warnings to alert the public to irregular offers of financial services. The corresponding figures in 2011 and 2010 were 23 and 25 respectively.

The FSMA also publishes warnings from its European counterparts. They are forwarded by the secretariat of ESMA-Pol, a part of ESMA within which the supervisory authorities exchange information about their activities. In 2012, the FSMA published 477 such warnings. Via a hyperlink, the FSMA also publishes the warnings of foreign authorities that are members of IOSCO.

During the last quarter of 2012, the FSMA noticed a substantial increase in the number of notifications of cases of phishing or phishing attempts. Over the course of the year 2012, there were 142 notifications of such cases, while

only 39 cases were notified of in 2011<sup>59</sup>. At the beginning of 2013, the FSMA published a warning about phishing.

### 2.3. Financial education

Since the Twin Peaks reform in April 2011, the Belgian legislator has entrusted the FSMA with the task of contributing to financial education. Better financial education of consumers can, in particular, help restore confidence in the financial system.

For this reason, the FSMA has created a distinct service and has worked to develop an action plan in the field of financial education. On 31 January 2013, the achievements in this area led to the launch of the new Wikifin brand during a conference which took place in the presence of Her Royal Highness Princess Mathilde, as well as several Ministers, Belgian and foreign opinion leaders, representatives of the education sector, and of a large number of associations involved in this subject.

The aim of the financial education programme developed by the FSMA is to help citizens with their financial decisions at every stage of their lives. The programme is built around three components.

#### The [www.wikifin.be](http://www.wikifin.be) portal

The first component of the FSMA's financial education programme is the website [www.wikifin.be](http://www.wikifin.be). This portal is aimed at all citizens and is designed to provide neutral, trustworthy and practical information on financial topics such as saving, investing, borrowing, insurance, etc.

This website also features simple tools for citizens in order to help them make the right financial choices.

The savings account simulator is one of these tools. The savings account simulator was developed as part of the agreement for the reform of savings accounts, which was concluded on 13 July 2012 between the Belgian political authorities, the FSMA and Febelfin. The savings account simulator provides savers with a personalized comparison online of several accounts. After having entered certain data, in particular the initial capital to deposit, any subsequent amounts, and the investment horizon, consumers will receive a list of results that shows what return the different savings accounts will give them on their savings. For this, 32 of the 34 banks that offer regulated savings accounts voluntarily adhered to the protocol that determines which information must be provided. All of these banks provided data on their accounts which will be updated in case of modification.

<sup>59</sup> Other correspondence concerning phishing (e.g. spam email) was not included in these figures.

The portal continues to grow and will soon offer a new design centred around important stages of life such as studying, marriage, and retirement.

Advertising campaigns will also be launched, with the aim of converting Wikifin.be into a household name.

### Schools

The plans of the FSMA go beyond the development of the portal [www.wikifin.be](http://www.wikifin.be) and the savings account simulator. The FSMA also wants to raise awareness in schools. Financial education begins at an early age and school is the perfect place to help the young to develop the right skills and attitudes towards money. The FSMA will not only strive to contribute to the debate and raise awareness amongst education networks from both the northern and the southern parts of Belgium, but also to offer quality teaching materials to students and teachers. The FSMA intends to work together on this with the authorities competent in the matter (political authorities, networks, teaching staff, etc.).

### Collaboration and exchange of good practices

Finally, the exchange of good practices and collaboration with the people involved in the field of financial education are other themes that the FSMA wishes to develop. In order to achieve this, the FSMA intends to organize regular meetings such as the National Conference on Financial Education that took place on 31 January 2013, or the Child and Youth Finance International (CYFI) European conference hosted by the FSMA on 6 and 7 November 2012. One of the purposes of Child & Youth Finance International (CYFI) is to assist with inclusion and financial education of youngsters all over the world.

## 2.4. Administrative sanctions

### 2.4.1. Cases referred by the departments and preliminary investigation phase

The procedure for the imposition by the FSMA of administrative fines (Articles 70 et seq. of the Law of 2 August 2002), as amended by Articles 16 to 20 of the Twin Peaks Law, entered into force on 15 July 2011<sup>60</sup>.

As part of this procedure, the investigation officer<sup>61</sup> decides whether to open an investigation into facts that are liable to give rise to the imposition of an administrative fine<sup>62</sup>. This decision is often made based on information supplied by the FSMA's departments.

In 2012, the investigation officer received 17 new cases from the departments of the FSMA with indications that could give rise to a decision to open an investigation.

Usually, the dossiers sent by the departments prompt the need for further information to be obtained prior to the investigation officer's decision on whether or not to open an investigation within the meaning of Article 70, § 1, of the Law of 2 August 2002.

The activities performed over the course of this preliminary investigation phase consist for example in identifying the ordering party in the case of suspect transactions, as well as a preliminary investigation of the facts.

It is only if these facts appear to be liable to give rise to the imposition of an administrative fine that the investigation officer decides to open an investigation.

The work behind the investigations and information gathering is carried out by the employees of the Enforcement department. The entry into force of the procedure laid down by the Twin Peaks Law was accompanied with the creation of the Enforcement department, which is composed of the employees who were previously in charge of the investigations prior to the decision to submit a case to the Management Committee and the audit employees, under the management of the Secretary General of the FSMA in his capacity as investigation officer.

Assisting the Management Committee or the Sanctions Committee with any follow-up to the procedure does not form part of the task of the Enforcement department.

<sup>60</sup> Article 1, paragraph 1 of the Royal Decree of 28 June 2011 establishing the date of entry into force 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 establishing the Organic Statute of the National Bank of Belgium.

<sup>61</sup> The Secretary General of the FSMA serves as investigation officer for the purpose of investigating actions that are liable to give rise to an administrative fine.

<sup>62</sup> Article 70, § 1, of the Law of 2 August 2002.

## 2.4.2. Decisions to open an investigation

In 2012, the investigations officer decided to open an investigation within the meaning of Article 70, § 1, of the Law of 2 August 2002, into ten dossiers<sup>63</sup> concerning circumstances liable to give rise to an administrative fine. Two of these decisions related to dossiers that were being handled by the department for the supervision of financial information and financial markets at the time of the entry into force of the new procedure<sup>64</sup>.

In this same period, the investigation officer decided not to open an investigation in six 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. The estimated number of persons concerned by the dossiers only serves as an indication. The investigation concerns facts and it could occur that the examination of the facts in question leads to a reconsideration of the number of persons concerned.

## 2.4.3. Summary of dossiers handled

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

In the year under review, the investigation 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, provided for by the Twin Peaks Law, came into force, under the transitional provisions in the Royal Decree of 28 June 2011.

## Proposed agreed settlements

Under the provisions of the procedure on the imposition of administrative fines, a dossier may conclude in an agreed settlement<sup>65</sup>.

The decision to consent to an agreed settlement is made by the Management Committee. The person concerned must have collaborated in the investigation and must previously agree to the settlement.

In the year under review, the investigation officer submitted two proposals for agreed settlements to which the perpetrators in question had agreed for acceptance by the Management Committee. These concerned:

- one natural person in a dossier concerning the notification of exceeding thresholds and operations carried out by a person discharging managerial responsibilities at an issuer;
- a legal person in a dossier concerning the process for making a public offer of investment instruments.

The first of these proposed agreed settlements was approved by the Management Committee in 2012 and is commented on in this report in the chapter about decisions made by the Management Committee<sup>66</sup>. The second was approved by the Management Committee at the beginning of 2013.

## Submission of findings to the Management Committee

After the investigation has been completed, a report is compiled. This states whether the facts ascertained may constitute an infringement liable to give rise to an administrative fine, or a criminal offence<sup>67</sup>.

The investigation officer must submit the final investigation report to the Management Committee. The Management Committee will decide how to proceed with the dossier based on this report<sup>68</sup>.

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 detailed in the Twin Peaks Law, 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.

<sup>63</sup> This amount takes into account the joining of two dossiers for which two separate decisions to open an investigation had initially been made, as a result of the fact that they were closely related.

<sup>64</sup> See the FSMA Annual Report 2011, p. 42.

<sup>65</sup> Article 71, § 3, of the Law of 2 August 2002.

<sup>66</sup> See the present report, p. 79.

<sup>67</sup> Article 70, § 2, of the Law of 2 August 2002.

<sup>68</sup> Article 71 of the Law of 02 August 2002.

Table 13: Laws to which the dossiers handled by the investigation officer related

Cumulative list	from 1 November 2002 to 15 July 2011	from 15 July 2011 to 31 December 2012
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		
Insider dealing	26	7
Market manipulation and disseminating false and misleading information	10	4
Law of 22 April 2003 on public offers of securities (prospectuses)	2	-
Royal Decree of 31 March 2003 on the obligations of issuers of financial instruments admitted to trading on a Belgian regulated market, replaced by the Royal Decree of 14 November 2007	3	1
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	2
Law of 16 June 2006 on public offers of investment instruments	3	1
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	-

In the year under review, the investigation officer communicated five investigation reports to the Management Committee. He also communicated a supplementary investigation report, in a dossier that had already been the subject of a report sent to the Management Committee, to the Sanctions Committee at its request. These reports concerned in total 9 physical or legal persons within the scope of investigations into serious indications of insider dealing within the meaning of Article 25, § 1, 1<sup>o</sup>, a), b), or c) and of Article 25, § 2 of the Law of 2 August 2002.

From the time when the provisions of the Law of 2 August 2002 concerning the procedural rules for the imposition of administrative fines entered into force (1 November 2002) until 31 December 2012, the investigation officer received a submission for - or decided to open an investigation into - 68 dossiers concerning the existence of one or more practices, by one or more persons, liable to give rise to an administrative fine.

The total number of proposed agreed settlements and preliminary reports or investigations closed by the investigation officer is 65.

These agreed settlements and preliminary reports have enabled 48 dossiers to be closed definitively.

The dossiers handled by the investigation officer concerned serious indications of infringements of one or more of the laws included in table 13<sup>69</sup>:

<sup>69</sup> Several dossiers handled by the investigation officer concerned potential infringements of several of the laws referred to in this 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.

#### 2.4.4. International co-operation

Requests for international co-operation for dossiers concerning potential incidences of market abuse are centralized with the investigation officer.

The year 2012 was marked by a significant increase in requests for international co-operation in relation to market abuse, both in those received by the FSMA and in those addressed by the FSMA to competent authorities of Member States of the European Union or of a third country.

The FSMA has had 27 requests for co-operation from foreign competent authorities. All of these requests have been responded to within a period ranging from two weeks to fewer than three months, the turnaround time being determined by the nature and scale of the tasks to be completed. The tasks in question often relate to identifying the beneficiary of a transaction. These requests however increasingly have a broader purpose. They can for example include collecting information from an issuer or an operator of telecommunication services, or even organizing a hearing of persons who are suspected of having committed an infringement, or of witnesses.

In addition, over the course of the same period, the FSMA has addressed 50 requests for co-operation to foreign competent authorities. These requests primarily ask for the beneficiary of a transaction to be identified. In all cases, requests made by the FSMA, as is the case with requests received from foreign competent authorities, can relate to obtaining a range of information from an issuer or another person. In one case, the request involved seizing a business e-mail inbox. For this, an employee of the FSMA accompanied the foreign competent authority's employees to the site.





## II. Supervision

Pages 54 - 104 and footnotes 70-350 are not translated into English, but are available in French and Dutch on the FSMA website ([www.fsma.be](http://www.fsma.be))





III.

## The organization of the FSMA



## 1. Organization

### 1.1. Structure

#### 1.1.1. Governing bodies

Management Committee



Jean-Paul Servais,  
chairman



Wim Coumans,  
deputy chairman



Henk Becquaert,  
member of the manage-  
ment committee



Gregory Demal,  
member of the manage-  
ment committee



Albert Niesten,  
secretary general

1.1.2. Organization chart





### 1.1.3. Supervisory Board

#### 1.1.3.1. Membership



Dirk Van Gerven, chairman



Jean-François Cats



Jean Eylenbosch



Robert Geurts



Hilde Laga



Didier Matray



Pierre Nicaise



Jean-Paul Pruvot



Michel Rozie



Reinhard Steenot



Marnix Van Damme



Marieke Wyckaert

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

In 2012, the Supervisory Board met nine times and used the written procedure once.

In the year under review, particular attention was paid to the FSMA's action plans in its first full year of operation after the reform of the supervisory architecture by way of the Twin Peaks Law and the Twin Peaks Decree. The Board has also exchanged views on a number of topics relating to supervisory practices or the internal operation of the FSMA. To enable the members to keep up to speed with significant current developments, the Chairman of

the Management Committee, further to a request from the Board, has provided the Board with an overview of the new initiatives of the FSMA and of other recent developments. The Board thanks the Management Committee for its co-operation with the fulfilment of the Board's tasks.

#### FSMA Action plans

As in the previous year, the Board learnt of the FSMA's plans for its future performance of the supervisory tasks and the other tasks of the FSMA from explanations given by the Management Committee.

The Board was informed of the plans and work on the extension of the tasks of the FSMA to include financial education. Given the importance of this task for the FSMA and the needs that the education of financial consumers respond to, the Board has followed the development of the portal site on financial education (planned for 2013) with great interest, as well as the savings account simulator managed by the FSMA which is accessible online via this portal site. The Board welcomes these steps and looks forward to the new initiatives that the FSMA intends to develop within the scope of the programme on financial education for the public, which includes awareness-raising campaigns and contact with the education sector.

The Board has also devoted attention to the action plans of the other new services of the FSMA, such as the Policy department, which steers the policy work of the FSMA, as well as the departments that carry out the classic tasks of the FSMA such as the supervision of the financial markets.

Towards the end of 2012, the Board devoted an entire meeting, along with all the members of the Management Committee, to the presentation and the agreement on the global action plan of the FSMA for 2013. This action plan set out by the Management Committee offers a full overview of all the initiatives that the FSMA intends to embark upon in both the short- and medium-term. The Board appreciates that in this way, an integrated vision is developed of the tasks of the FSMA.

### **Supervisory practice**

The Board had the opportunity to exchange views on the FSMA's important initiatives.

In this way, the Board was regularly updated on the steps that were taken for the implementation of the supervision on the rules of conduct and MiFID. In particular, the Board was informed of the audit methodology developed and the inspections that were started by the FSMA in 2012 on-site at banks to supervise compliance with certain aspects of MiFID. The Board welcomes this action through which compliance with the rules for conducting business with investors is tested in practice. The Board recommends in this respect that the FSMA look into interaction with the Ombudsman, which handles complaints from consumers, since this could be a way of obtaining valuable information. The Board also drew attention to the deterrent effect of sanctions where serious infringements of the rules of conduct are detected.

The Board was kept regularly informed about the application in practice of the moratorium on particularly-complex products that the FSMA launched during the previous reporting year. This moratorium offers the advantage that upon development of new products, action is taken to ensure that the products brought onto the market respond to the needs of the retail investor.

The Board also drew attention to the other diverse aspects of the supervisory practice of the FSMA including the action taken by the FSMA to monitor the situation of institutions for occupational retirement provision in the wake of the financial crisis and the measures that were taken to achieve the implementation of the short selling regulation.

### **Regulatory developments**

The Board was regularly informed of new regulatory developments, in particular on the preparation of a draft bill to reinforce the tasks and supervisory instruments of the FSMA.

The members also received explanations on the possible options for the transposition of the European directives such as the AIFMD, the Alternative Investment Fund Managers Directive. They also received information on the studies that the FSMA has carried out on possible future reforms regarding supplementary pensions as well as on the possibility of introducing an obligatory label featuring the risks involved in a financial product.

On the basis of its statutory task contained in Article 49, § 3, of the Law of 2 August 2002, the Supervisory Board advised the Management Committee on an FSMA regulation on the establishment of life expectancy tables that are used when a member opts for the conversion of his/her pension rights to an annuity.

The Board also received background information on a number of international measures that were prepared in the aftermath of the financial crisis, including the introduction of a banking union in the eurozone.

### **Recommendation on the relationship between the FSMA and the FPS Economy**

The Board, on its own initiative and on the basis of its advisory role to the Management Committee in accordance with Article 48, § 1, paragraph 1, of the Law of 2 August 2002, has informed the Management Committee of its vision regarding the distribution of competences between the FSMA and the FPS Economy with regard to the supervision of compliance with legislation on the protection of financial consumers. The Supervisory Board believes that a number of issues could occur (in the future) in relation to the competences of the FSMA and the FPS Economy with respect to the protection of the financial consumer. This must be avoided in the opinion of the Supervisory Board. The Supervisory Board also therefore recommends that the FSMA insist that the ministers responsible clearly outline the powers of both bodies, in particular if use is made of the possibility of further broadening the protection of consumers with a Royal Decree, as well as in relation to businesses and operations referred to in the Law on consumer credit.



## Internal organization and functioning of the FSMA

For the execution of its general task of supervising the functioning of the FSMA, the Board exchanged views on a number of occasions on the internal operation of the different departments of the FSMA as well as on the Human Resources policy. In this respect, the Board paid particular attention to the FSMA's recruitment efforts and the results of the recruitment drive, given the needs of the FSMA to expand its workforce to be able to effectively carry out its tasks.

Within the scope of its statutory tasks, the Board approved the budget for 2012 on 16 December 2011 for expenditure and, after the publication of the new Royal Decree on the financing of the FSMA's operating expenses on 31 May 2012, for income.

The budget for 2013 was approved on 4 February 2013.

The Board approved the financial statements for 2011 on 31 May 2012 and the financial statements for 2012 on 24 April 2013.

The 2011 Annual Report was approved on 31 May 2012 while the present report on the Supervisory Board was approved on 16 May 2013.

The Board has also reappointed its auditor for a term of three years. He has approved the internal regulations of the audit committee proposed by the audit committee including further detail on the interaction between the audit committee and the Supervisory Board.

### 1.1.3.3. Report on the exercise by the audit committee of its statutory tasks

Since the Twin Peaks reform of financial supervision, the FSMA has a permanent audit committee. 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 of the FSMA ensure general supervision of the FSMA and that such supervision necessitates the constitution of an audit committee from among its members<sup>351</sup>.

The audit committee met four times in 2012 and used the written procedure once. The audit committee examined, amongst other things, the FSMA annual report and accounts for 2011 and 2012, as well as the budget for 2012 and 2013. Pursuant to the aforementioned provisions of Article 48, the audit committee reported to the Supervisory Board on that subject and drafted a recommendation for approval. The audit committee also inspected the half-yearly accounts of the FSMA on 30 June 2012.

In the year under review, the audit committee prepared its internal regulations, which were approved by the Supervisory Board. These regulations determine the operation and organization of the audit committee and specify its interaction with the Supervisory Board. They also elaborate on the relationship with the Management Committee and the internal audit department.

In the year under review, the audit committee advised the Management Committee on the FSMA's internal audit department charter. It also discussed the organization of the internal audit operations based on the changes in the FSMA's structure.

In the year under review, no recommendations were made to the Chairman of the FSMA. The audit committee reported on its work to the Supervisory Board.

## 1.1.4. Auditor

André Killesse<sup>352</sup>

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 covering the FSMA's operating expenses as referred to in Article 56 of the aforementioned Law.

<sup>351</sup> For an overview of the tasks of the audit committee, see the 2011 FSMA Annual Report, p. 97-98. The audit committee, which is composed of three members chosen from among the members of the Board, remained unchanged in 2012.

<sup>352</sup> 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.

## 1.1.5. Sanctions Committee

### Composition



Michel Rozie, chairman



Luc Huybrechts



Guy Keutgen



Pierre Nicaise



Claude Parmentier



Philippe Quertainmont



Hamida Reghif



Reinhard Steennot



Marnix Van Damme



Dirk Van Gerven

### Organization and operation

Pursuant to Article 48*bis* of the Law of 2 August 2002, the FSMA Sanctions Committee determines the imposition of administrative fines by the FSMA.<sup>353</sup> The Sanctions Committee 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

- 3° two judges who do not serve on the Supreme Court or the Brussels Court of Appeal;
- 4° four other members.

The sanctions procedure commences with a decision by the Management Committee as a result of which a notification of charges is sent to the persons concerned. This notification is also forwarded to the Chairman of the Sanctions Committee. The investigation report drawn up by the investigation officer, after completion of the investigation launched and conducted, is appended to this notification.

<sup>353</sup> See the FSMA Annual Report 2011, p. 99-101 for a description of the tasks, members, and the operation of the Sanctions Committee.

The procedural and ethical rules for handling the sanctions dossiers are further elaborated upon in the internal regulations of the Sanctions Committee of 21 November 2011 which was approved by way of the Royal Decree of 12 March 2012 and published in the Belgian Official Gazette of 27 March 2012<sup>354</sup>. The Sanctions Committee was provided part-time with a Dutch-speaking and a French-speaking lawyer, for the coordination of its secretariat, pursuant to the protocol that was established between the Sanctions Committee and the Management Committee<sup>355</sup>.

The Sanctions Committee was forwarded 8 dossiers by the Management Committee in 2012, some of which concerned more than one person. The Sanctions Committee held hearings for 7 of these dossiers in 2012. These hearings occur in accordance with the provisions of the aforementioned internal regulations of the Sanctions Committee. The Management Committee can make its remarks heard during the hearing. The Sanctions Committee also invited the investigation officer to the hearings for the aforementioned dossiers in order that he could answer any potential questions. Pursuant to the aforementioned internal regulations, the Sanctions Committee can require the investigation officer to undertake a further investigation and this occurred in the cases of 2 of the dossiers. In the year under review, the Sanctions Committee made a ruling in two of the cases.

### Decisions of the Sanctions Committee

On 21 December 2012, the Sanctions Committee ruled on two dossiers that concerned the compliance with the rules on the use of inside information. In both dossiers, it was decided not to impose an administrative fine and not to publish the decision<sup>356</sup>. In both cases, the Sanctions Committee decided that infringement was not sufficiently proven.

At a procedural level, the Sanctions Committee investigated in both of the dossiers whether the FSMA had taken into consideration the general legal principle of reasonable time, which is a principle that the FSMA has to comply with when imposing administrative fines as a result of market abuse. In one of the dossiers, the Sanctions Committee determined, based on the circumstances in question, that the requirement for reasonable time had not been breached. In the second of the dossiers, based on the circumstances in question, the Sanctions Com-

mittee determined that the reasonable time period had been exceeded. The fact that the duration of the regulatory and institutional measures for the establishment of the new sanctions order of the FSMA had extended the procedure did not alter this fact. The Sanctions Committee considers that the consequences of breaching the reasonable time requirement should depend on whether the unreasonably long time taken had a serious and irreparable effect on the evidence and the right to a defence of the party involved. The Sanctions Committee referred in this respect to the case law from the Constitutional Court that determines that if as a result of exceeding the reasonable time, the delivery of evidence has become impossible, trial courts should acquit the persons concerned and, if the right to a defence has been seriously and irreparably harmed as a result, they should declare the criminal procedure inadmissible (Constitutional Court, 18 February 2010, n° 16/2010, 29 July 2010, n° 92/2010 and 29 April 2010, n° 51/2010). In the dossier in question, there was no evidence of serious and irreparable harm to the right of a defence and delivery of evidence. The breach of the reasonable time requirement therefore did not result in acquittal or the inadmissibility of the prosecution. The Sanctions Committee did however consider that the unreasonable duration of the procedure ought to be taken into account if a sanction is imposed.

In the latter decision, the Sanctions Committee also explored the meaning of inside information and in particular the legal requirement that it be precise. The Sanctions Committee assessed in this respect Article 2, 14° of the Law of 2 August 2002, which in particular includes the following specification: “information [...] shall be deemed to be of a precise nature if it indicates existing circumstances or circumstances that may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to do so, and if it is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or event on the prices of financial instruments or related derivatives”. The Sanctions Committee referred in that respect to the recent case law of the Court of Justice in which it is specified that “in the case of a protracted process intended to bring about a particular circumstance or to generate a particular event, not only may that future circumstance or future event be regarded as precise information within the meaning of those provisions, but also the intermediate steps of that process which are connected with bringing about that future circumstance or event;” (Court of Justice, item C-19/11, Markus Geltl v Daimler AG 28 June 2012). In the same way, the Sanctions Committee considered that information on an intermediate step in the case of a protracted process (in this case an intended takeover of a listed company) can be considered precise information, even if the outcome of that process remains uncertain.

### Sanctions decisions against which an appeal was lodged

The CBFA imposed an administrative fine in 2007 on two dossiers relating to market abuse. An appeal was lodged

<sup>354</sup> See the FSMA Annual Report 2011, p. 101.

<sup>355</sup> See the FSMA Annual Report 2011, p. 101.

<sup>356</sup> Following various laws on the manner in which decisions are published in relation to administrative fines procedures, the principal of retroactivity was applied from the more lenient criminal law. This led to the application of the previous legal provisions pursuant to which only decisions to impose an administrative fine are allowed to be published and not decisions not to impose an administrative fine.

against these decisions of the Management Committee in the Court of Appeal, which issued two judgments on 4 December 2012<sup>357</sup>.

## 1.2. The organizational structure in practice

### 1.2.1. The internal audit function at the FSMA

In the 2012 reporting year, the FSMA has continued to give impetus to the new governance that was introduced further to the Twin Peaks reform. In this respect, a number of internal audit aspects were crystallized. More particularly, the Supervisory Board clarified its task of global supervision of the FSMA through the audit committee that was formed from among its members.

The role of the internal audit function in this new composition was clarified and established in the new internal audit charter. The key tasks of internal audit are the following:

- 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. These audits occur on an annual basis based on an audit programme approved by the Management Committee. The Management Committee can task the internal audit with ad-hoc audits. In this way, in cases of urgency, processes or procedures are audited or investigations are carried out on errors, internal and external complaints, situations of serious risk, suspicions of fraud or theft and breaches of legal or ethical obligations.
- The entire field of audit includes in principle all competences and activities of the FSMA. The Management Committee may not task the internal audit department with audits on the operation of the Sanctions Committee.
- The internal audit department draws up a report on all audits. The report is provided by the Management Committee to the Chairman of this Committee for an opinion. The audit committee receives the audit reports on behalf of the Management Committee along with the explanation of the conclusions drawn.
- The audit committee can request that the Management Committee allow certain aspects to be investigated by the internal audit department. In exceptional circumstances, the audit committee can ask the Management Committee to task the internal audit department with an investigation on the operation of the committees, with the exception of the Sanctions Committee.

Within this new audit framework, the internal audit function already carried out some investigations in 2012 and reported on the same to the Management Committee. Amongst others, an audit was carried out on the supervi-

sion of the FSMA of particularly-complex structured products via the regulatory method of the moratorium.

Internal audits also provide audit expertise to the department that supervises institutions for occupational retirement provision. This enables this department to obtain a clearer picture of the activities and the financial position of an institution under supervision.

As in 2011, the internal audit department, on request from the Management Committee, was brought in to coordinate the extended reporting that the institutions under the FSMA's supervision have to periodically provide to the FSMA. This involved on the one hand determining the periodic information for the various supervisory areas, and on the other hand developing the organizational procedures for the collation of such information. One of the important considerations here was the wish of the Twin Peaks legislator to keep the costs of the new supervisory structure under control as much as possible for its members. To this end, a Memorandum of Understanding with the National Bank was drawn up.

The internal audit department also carried out a long-term programme of consultancy in the year under review on the analysis and installation of a more thoroughly-integrated and automated dossier management system within the FSMA. This occurred based on its past work and the recommendations made as a result. This major project, which will eventually involve the entire organization, was rolled out at the start of 2013 in the department for the supervision of funds and of product promotion. The internal audit department expects this new IT environment to contribute to reinforcing the FSMA's internal audit.

### 1.2.2. Code of professional ethics

The FSMA places great importance on compliance by all employees with its code of professional ethics. This code contains provisions of a varying nature, which all appear to be perfectly assimilated by the employees.

The FSMA underlines the importance of this code to all new employees as well as the potential consequences for their career within the institution of not complying with the letter and spirit of the code.

The message purveyed is that in case of any doubt whatsoever in a particular situation, employees should first obtain information through the prescribed method. The number and nature of questions on the code's interpretation, as well as their evolution over time, show that the precepts of the code of professional ethics are rapidly taken on board.

In 2012, only two requests for authorization were made by employees prior to their intention to sell their shares in listed companies under the permanent supervision of the FSMA. By way of reminder, FSMA employees are not permitted to acquire such shares. However, contrary to

<sup>357</sup> See the present report, p. 80-81.

the rules for the members of governing bodies, who are not allowed to hold shares in listed companies under the permanent supervision of the FSMA, employees are allowed to keep the shares that they possessed prior to starting their employment with the FSMA as long as they are declared beforehand. Thereafter, if they wish to sell all or some of these shares, they must obtain prior permission from the Secretary General.

### 1.2.3. Co-operation with the National Bank of Belgium

By introducing the Twin Peaks reform in Belgium for the supervisory architecture of the financial sector, the legislator's aim was to make the respective tasks of the NBB and the FSMA more specialized. In this way, the legislator puts an end to the obligation of the institutions to share certain activities, in particular for human resources management, IT or other general services, making each institution fully independent from now on in this respect. However, since both authorities supervise the Belgian financial sector from their own perspective, there is a need for co-operation and the sharing of information between the two authorities in order to ensure the highest level of efficiency in the exercise of their supervision.

The principle of specialization may not lead to information in the possession of one authority being unknown to the other if it is useful for the exercise of the latter authority's tasks. In addition, each authority should be able to request information from the other authority if it considers that the latter could have information that is useful for the exercise of its tasks.

It is with this idea in mind that a number of legal provisions<sup>358</sup> provide for a Memorandum of Understanding between the two Authorities. These provisions provide a legal basis on the one hand for organizing co-operation in the areas agreed upon by the two authorities, and on the other hand for specifying the methods for co-operation where it is the subject of specific provisions in sectoral laws.

To apply these provisions, the NBB and the FSMA entered into a "General Memorandum of Understanding for collaboration between the National Bank of Belgium and the Financial Services and Markets Authority to ensure the coordination of the supervision of the institutions

under their respective supervision" at the beginning of 2013. This MoU is based on the principle of co-operation in good faith between the authorities, which commit to co-operating based on best possible efforts. It goes without saying that this MoU does not in any way affect the respective responsibilities of the authorities, in particular in terms of mutual consultation or the independence of their decisions.

The Memorandum of Understanding specifies a series of areas in which the authorities have agreed to co-operate over and above the specific cases of co-operation provided for by the sectoral supervision laws. These areas are as follows:

- sharing of information either on the authority's own initiative or on request;
- reciprocal consultation on draft regulations, circulars etc.;
- consultation on boundaries of competence;
- sharing information and consultation to ensure the harmonized application of the regulations common to both Authorities.

In particular, the authorities commit to providing any information to the other authority if it is deemed by the first authority to be of significant importance and relevance for the exercise of the other authority's supervision.

A number of decisions and information are qualified *a priori* as significantly important and relevant. The list is, however, not exhaustive.

The two authorities must therefore be mindful while exercising their supervision to identify information that could potentially be of significant importance and relevance for the exercise of the other authority's supervision, and in such a case to forward it.

In addition, the MoU determines the practical methods for the exchange of information as provided for by the sectoral laws.

The MoU also provides that the Governor of the National Bank of Belgium and the Chairman of the FSMA shall meet regularly and at least every three months to exchange views on the supervision of the Belgian financial sector, to review the co-operation between the authorities, and agree, where applicable, on new initiatives to embark upon.

In addition, the MoU provides for the establishment of a joint liaison committee for supervisory policies.

<sup>358</sup> Article 45bis of the Law of 2 August 2002, Article 46ter of the Banking Law, Article 37 of the Insurance Supervision Law and Article 92 § 6, of the Law of 6 April 1995.



## 1.2.4. Developments in IT

Investment by the FSMA in IT in 2012 was inextricably linked to the implementation of the new supervisory architecture<sup>359</sup>. In accordance with the schedule drawn up in 2011, the IT architecture has been independently managed since September 2012.

At the same time, new applications were also implemented for collection, management and analysis of financial information, and all applications were adapted, where necessary, to use the FSMA standard architecture.

Alongside this, the FSMA finalized the development of the eDossier project for automating dossier management and follow-up. This application was rolled out at the start of February to the 'Supervision of funds and of product promotion' department.

Finally, IT support has also adjusted to the needs of the new competences of the FSMA. This included support for the new website 'Wikifin', and the development of the savings account simulator, both of which were rolled out on 31 January 2013.

## 1.2.5. Human resources management

### Recruitment

In autumn of 2011, the FSMA launched a massive recruitment drive through the media, which ran until the beginning of 2012. After this, vacancies were primarily publicized through the FSMA website, through the monthly FSMA newsletter, and a number of university alumni sites. Experience has shown that many motivated university leavers find their own way to the FSMA's website. For certain specific profiles, search and selection agencies were used. Despite the difficult employment market, the FSMA stood firm in its conviction that during the recruitment process, the bar must continue to be set high in order to recruit only the best candidates.

In 2012, 18 executive staff and 9 administrative staff were recruited. The search for new employees continues with the same intensity for 2013 and remains a priority for the human resources department for the coming years.

## The workforce in figures

	31/12/2012
Number of staff members according to the staff register (units)	281
Number of staff according to the staff register (FTEs)	265.08
Operational staff members (FTEs)	256.79
Maximum staff members (FTEs)	311

### Characteristics of the workforce

The average age of the FSMA staff is 42.

As in 2011, in 2012, women continued to be in the majority, both in graduate and administrative staff (56.6%).

At the end of 2012, 48% of the FSMA's staff had university degrees. The qualifications of university graduate staff are the following:

Law	51 %
Economics	33 %
Mathematics	4 %
Other	11 %
Multiple degrees/specializations	56 %

As a result of the new educational task entrusted to the FSMA, the FSMA searched for new recruits for the 'Financial Education' department with a background in areas other than the traditional law, economics or mathematics that it had previously attracted.

In 2012, there were vacancies for marketing specialists, project managers for educational projects, and a content and community manager for the 'Financial Education' department, primarily for the management of the Wikifin website<sup>360</sup>. A number of these vacancies were filled in 2012. These new members of staff were involved in the launch at the beginning of 2013 of the financial education programme<sup>361</sup>.

<sup>359</sup> See FSMA Annual Report 2011, p. 102.

<sup>360</sup> See the present report, p. 47-48.

<sup>361</sup> See the present report, p. 47-48.

31 December 2012	Executive staff	Administrative staff	Total
Statutory staff	6	13	19
Contractual staff with public official status		4	4

### The integration of statutory and contractual staff of the former CDV/OCA

At present, the FSMA still has 6 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/OCA

The number of statutory and contractual staff from the former CDV/OCA remains unchanged in comparison with 2011.

The average age of this group of employees is 50, and the youngest is 37.

### Training

The professional skills of employees are central to a knowledge-based sector such as that of the FSMA. It is therefore vital to continually focus and develop skills in order to, as an institution, keep our finger on the pulse of new developments and challenges, and thereby continue to provide a motivating and stimulating working environment to employees.

Staff training remains a priority for the FSMA.

Every year, the training unit presents a training programme to the Management Committee based around three pillars:

- professional expertise;
- supporting training (language, IT skills, soft skills, leadership etc.);
- general educational information sessions.

In the autumn of 2011, an extended cycle of training commenced to inform staff on the new competences and services of the FSMA. This training continued into 2012 in order that all the services and competences of the FSMA could be covered. A new initiative for team motivation was started in 2012 and a very successful family day was organized in the autumn.

The learning avenues that the FSMA offers to its employees are diverse: alongside very specialized internal training, external training courses represent the largest portion of the training budget. Important amongst these are the

specialized training courses that staff are able to follow with the European and international organizations such as ESMA, EIOPA, IOSCO, and EBA. The FSMA staff also benefit from the use of a variety of e-learning programmes.

### 1.2.6. Consultation on social matters

The social elections, the preparations for which were started in autumn 2011, took place on Thursday 10 May, 2012. On that day, the staff representatives were chosen for the Works Council, the Committee for Occupational Health & Safety and the trade union delegation. The social bodies had their first meeting in their new composition at the end of May.

In the Works Council, a number of working groups with equal representation were set up over the course of 2012 to focus on the following themes:

- amendments to evaluations, with particular attention focused on communicating employees' strengths and points for attention in relation to their training needs;
- the remuneration and career progression of young executives;
- "active ageing", with activities focused around the ageing staff of the FSMA and a work opportunity plan for older employees<sup>362</sup>.

### 1.2.7. Financing of the FSMA's operating expenses

Pursuant to its organic law<sup>363</sup>, the FSMA's operating expenses are borne by the companies subject to its supervision or whose transactions or products are subject to its supervision, within the limits and according to the specific rules determined by the King.

<sup>362</sup> This plan implements the collective labour agreement n° 104 of 27 June 2012.

<sup>363</sup> Article 56 of the Law of 2 August 2002.



Since 1 April 2011, the new supervisory architecture of the Belgian financial sector has become a reality. The Royal Decree of 17 May 2012 specifies how the new FSMA's operating expenses are to be financed. This Decree replaces the Royal Decree of 22 May 2005.

This new Decree maintains the three basic principles which underpinned the financing of the old CBFA which had already proven to be effective:

- annual covering of the actual costs of supervision;
- limited growth in annual expenses of the FSMA;
- a pre-financing system coupled with later adjustment of the contributions paid.

The Report to the King which precedes the Royal Decree of 17 May 2012 includes a detailed comment on the options selected. The main points are detailed as follows.

### Covering the FSMA's annual expenses

Contributions from companies and persons subject to the supervision of the FSMA are destined for covering its annual expenses based on the statement of activities established pursuant to the accounting legislation<sup>364</sup>.

It is implicit in this principle that any surplus income in relation to the costs does not belong to the FSMA and is therefore reimbursed. Conversely, any shortfalls are covered by an additional contribution.

The FSMA's costs consist of the following items:

- personnel costs (including for members of governing bodies);
- costs for the financing of the FSMA's headquarters;
- sundry goods and services. Among those, a distinction is drawn between:
  - certain costs imposed to the FSMA and/or those that are subject to change based on factors beyond the FSMA's control (lawyer's fees, taxes and duties, contributions due to the European supervisory authorities that the FSMA forms part of, costs associated with the operation of commissions the organization and administration of which has been entrusted to the FSMA by the legislator, costs associated with ad hoc activities<sup>365</sup> etc.), and
  - other costs (such as logistics support costs etc.).

### Limit to the growth of expenses

The growth in annual expenses of the FSMA is limited. The measure in which the operating expenses can grow is strictly regulated in the Decree.

In this sense, the maximum number of FTEs is determined by the Decree and is set at 311 for 2015<sup>366</sup>.

The costs associated with the financing of the FSMA's headquarters, established in 2005, remain unchanged along with the amount to be paid by each of the categories of company.

The other operating expenses, outside of those specifically identified as 'unexpected', have a ceiling established by the King which is adapted each year based on the change in the number of members of staff of the FSMA as well as the consumer price index.

### Pre-financing

The Decree provides for a pre-financing system coupled with a mechanism for adjustment after closure of the annual accounts.

There are three types of contribution:

- sectoral contributions calculated based on the FSMA's budget<sup>367</sup> for the fiscal year in question<sup>368</sup>, the amount for which is distributed among the companies in the sector based on a pre-determined key;
- flat-rate contributions with a fixed term for financing the FSMA's headquarters;
- specific contributions to pay the FSMA for its intervention in certain ad hoc activities.

### Correction mechanism

The FSMA finances its operating expenses. It is not authorized - nor is it its intention - to build up reserves other than those necessary for its financial equilibrium and provided for by the Decree<sup>369</sup>. In light of the fact that the initial request for contributions occurs on the basis of the budget, a correction is made at the end of the year. When the real operating expenses of the institution are determined, after approval of the annual accounts, the

<sup>364</sup> Article 57 of the Law of 2 August 2002.

<sup>365</sup> Such as for example the development of specific supervisory instruments or methods.

<sup>366</sup> The difference of 36 FTEs with the maximum number of members of staff for 2011, which was 275, will be phased in gradually.

<sup>367</sup> Adopted by its Supervisory Board.

<sup>368</sup> For liquidity reasons, it is not possible to await the approval of the annual accounts (end of the first quarter following the end of the fiscal year concerned) to claim the operating expenses. This is why this claim is on the basis of the budget.

<sup>369</sup> The FSMA is allowed to keep limited reserves in order to cope with its liquidity requirements and any unforeseen expenses. The FSMA can request additional contributions to this reserve fund. Once the reserve fund is full, the FSMA's income must be strictly aligned with its outgoings.

correction is applied. Once the operating expenses have been established, which occurs upon approval of the institution's accounts by the Supervisory Board once they have been signed off by the auditor, the FSMA compares these expenses with the total income received for the fiscal year concerned.

If it emerges from this comparison that the FSMA has received a surplus in contributions, this surplus is reimbursed to certain categories of company in proportion with their share in the contributions and in the form of a credit against future contributions.

Conversely, if this comparison reveals that the contributions received fall short of covering the real operating expenses of the FSMA, these sectors are asked to pay a proportionate additional contribution.

Pages 120 - 128 and footnotes 370-378 are not translated into English, but are available in French and Dutch on the FSMA website ([www.fsma.be](http://www.fsma.be)).





### 3. Composition of the departments and services<sup>379</sup>

#### Reporting to Mr Jean-Paul Servais, chairman

##### Communication

Jim Lannoo, press officer

Julie Dienga

##### Internal audit

Herman De Rijck

Els Lagrou

##### Policy, international relations and market infrastructures

Jean-Michel Van Cottem, director

Lieven Baert

Guillaume Bérard

Aimery Clerbaux<sup>380</sup>

An De Pauw

Hervé Dellicour

Ann Devos

Christophe Majois

Didier Niclaes

Renée Spierings

Antoine Van Cauwenberge<sup>382</sup>

Hendrik Van Driessche

##### Supervision of listed companies and surveillance of financial markets

Thierry Lhoest, director

Vincent De Bock

Mélanie De Rook

Luk Delboo<sup>381</sup>

Geoffrey Delrée

Valérie Demeur

Sonja D'Hollander\*

Kristof Dumortier

Katrien Kestens

Annick Lambrighs

Johan Lembrecht\*

Martine Nemry

Stefaan Robberechts

Koen Schoorens

Katrien Van De Poel

Lynn Van Thillo

Dieter Vandelanotte\*

Véronique Weets

#### Reporting to Mr Henk Becquaert

##### Supervision of funds and product promotion

Gaëtan Laga, deputy director

Nathalie Flamen\*

Séverine Fratta

Ivan Roisin

Yannick Simon

Koen Verstraete

Benoit Zinnen

##### Supervision of financial products compliancy

Veerle De Schryver, deputy director

Cyrielle Allard

François Bayi

Bénédicte Clerckx\*

Quentin Deschepper

Philippe Despontin

Johan Lammens

Bregtje Van Bockstaele

Nathalie Van Duyse

Sofie Van Eetveldt

Luc Vynckier

\* Serves as coordinator.

<sup>379</sup> Situation as at 1 January 2013.

<sup>380</sup> Seconded to the Permanent Representation of Belgium in the European Union.

<sup>381</sup> Also working in another department.

<sup>382</sup> Also serves as Secretary of the Supervisory Board and the Sanctions Committee. Also serves as coordinator of international relations.

## Reporting to Mr Gregory Demal

### Supervision of financial service providers and intermediaries

Georges Carton de Tournai, first director

#### Supervision of financial service providers

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

#### Supervision of intermediaries

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

### Supervision of rules of conduct (MiFID)

Hein Lannoy, deputy director

Virginie Bassem	Maryline Serafin*
Stéphanie Brandt	Aldo ten Geuzendam
Pascale Coulon	Jelle Van Caekenberghe
Els De Keyser*	Lien Verhegghe

Isabel Lopez Martinez

## Reporting to Mr Wim Coumans, deputy chairman

### Financial education

Danièle Vander Espt, deputy director

Luk Delboo<sup>383</sup>  
Tony Langone  
Cécile Van Leeuw

### Supervision of IORPs and supplementary pensions

Greet T'Jonck, director

Luk Behets	Marc Meganck*
Saskia Bolu <sup>384</sup>	Marie-Paule Peiffer
Christelle D'Alessandro	Johanna Secq
Nicolas Deltour	Paul Teichmann
Maria Di Romana	Marleen Tombeur
Gerhard Gieselink	Ingrid Trouillez <sup>385</sup>
Caroline Gillain	Diederik Vandendriessche
Fabienne Maudoux	Caroline Vandevelde*

### Relations with consumers of financial services

Marie-Sheila Bastians	Monique Siscot
Jan De Pagie	Luc Van Cauter*
Annick Dewulf	Han Van Denhouwe
Aurélie Leclercq <sup>386</sup>	Lutgarde Vandermassen

Brigitte Leën

\* Serves as coordinator.

<sup>383</sup> Also working in another department.

<sup>384</sup> 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.

<sup>385</sup> Also serves as Secretary of the Supplementary Pensions Commission and of the Supplementary Pensions Board.

<sup>386</sup> Also serves as Secretary of the Insurance Commission.



## Reporting to Mr Albert Niesten, secretary general

### Enforcement

Albert **Niesten**, secretary general,  
serves in the capacity of investigation officer

Michaël **André**

Jessica **Heyse**

Conny **Croes**

Patrick **Van Caelenberghe**

Stéphane **De Maght**

### Legal department

Annemie **Rombouts**, director

Hilde **Daems**

Hans **Seeldrayers**

Sylvie **Decoster**

Dounia **Shita**

Antoine **Greindl**

Annelies **Verrijdt**

Clarisse **Lewalle**

### Translation department

Françoise **Danthinne**

Mathieu **Saudoyer**

Marie-Hélène **Dubois**<sup>387</sup>

Christine **Triest**

Jan **Leers**

### General support services

Tom **Plasschaert**, deputy director

### Reception, Facilities & Infrastructure

Egwin **Schoolmeesters**\*

### Management control & accounting

Sabine **Philippart**

### People & Communication

Hilde **Dierckx**

Myriam **Penninckx**\*

Annemie **Hoogewijs**

Marianne **Van Hoorebeke**

Marie-Josèphe **Léonard**

### IT

Emmanuel **De Haes**

Johan **Vanhaverbeke**

Véronique **Léonard**\*

Jan **Vyverman**

Jeroen **Rits**

\* Serves as coordinator.

<sup>387</sup> Temporarily replacing Monica Sandor.



# Abbreviations



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

<b>Assuralia</b>	Professional association of insurance companies
<b>Banking Law</b>	Law of 22 March 1993 on the legal status and supervision of credit institutions
<b>CBF</b>	Banking and Finance Commission (before its merger with the Insurance Supervisory Authority (CDV/OCA))
<b>CBFA</b>	The Banking, Finance and Insurance Commission
<b>CC</b>	Companies Code
<b>CEIOPS</b>	Committee of European Insurance and Occupational Pensions Supervisors
<b>CESR</b>	Committee of European Securities Regulators
<b>Closed-end real-estate investment company Decree</b>	Royal Decree of 7 December 2010 on closed-end real-estate investment companies (bevaks/sicafis)
<b>EBA</b>	European Banking Authority
<b>EEA</b>	European Economic Area
<b>EECS</b>	European Enforcers Coordination Sessions
<b>EFRAG</b>	European Financial Reporting Advisory Group
<b>EIOPA</b>	European Insurance and Occupational Pensions Authority
<b>ESMA</b>	European Securities and Markets Authority
<b>FASB</b>	Financial Accounting Standards Board
<b>FATF</b>	Financial Action Task Force
<b>FEBELFIN</b>	Belgian Financial Sector Federation
<b>FPS</b>	Federal Public Service
<b>FSMA</b>	Financial Services and Markets Authority
<b>General insurance regulation</b>	Royal Decree of 22 February 1991 containing general regulations relating to the supervision of insurance companies
<b>IAASB</b>	International Auditing and Assurance Standards Board
<b>IAIS</b>	International Association of Insurance Supervisors
<b>IAS</b>	International Accounting Standards
<b>IASB</b>	International Accounting Standards Board
<b>IFRS</b>	International Financial Reporting Standards
<b>Insurance Supervision Law</b>	Law of 9 July 1975 on the supervision of insurance companies.
<b>IORP</b>	Institution for occupational retirement provision
<b>IORP Directive</b>	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
<b>IOSCO</b>	International Organization of Securities Commissions
<b>ISA</b>	Insurance Supervisory Authority (before its merger with the Banking and Finance Commission CBF)
<b>Law of 6 April 1995</b>	Law of 6 April 1995 on the legal status and supervision of investment firms

<b>Law of 2 August 2002</b>	Law of 2 August 2002 on the supervision of the financial sector and on financial services
<b>Law of 22 March 2006</b>	Law of 22 March 2006 on intermediation in banking and investment services and on the distribution of financial instruments
<b>Law of 27 March 1995</b>	Law of 27 March 1995 on insurance and reinsurance intermediation and on the distribution of insurance
<b>LCAT/WLVO</b>	Law of 25 June 1992 on the non-marine insurance contract
<b>Life Regulation</b>	Royal Decree of 14 November 2003 on life insurance activities
<b>LPC/WAP</b>	Law of 28 April 2003 on supplementary pensions and their tax regime, and on certain additional social security benefits
<b>LPC/WAP Decree</b>	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
<b>LPCI/WAPZ</b>	Title II, Chapter I, Section 4, of the Programme Law (I) of 24 December 2002 on supplementary pensions for the self-employed
<b>Market Abuse Directive (MAD)</b>	Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)
<b>MiFID Directive</b>	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
<b>Money-laundering Law</b>	Law of 11 January 1993 on preventing the use of the financial system for purposes of money-laundering and the financing of terrorism
<b>MoU</b>	Memorandum of Understanding
<b>MTF</b>	Multilateral Trading Facility
<b>NBB</b>	National Bank of Belgium
<b>New UCI Decree</b>	Royal Decree of 12 November 2012 on certain public undertakings for collective investment
<b>New UCI Law</b>	Law of 3 August 2012 on certain forms of collective management of investment portfolios
<b>OFP</b>	Organisation for Financing Pensions
<b>Old UCI Decree</b>	Royal Decree of 4 March 2005 on certain public undertakings for collective investment
<b>Old UCI Law</b>	Law of 20 July 2004 on certain forms of collective management of investment portfolios
<b>Prospectus Directive</b>	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
<b>Prospectus Law</b>	Law of 16 June 2006 on public offers of investment instruments and admission of investment instruments to trading on regulated markets
<b>Prospectus Regulation</b>	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

<b>Recast Banking Directive</b>	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)
<b>Reinsurance Supervision Law</b>	Law of 16 February 2009 on reinsurance
<b>Royal Decree of 14 November 2007</b>	Royal Decree of 14 November 2007 on the obligations of issuers of financial instruments admitted to trading on a regulated market
<b>Royal Decree of 23 August 2004</b>	Royal Decree of 23 August 2004 implementing Article 63, §§ 1 and 3 of the Law of 2 August 2002 on the supervision of the financial sector and on financial services
<b>Squeeze out Decree</b>	Royal Decree of 27 April 2007 on squeeze out bids
<b>Takeover Decree</b>	Royal Decree of 27 April 2007 on takeover bids
<b>Takeover Directive</b>	Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids
<b>Takeover Law</b>	Law of 1 April 2007 on takeover bids
<b>Transparency Decree</b>	Royal Decree of 14 February 2008 on disclosure of major shareholdings
<b>Transparency Law</b>	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
<b>Twin Peaks Decree</b>	Royal Decree of 3 March 2011 on developments in the supervisory architecture for the financial sector
<b>Twin Peaks Law</b>	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
<b>UCI</b>	Undertaking for Collective Investment
<b>UCITS</b>	Undertaking for Collective Investment in Transferable Securities (which has a European passport)
<b>UCITS Directive</b>	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)
<b>UCITS IV Directive</b>	Directive 2009/65/EEC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)
<b>WIBP/LIRP</b>	Law of 27 October 2006 on the supervision of institutions for occupational retirement provision
<b>WIBP/LIRP Decree</b>	Royal Decree of 12 January 2007 on the prudential supervision of Institution for Occupational Retirement Provision







Legal responsibility for this edition  
J.-P. Servais  
Rue du Congrès / Congresstraat 12-14  
1000 Brussels  
Photography  
Michel Wiegandt  
Layout  
Gamma nv, Antwerp

