

COMPLIANCE GUIDELINE

April 2009

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Preamble

The *Autorité des marchés financiers* ("AMF") establishes guidelines setting out its expectations with respect to financial institutions' legal requirement to follow sound and prudent management practices. These guidelines therefore cover the execution, interpretation and application of this requirement.

The AMF favours a principles-based approach rather than a specific rules-based approach. As such, the guidelines provide financial institutions with the necessary latitude to determine the requisite strategies, policies and procedures for implementation of such management principles and to apply sound practices based on their nature, size and complexity of their activities.

There is a major correlation between governance, integrated risk management and compliance (GRC). The AMF considers these three elements as the foundation stones for sound and prudent management of financial institutions and, consequently, as the basis for the prudential framework provided by the AMF.

Introduction

The AMF seeks to converge two objectives, namely, the protection of consumers of financial products and services and the development of financial institutions based on equity, integrity and the financial sector's sustainability. In this regard, it places high priority on the measures implemented by financial institutions to ensure they comply with all laws, regulations and guidelines to which they are subject.

Non-compliance can have a serious impact on the reputation of financial institutions as well as their solvency. From such a perspective, it is obvious that compliance management must increasingly be a major issue for financial institutions. Adopting and fostering a culture of compliance is critical to ensuring sound and prudent management. It may also serve to mitigate any risks that non-compliance may generate.

The guidance published by the Basel Committee on Banking Supervision¹ clearly explains the need and importance for financial institutions to ensure compliance with laws, regulations and guidelines. Moreover, regulators are encouraged to provide financial institutions with the framework to do so.

This guideline is intended to set out the AMF's explicit expectations with respect to the development of a compliance management framework through the implementation of strategies, policies and procedures. Under the various sector-based laws it administers, the AMF has the authority² to establish guidelines regarding sound and prudent management practices for financial institutions. The promotion of compliance is an integral part thereof.

It should be noted that the term "regulatory risk" is used in this guideline in a generic sense and refers to the risk of non-compliance with the laws, regulations and guidelines to which financial institutions are subject.

¹ Basel Committee on Banking Supervision, Bank for International Settlements, Compliance and the compliance function in banks, April 2005.

² *An Act respecting insurance*, R.S.Q., c. A-32, sections 325.0.1 and 325.0.2.
An Act respecting financial services cooperatives, R.S.Q., c. C-67.3, section 565.
An Act respecting trust companies and savings companies, R.S.Q., c. S-29.01, section 314.1.

Scope

This compliance guideline is intended for insurers of persons (life and health), damage insurers, portfolio management firms controlled by an insurer, guarantee funds, mutual insurance associations, financial services cooperatives as well as trust and savings companies, governed by the following Acts.

- *Act respecting insurance*, R.S.Q., c. A-32;
- *Act respecting financial services cooperatives*, R.S.Q., c. 67.3;
- *Act respecting trust companies and savings companies*, R.S.Q., c. S-29.01.

This guideline applies to financial institutions operating independently as well as to financial institutions operating as members of a financial group³. As regards financial services cooperatives and mutual insurance associations that are members of a federation, the standards or policies adopted by the federation should be consistent with - and even converge on - the principles of sound and prudent management prescribed by law and detailed in this guideline.

The generic terms “financial institution” and “institution” refer to all financial entities covered by the scope of this guideline.

³ For purposes of this guideline, a “financial group” refers to any group of legal persons composed of a parent company (financial institution or holding company) and legal persons affiliated therewith.

Coming into effect and updating

This compliance guideline will come into effect on April 1st, 2009.

With respect to the legal requirement of institutions to follow sound and prudent management practices, the AMF expects each institution to develop strategies, policies and procedures based on its nature, size, complexity and risk profile, to ensure the adoption of the principles underlying this guideline by April 1st, 2011. Where an institution has already implemented such a framework, the AMF may verify whether it enables the institution to satisfy the requirements prescribed by law.

This guideline will be updated based on developments in compliance and in light of the AMF's observations in the course of its supervision of financial institutions.

1. Compliance management framework

The AMF expects each financial institution to establish a compliance management policy and procedures with regard to the legal, regulatory and normative requirements applicable to its activities and to ensure that they are regularly updated.

Like good governance and reliable internal control systems, compliance management is a critical component of a financial institution's sound and prudent management. Together, these elements constitute the basis for an efficient and effective management system.

Financial institutions should therefore implement an efficient and effective compliance management policy and procedures for identifying, assessing, communicating and maintaining knowledge related to the legal, regulatory and normative requirements in force.

The policy and procedures should cover a financial institution's daily operations. Furthermore, they should be integrated and maintained in relevant operational sectors for the purpose of timely identification of regulatory risks.

The main purpose of the policy and procedures comprising the compliance management framework is to:

- monitor significant exposure to regulatory risks;
- ensure that senior management and the board of directors are given adequate and relevant information on the effectiveness of regulatory risk management in a timely manner;
- assess the effectiveness and adequacy of the compliance management framework policy and procedures;
- enable reporting on significant findings from compliance oversight and internal or other independent audits;
- recommend corrective measures where major problems are identified.

A compliance management framework is particularly effective when it forms an integral part of the financial institution's culture and values, and is supported by senior management and the board of directors.

The financial institution of course remains fully responsible for any compliance function outsourced to a service provider and fully accountable for this function.

Lastly, the policy and procedures that make up the compliance management framework should incorporate the monitoring of their application, an audit of their appropriateness and an assessment of their reliability, as outlined in the following sections.

2. Compliance monitoring function

The AMF expects financial institutions to set up a compliance oversight function.

A financial institution may rely on functions that already exist within its organization to avoid creating additional structures that could hinder operations.

The compliance oversight function should ensure that the compliance management framework is sufficiently robust to be able to identify compliance deficiencies impacting the financial institution and escalate them to senior management and the board of directors.

This oversight function must be independent of the activities it is overseeing. It must also be able to provide the information needed by the board of directors to obtain an overview of the financial institution with respect to compliance matters.

Overall responsibility for compliance monitoring should ideally rest with a compliance officer or if such a position does not exist, a member of senior management.

The compliance officer or person assigned to this function has an important role within the financial institution. The necessary powers and resources required to execute the mandate, based on the size and complexity of the institution, should be made available to him. He should also have the necessary competencies as well as extensive knowledge of the financial institution and the legislative and regulatory framework in which it operates. These criteria also apply to all other persons within the organization with responsibility for compliance oversight.

3. Definition of roles and responsibilities

The AMF expects the roles and responsibilities of compliance staff to be clearly defined.

One of the elements key to the effective operation of a compliance management framework is the financial institution's commitment to promoting values related to proper conduct in compliance matters. Compliance management framework objectives will be more easily achieved if roles and responsibilities are clearly identified and staff at all levels of the financial institution are fully aware of their respective roles and responsibilities and understand them.

The board of directors and senior management are ultimately responsible for ensuring the financial institution's ongoing compliance with legal, regulatory and normative requirements. They should establish and maintain a compliance management framework, and ensure that the policy and procedures underpinning the compliance management framework are appropriate and observed. The board of directors and senior management are generally assigned the following principal roles and responsibilities.

Board of directors⁴ should:

- approve the content of the compliance management framework;
- ensure that the compliance management framework is established and adequately maintained;
- ensure that it has sufficient relevant information to address important compliance issues and obtain reasonable assurance that the institution is in compliance with laws, regulations and standards;
- monitor remedial plans introduced with regard to any major problems detected;
- regularly assess the effectiveness of the compliance management framework;
- approve any changes to the compliance management framework.

The board of directors should ensure that an internal audit or other independent oversight function regularly validates the compliance management framework. It should also ensure that any recommendations are brought to its attention and that the necessary corrective measures are implemented.

Senior management should:

- implement the compliance management framework;
- establish a compliance function within the financial institution;
- communicate the compliance policy throughout the financial institution;
- ensure that the compliance policy is adhered to;
- ensure that due consideration is given to important recommendations regarding compliance;
- report on compliance risk management to the board of directors.

Senior management should ensure that the policy and the procedures are developed and effectively applied by competent persons who understand and assume their responsibilities.

If compliance-related responsibilities are carried out by staff from various operational units, the distribution of such responsibilities among these various units should be clearly defined. The primary role of staff responsible for compliance consists in assisting senior management in effectively managing the regulatory risk with which the financial institution is faced. They should have the skills and experience necessary to perform their functions effectively.

⁴ A reference to the board of directors can also include a board committee, such as a board committee established to examine specific issues.

4. Audit of compliance management framework

The AMF expects the financial institution's compliance management framework to be regularly audited by the internal audit function to validate key control mechanisms. Where this is not feasible given the financial institution's size or structure, the audit should be carried out by another independent oversight function.

The audit function should be independent of the activities being reviewed. The persons in charge of audits should have the appropriate competencies as well as extensive knowledge of the financial institution and the legislative, regulatory and normative framework. Review findings and recommendations should be reported to operations management, senior management, the compliance officer and the board of directors. The measures implemented in response to these recommendations should be given appropriate follow-up.

The persons in charge of audits should be able to request from senior management timely and easy access to any data, reports and other documents or explanations necessary for their review.

5. Documentation and reports to the board of directors

The AMF expects the compliance oversight function and the internal audit or other independent oversight function, as applicable, to report to the board of directors on all important issues regarding compliance on a regular basis or as necessary.

The financial institution should produce adequate documentation regarding the content of the compliance management framework for use as evidence in support of adequate management of regulatory risk. In this regard, the compliance management framework should specify which components the financial institutions considered to be part of regulatory risk. The documentation should also cover the procedures put in place to identify and assess regulatory risk and the methods employed to manage and mitigate this risk at all levels of the financial institution.

Documentation regarding the various reports submitted to senior management and the board of directors should be kept on file, including all documents concerning the board's regular review of the compliance management framework.

5.1 Reports by oversight function

Commonly used reports should be generated on a periodic basis and submitted to the board of directors. These reports should cover the significant results of compliance oversight at all levels of the financial institution. They should at least include relevant information on major problems or deficiencies in the compliance management framework, exposure to regulatory risk and any required corrective measures.

The reports should include enough information to enable the board of directors to make an informed judgment on the compliance management framework. Reports could include the following:

- the scope and results of compliance management reviews;
- major recommendations for correcting deficiencies;
- initiatives by senior management with regard to corrective measures;
- details of significant amendments to laws, regulations or standards;
- compliance issues and trends in the industry or the financial sector.

5.2 Reports by internal audit or another independent oversight function

These reports, similar to those issued by the oversight function, should contain sufficient information to facilitate periodic re-assessments of the compliance management framework by the board of directors. They should be generated using a methodology that the board of directors deems appropriate and include all information necessary to support the board's control process.

6. Assessment of compliance management framework effectiveness

The AMF expects the financial institution to foster a culture of compliance, introduce a policy and procedures for managing its regulatory risk and ensure the effectiveness of its compliance management framework.

6.1 Role of the financial institution

Compliance control mechanisms and related methodologies should be regularly reviewed and updated to take into account all changes to the financial institution's regulatory risks, activities, products and organizational structure so that such changes are adequately identified.

6.2 Role of the AMF

In seeking to promote sound and prudent management at financial institutions, the AMF intends to assess the degree of compliance with the sound and prudent management principles contained in this guideline and the effectiveness of the compliance control mechanisms implemented by financial institutions.

Since this guideline sets out the AMF's expectations based on principles rather than specific rules, its provisions should be considered more as guidance to assist financial institutions in implementing a compliance management framework. Consequently, the AMF will take into consideration the specific attributes of each institution when assessing the effective implementation of a compliance management framework.