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## Regulatory evolution and Hedge Funds innovation: The key regulatory role of the Moroccan Capital Market Authority

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### Abstract

Attracting hedge funds is a matter of balancing financial innovation with investor protection, reflecting global trends and investment complexities. Central to this is the Moroccan Capital Market Authority, whose modernization through key legal reforms aims to enhance efficiency and global competitiveness. The AMMC's additionally plays a key role in promoting financial literacy and putting forward proactive measures to adapt to the burgeoning realm of FinTech and sustainable finance, which collectively strengthen Morocco's financial market's inclusivity, innovation, and sustainability. The AMMC's comprehensive and adaptive approach signifies its pivotal role in steering the Moroccan financial sector towards a future of heightened global integration and economic robustness, consequently fostering an attractive regulatory environment for Hedge Funds.

**Key words:** Hedge funds – Regulation – Financial markets – Market regulator – Market transparency – Legislative reforms – Morocco – Investment funds – Equity markets – Debt markets – Capital markets – Portfolio diversification – Market oversight – Compliance

## INTRODUCTION

The Moroccan Capital Market Authority (AMMC) functions as the principal regulatory institution for the supervision of investment funds and other financial market activities in Morocco. Tasked with the protection of investors, the assurance of market transparency, and enforcement of legal compliance, the AMMC operates as an independent authority established under Moroccan law.

The AMMC was created to address the increasing sophistication and complexity of Morocco's financial markets and to align the nation's regulatory environment with international standards. The enactment of Law No. 52-01 established the AMMC, laying the foundation for a regulated financial market in Morocco. The authority's regulatory scope and responsibilities were further defined and expanded by Law No. 43-12, which provided a more robust legal framework for capital market oversight. Its operational mandate, as dictated by Law No. 43-12, includes the monitoring of capital market activities and enforcement of regulatory compliance by market participants. This involves the review and dissemination of financial information, oversight of trading activities, and the implementation of anti-money laundering measures. Additionally, the AMMC is responsible for representing Morocco in international financial regulatory forums and for promoting financial

literacy among investors. The authority's regulatory oversight extends to a broad range of financial entities, including stock brokerage firms, collective investment schemes, and other market intermediaries. The AMMC is empowered to conduct inspections and demand necessary documentation from these entities to ensure compliance with the regulatory framework.

Recent legislative updates have underscored the AMMC's crucial role in market regulation, reflecting the evolution of the Moroccan financial market and the need for an adaptive regulatory approach to safeguard market integrity and protect investor interests. Our analysis delves into the effectiveness of the dual role the AMMC plays as both a regulator and a facilitator of the hedge funds industry in Morocco and is centered around the problematic: How does the AMMC balance regulatory oversight with the promotion of innovation and competitiveness of an attractive regulatory framework for hedge funds?

For this purpose, our analysis will be structured into two comprehensive parts. First, we will scrutinize the recent legal reforms and their impact on the operational and regulatory environment of the AMMC. We will then proceed with a comprehensive analysis of the Moroccan efforts to align its financial sector with global trends, focusing on the attractiveness of its regulatory framework to hedge funds

while highlighting the role the AMMC plays in fostering a favorable competitive environment for Hedge Funds.

## I. The Moroccan Capital Market Authority, the market regulator

The primary regulatory body overseeing investment funds of all kind in Morocco is the Moroccan Capital Market Authority. Established as an independent authority, the AMMC is responsible for ensuring the protection of investors, the transparency of financial markets, and the compliance of various market participants with laws and regulation.

### 1. Historical relevant context

The Moroccan Capital Market Authority, an entity enshrined in the annals of financial regulation, emerges as a linchpin in the orchestration and oversight of the country's financial markets. Its inception and continued evolution reflect Morocco's commitment to fostering a robust, transparent, and efficient capital market, crucial for the nation's economic fortitude and growth trajectory<sup>1</sup>.

Established in the wake of an expanding and increasingly complex financial marketplace, the AMMC was born out of a strategic imperative to cultivate a regulatory environment that aligns with global best practices<sup>2</sup>. It represents a confluence of visionary policymaking and pragmatic financial stewardship, aimed at nurturing a secure and dynamic investment landscape. The establishment of the Moroccan Capital Market Authority marked a pivotal moment in Morocco's financial history: It represented a transition from a traditional, banking-focused financial system to a more diverse and sophisticated market-oriented economy. The AMMC's genesis is deeply intertwined with Morocco's economic liberalization efforts, its response to the complexities of a modern financial market, and its aspirations for integration into the global financial community.

Law No. 52-01<sup>3</sup> was a foundational law that created the Moroccan Capital Market Authority, setting the stage for modern and effective capital market regulation in Morocco. The AMMC, since its establishment under this law, has been instrumental in driving forward Morocco's financial market regulation and development. The inception of the AMMC was later formalized through the Dahir No. 1-13-21 constituting the promulgation of Law No.43-12<sup>4</sup>. This regulatory body is

<sup>1</sup> Slimani, C., & Alaoui, M. (2022). *The Economic Regulation And Competition In The Moroccan Monetary And Financial Markets In The Era Of Covid-19 Pandemic. Journal of Positive School Psychology*, 6(8), 8992-9004.

<sup>2</sup> Slimani, C., & Alaoui, M. (2022). *The Economic Regulation And Competition In The Moroccan Monetary And Financial Markets In The Era Of Covid-19 Pandemic. Journal of Positive School Psychology*, 6(8), 8992-9004. p. 4-6.

<sup>3</sup> Law No. 52-01 amending Dahir 1-93-212 of September 1993

<sup>4</sup> Dahir n° 1-13-21 du 1er jourmada I 1434 (13 mars 2013) portant promulgation de la loi n° 43-12 relative à l'Autorité marocaine du marché des capitaux. Bulletin officiel n° 6144 du 7 jourmada II 1434 (18-4-2013).

primarily tasked with monitoring and curtailing unlawful activities within the stock exchange.

## Box 1 : Establishing the Moroccan Capital Market Authority

The Moroccan Capital Market Authority was established under Law No. 52-01, which replaced the earlier CDVM. This law restructured the CDVM and redefined its role, giving birth to the AMMC as the new regulatory authority for Morocco's capital market. Key aspects of the law are:

- **Establishment of AMMC:** Law No. 52-01 marked the transition from the CDVM to the AMMC, signifying a strategic overhaul in the regulatory framework governing Morocco's capital markets.
- **Expanded Regulatory Scope:** The law broadened the regulatory scope of the authority, empowering the AMMC to oversee a wider range of financial instruments and market participants.
- **Enhanced Regulatory Powers:** Under Law No. 52-01, the AMMC was granted increased powers for market supervision and enforcement, aligning Morocco's capital market regulations with international standards.
- **Focus on Transparency and Investor Protection:** The law emphasized the importance of transparency in market operations and the protection of investors, mandating strict compliance and reporting standards for market entities.

## Box 2 : Establishing the Moroccan Capital Market Authority

- **Adaptability to Market Dynamics:** Law No. 52-01 was designed to be adaptable to the evolving nature of financial markets, allowing the AMMC to effectively respond to new challenges and trends in the financial sector.

The enactment of Law No. 52-01 and the establishment of the AMMC represented a significant milestone in Morocco's financial market development. It signaled the country's commitment to fostering a robust, transparent, and efficient capital market, crucial for attracting domestic and international investments.

The most recent legislative updates have further reinforced the AMMC's pivotal role. Originally, the institution was known as the CDVM<sup>5</sup>, established in 1993 amid Morocco's economic modernization and the formation of key strategic bodies. Initially, the CDVM's powers were somewhat restricted, hindering its effectiveness. To address this, Moroccan legislators revamped the legal framework, enhancing the CDVM's capabilities and eventually transitioning it to the AMMC.

<sup>5</sup> Abrv. Conseil Déontologique des valeurs immobilières, previous denomination of the current AMMC

## Box 2 : The CDVM, the predecessor of the AMMC

Law 1-93-212 in Morocco, enacted in 1993, is a pivotal piece of legislation that played a significant role in the establishment and regulation of the Conseil Déontologique des Valeurs Mobilières (CDVM), the precursor to the current Moroccan Capital Market Authority (AMMC). This law was integral to the modernization and structuring of Morocco's financial market regulatory framework. Key Features of Law No. 1-93-212 are:

- **Establishment of the CDVM:** Law No. 1-93-212 laid the foundation for the creation of the CDVM, setting out its structure, functions, and responsibilities. The CDVM was tasked with overseeing the Moroccan capital market, ensuring compliance with financial regulations, and protecting investor interests.

## Box 2 : The CDVM, the predecessor of the AMMC

- **Regulatory Framework:** The law provided a comprehensive framework for the regulation of the Moroccan capital market, including oversight of securities issuance, market operations, and disclosure requirements.
- **Investor Protection:** A central aspect of Law No. 1-93-212 was its focus on investor protection, mandating transparency in market operations and requiring accurate and timely disclosure of information by listed companies.
- **Market Integrity and Transparency:** The law aimed to enhance market integrity and transparency, setting standards for ethical conduct in the capital market and establishing guidelines for the dissemination of financial information.
- **Adaptation to Market Dynamics:** Recognizing the evolving nature of financial markets, Law No. 1-93-212 allowed for the adaptation of regulations to meet the changing needs of the market and align with international best practices.

The implementation of Law No. 43-12 represented a major step in the evolution of Morocco's financial regulatory landscape. By establishing the CDVM and setting out a framework for market regulation, the law contributed to the development of a more organized, transparent, and efficient capital market in Morocco, thus playing a crucial role in fostering investor confidence, attracting investment, and promoting economic growth.

## 2. Transitioning from CDVM to AMMC: The modernization of financial market regulation

Law No. 43-12 was instrumental in shaping the regulatory environment of the Moroccan capital market. Its enactment

marked the beginning of a new era in financial market regulation in Morocco, laying the groundwork for the modern regulatory structure overseen by the AMMC.

The Dahir 1-13-21 of the 1<sup>st</sup> Joumada I 1434 (13<sup>th</sup> March 2013) promulgating Law No. 43-12 relating to the Moroccan Capital Markets Authority frames the transformation of the CDVM into a public legal entity, endowed with financial autonomy and subjected to state oversight on behalf of, and in the name of, the Ministry of Finance. The new authority is under the oversight of an appointed government commissioner, entrusted with ensuring adherence to legislative provisions governing its activities. The commissioner is also charged with ascertaining that the Sanctions Committee is sufficiently equipped to conduct its functions effectively<sup>6</sup>.

Article 3 of the aforementioned law articulates that the AMMC is tasked with the responsibility of safeguarding the savings invested in financial instruments, as defined by Law No. 44-12 pertaining to public appeals for savings and governed by the various legislations stipulated in Law 43-12.

Specifically, the AMMC's duties encompass:

- Ensuring the seamless operation of the capital market and vigilantly overseeing the application of legislative and regulatory provisions;
- Conducting thorough oversight of the activities of various entities under its jurisdiction;
- Guaranteeing that information to be provided to investors in financial instruments and the public is prepared and disseminated in strict compliance with the aforementioned legislations and regulations;
- Combating money laundering activities undertaken by individuals and organizations under its supervision;
- Representing Morocco, within the ambit of its legal prerogatives, in international institutions to foster global cooperation in the realm of capital market oversight;
- Advocating for the financial education of savers, thereby empowering them with knowledge and understanding critical to making informed investment decisions.

Pursuant to Article 4 of the aforementioned law, the Moroccan Capital Market Authority fulfills its regulatory oversight responsibilities as designated by current legislation. This oversight extends to entities and individuals under its jurisdiction as specified in the article, ensuring their compliance with applicable legislative and regulatory provisions.

<sup>6</sup> Dahir 1-13-21 of the 1st Joumada I 1434 (13th March 2013) promulgating Law No. 43-12 relating to the Moroccan Capital Markets Authority

Key areas of focus include<sup>7</sup>:

- Stock brokerage firms and the company managing the stock exchange, governed by the Dahir enacting Law 1-93-211 of 4 Rabii 1414 (September 21, 1993), pertaining to the stock exchange.
- Organismes de Placement Collectif en Valeurs Mobilières (UCITs), their management companies, and custodian institutions, regulated by the Dahir enacting Law No. 1-93-213 of 4 Rabii II 1414 (September 21, 1993), concerning UCITs.
- The central depository, account keepers, and corporate issuers, governed by Law No. 35-96, which relates to the establishment of a central depository and the general regime for the account registration of certain securities.
- Venture capital organizations and their management companies, regulated under Law No. 41-05.
- Collective investment funds in securitization and their managing custodian institutions, governed by Law No. 33-06.
- Individuals or legal entities subject to the provisions of Law No. 26-03, related to public offerings in the stock market.
- Entities making public appeals for savings in accordance with the stipulations of the aforementioned Law No. 44-12 and Law No. 17-95 concerning joint-stock companies.
- To brokers, clearers, and broker-clearers, as well as the managing company and the clearinghouse, all governed by the current legislation related to the futures market of financial instruments.
- To repurchase agreements (repos), regulated by Law No. 24-01.
- To certain negotiable debt securities, governed by Law No. 35-94.
- To authorized individuals as specified in Article 31 of the present law, as well as those who, due to their activities, contribute to operations involving financial instruments.

These regulatory domains underscore the AMMC's comprehensive approach to overseeing various components of Morocco's capital market, ensuring that each adheres to the specific legislative and regulatory frameworks that guide their operations.

The Moroccan Capital Market Authority is empowered to request from individuals and organizations under its supervision, as specified in Article 4 of the current law, all documents and information necessary for the fulfillment of its duties. The AMMC determines the list, content, and format of these documents, as well as the mediums and deadlines for submission, in accordance with prevailing legislation.

<sup>7</sup> Dahir 1-13-21 of the 1st Joumada I 1434 (13th March 2013) promulgating Law No. 43-12 relating to the Moroccan Capital Markets Authority

Furthermore, the AMMC is authorized to conduct on-site and documentary inspections at any time with these entities, to ensure their compliance with the legislative and regulatory provisions governing their activities. These inspections are carried out by agents referred to in Article 34 of the same law. The authority of these inspections extends to subsidiaries of the mentioned entities or organizations, or to legal entities they control, as defined under Articles 143 and 144 of Law No. 17-95 pertaining to joint-stock companies.

The AMMC also provides its opinion on the general regulations of the company managing the Stock Exchange and the central depository, as well as on any amendments to these regulations.

## I. The AMMC's role in fostering a favorable regulatory environment for Hedge Funds

### 1. Legal provisions relating to the control mechanisms and punishments measures

The AMMC utilizes administrative circulars<sup>8</sup> to enforce legal mandates. These circulars detail professional practice standards, ethical codes, and practical applications of laws and regulations, often crafted in collaboration with industry professionals and aligned with international best practices in securities market regulation.

The AMMC prioritizes the security and integrity of the financial market and its transactions. In this context, various financial market professionals, including brokerage firms, stock exchanges, account holders, central depositories, and management companies, fall under the AMMC's jurisdiction. The Authority's oversight extends through two primary methods: on-site inspections at intermediary premises and document reviews via mandatory reporting established by the AMMC.

The principal objective of these regulatory activities is to ensure that market professionals continuously maintain and enforce adequate safeguards in terms of organization, technical resources, financial stability, and human resources. Additionally, the AMMC ensures that the conditions for granting operational approvals are consistently met.

Furthermore, the AMMC is responsible for ensuring that transactions in the securities market adhere to established rules, thereby upholding market integrity. When necessary, and under the prerogatives listed under Title I – Section VI “Disciplinary and financial sanctions pronounced by the President of the AMMC” and Title VI “Investigation and reporting of offenses and criminal sanctions” of Dahir 1-13-21 of the 1st Joumada I 1434 (13th March 2013) promulgating Law No. 43-12, it conducts investigations and, upon validating any infractions, is authorized to impose sanctions

<sup>8</sup> Art. 6-7 of Dahir 1-13-21 of the 1st Joumada I 1434 (13th March 2013) promulgating Law No. 43-12

against those who violate market regulations or disrupt market operations.

These sanctions are imposed following a procedure that upholds the rights of the involved parties. The AMMC's legal framework is both comprehensive and well-structured, drawing upon international best practices and experiences to effectively regulate Morocco's stock market. The evolution of the AMMC's legal framework is a response to emerging market practices and activities. Thus, the modernization of its laws and the incorporation of global insights are key to bolstering the safety and integrity of Morocco's financial market.

The AMMC is not merely a regulatory body but a strategic component of Morocco's broader economic vision. It is integral to the country's ambitions to modernize its financial system, diversify its economy, and position itself as a competitive player in the regional and global economy.

## 2. Comprehensive mandate and jurisdiction

The AMMC is entrusted with the critical mission of regulating and overseeing the Moroccan capital markets. Its mandate encompasses ensuring the protection of investors, maintaining fair and orderly markets, and fostering transparency and efficiency in financial operations.

Consequently, the AMMC's jurisdiction extends over a broad spectrum of financial activities and entities in Morocco. This includes the oversight of public offerings, market intermediaries, collective investment schemes, and other market participants<sup>9</sup>.

One of the primary responsibilities of the AMMC is to regulate the securities market. This includes supervising trading activities, monitoring compliance with securities laws, and ensuring that all market players adhere to the established rules and regulations.

The AMMC actively monitors market activities to identify and mitigate potential risks that could lead to market instability, such as price manipulation, or insider trading. This involves analyzing market trends, detecting irregularities, and investigating suspicious activities.

Additionally, a pivotal aspect of the AMMC's role is to protect the rights and interests of investors. This is achieved through stringent regulatory measures that ensure the transparency and integrity of market operations and the dissemination of accurate and timely information to investors. For that purpose, the authority rigorously enforces compliance with the financial regulatory framework. This involves regular audits, inspections, and reviews of financial entities to ensure they adhere to legal and regulatory standards.

<sup>9</sup> Hnaka, H., Ouassou, F. E., & Riad, L. (2023). *The impact of Covid-19 on the behavior of actors and the regulation of the Moroccan stock market*. *Annals of Management and Organization Research*, 5(1), 31-48.

Furthermore, the AMMC also addresses investor complaints and facilitates dispute resolution between investors and financial entities, thereby enhancing investor confidence in the Moroccan capital markets. Consequently, in instances of non-compliance, the AMMC is empowered to take corrective actions, which can range from issuing fines and warnings to more severe penalties such as the suspension or revocation of licenses; while in case of conflicts, it acts as a mediator in disputes between investors and financial entities.

## 3. Development of a favorable best practice regulatory framework

The AMMC plays a key role in formulating and amending policies and regulations to adapt to evolving market conditions, new financial products, and international best practices. The authority collaborates with other national and international regulatory bodies to harmonize regulatory standards and practices, ensuring that Morocco's capital markets align with global financial norms.

Accordingly, it actively participates in developing and refining the regulatory framework governing Morocco's capital markets. This process involves assessing current market needs, forecasting future trends, and incorporating international regulatory practices.

The AMMC has been at the forefront of pioneering initiatives to democratize access to capital markets for Small and Medium-sized Enterprises (SMEs). The operationalization of the SME Offer, a groundbreaking endeavor launched in late 2021, with the inaugural SME reaping the benefits of this innovative mechanism<sup>10</sup>.

The AMMC's contributions have extended beyond this realm, as it has played a pivotal role in the dynamic evolution of the private debt market. A notable achievement in this regard has been the integration of new market participants, specifically local authorities, thereby enriching the market's diversity and depth.

Moreover, the AMMC has been instrumental in fortifying the significance of asset management as a key driver of economic financing. This has been achieved through persistent efforts to refine existing legislations. Notably, the ongoing endeavors include revising the law pertaining to Undertakings for Collective Investment in Transferable Securities (UCITS), initiating amendments to the law governing venture capital investment vehicles (OPCCs), and the practical implementation of debt funds as outlined by the securitization law, further supported by the publication of its application decree<sup>11</sup>.

<sup>10</sup> Hnaka, H., Ouassou, F. E., & Riad, L. (2023). *The impact of Covid-19 on the behavior of actors and the regulation of the Moroccan stock market*. *Annals of Management and Organization Research*, 5(1), 31-48.

<sup>11</sup> Naheem, M. A. (2021). *Morocco's market economy expansion and its successful strategy in combatting money laundering and terrorist financing*. *Journal of Money Laundering Control*, 24(2), 325-347.

The AMMC's strategic involvement has been crucial in cultivating a modern, adaptable, and progressive legal and regulatory framework. This framework is adept at facilitating market-based financing for enterprises, exemplified by several significant developments:

- The refinement of the circular concerning financial operations and information, which notably includes broadening the definition of a qualified investor. This expansion now encompasses subsidiaries of entities meeting the criteria for qualified investor status, as well as the two bank deposit guarantee funds.
- The completion of the AMMC circular focused on Financial Investment Advisors (FIAs), establishing a structured framework for investment advisory activities. This framework encompasses registration, professional practice, and ethical standards for advisors, ensuring a well-regulated advisory landscape.
- Proactive support in the implementation of the latest amendments to the Public Limited Companies Law. These amendments are geared towards enhancing governance within issuers and bolstering investor protection, thereby strengthening the foundational pillars of market integrity and trust.

In essence, the AMMC's initiatives and regulatory advancements underscore its commitment to fostering a vibrant, inclusive, and efficient financial market in Morocco. Through these concerted efforts, the AMMC is not only nurturing the growth of SMEs and broadening market participation but is also laying the groundwork for a sustainable and prosperous economic future.

In a bid to catalyze innovation within the financial sector, the Moroccan Capital Market Authority embarked on several pioneering initiatives in 2022<sup>12</sup> to diversify and enrich the spectrum of financial instruments available in the marketplace. These initiatives, characterized by their ingenuity and forward-thinking approach, included:

**Finalizing the Crowdfunding Regulatory Framework:** The AMMC meticulously crafted and completed the regulatory architecture for crowdfunding, marking a significant milestone in broadening investment avenues and democratizing access to capital.

**Broadening the Scope of Participative Finance:** In its endeavor to expand the realm of participative finance, the AMMC adopted a series of decrees pertinent to Sukuk investment and financing certificates. Furthermore, it embarked on the submission of a proposal for a Sharia-compliant market index to the esteemed Higher Oulema Council (CSO), signifying a confluence of financial innovation and adherence to ethical investment principles.

<sup>12</sup> AMMC. (2023). *Priority Actions for 2023, AMMC report, February 2023*

**Fostering FinTech Development through a Multifaceted Strategy:** In collaboration with key market players, the AMMC initiated a Proof Of Concept (POC) on blockchain technology. This venture focused on a bond issuance via private placement, heralding the first operation of its kind in Morocco to utilize a blockchain platform.

The legislative landscape surrounding crypto-assets received heightened attention, with the AMMC actively participating in the national working group on crypto-assets (GTNCA). This involvement underscores the Authority's commitment to staying abreast of emerging digital asset trends.

To further support FinTech innovations, the AMMC launched a dedicated portal on its website. This platform serves as a conduit for project holders to engage with the Authority, discussing their ventures and navigating the applicable legal and regulatory framework.

**Sustaining Efforts in Promoting Sustainable Finance:** The AMMC continued to champion the cause of sustainable finance, undertaking a series of actions designed to encourage the integration of environmental, social, and governance (ESG) considerations into the practices of market players, encompassing both issuers and participants.

**Strategic Partnerships and Awareness Campaigns:** The Authority forged key partnerships (with FSD Africa, IFC) and conducted awareness-raising activities focused on ESG aspects. A noteworthy initiative was the launch of a tool to assess the compliance and quality of ESG reports, reinforcing the importance of sustainable reporting standards.

**Marrakech Pledge Signatories Meeting:** In collaboration with the Casablanca Stock Exchange, the AMMC organized a convocation of signatories of the Marrakech Pledge, an initiative birthed during COP22. This assembly served as a platform to review the achievements of the pledge, brainstorm on future action plans, and welcome six new signatories, encompassing three stock exchanges and three capital market regulators.

The AMMC's endeavors in 2022 stand as a testament to its dedication to fostering a dynamic, innovative, and sustainable financial landscape in Morocco. Through these strategic actions, the Authority not only reinforces its role as a regulator but also as a visionary entity steering Morocco's financial sector towards a future marked by inclusivity, innovation, and sustainability.

#### 4. The AMMC's role in broadening market participation and ensuring compliance

The AMMC's regulatory framework aims to encourage broader market participation, including attracting foreign investors and facilitating the entry of new market players by ensuring the market is more inclusive and accessible<sup>13</sup>.

<sup>13</sup> AMMC. (2023). *Priority Actions for 2023, AMMC report, February 2023*

The AMMC also engages in educational and outreach initiatives to promote financial literacy and awareness among investors and market participants.

The AMMC's role in ensuring regulatory compliance is characterized by rigor and precision. Regular audits, inspections, and reviews are conducted to ascertain adherence to the legal and regulatory framework governing the financial markets. In instances of non-compliance, the AMMC wields its authority to administer corrective actions, ranging from issuing warnings to imposing fines and even suspending or revoking licenses. This enforcement regime underscores the AMMC's commitment to maintaining market discipline and ethical standards.

The essence of this oversight is to guarantee that the public receives consistent and reliable updates from those entities seeking their investment. The AMMC diligently ensures that these entities adhere to their obligations of publishing annual and semi-annual financial statements, and that they disclose any significant information that might impact the stock market prices of their securities or affect the assets of the security holders. The Authority is committed to ensuring that the disseminated information is precise, genuine, accurate, and timely shared with the entire financial community.

In the sphere of market participants and enterprises, those under the purview of the AMMC's scrutiny include brokerage firms, account keepers, banks, asset management companies, the Stock Exchange, and the Central Depository. This surveillance manifests in two complementary forms: on-site control, which involves inspections within the premises of these entities, and documentary control, achieved through reporting processes defined by the AMMC in both content and frequency. The primary aim of this oversight is to perennially ascertain that each entity maintains sufficient guarantees, particularly in terms of organizational structure, technical, financial, and human resources, and to verify the ongoing fulfillment of licensing conditions.

### Box 3: Overview of the “Collège des sanctions” role in enforcing compliance and regulatory framework

The Sanctions Committee at the AMMC is tasked with examining cases that might necessitate disciplinary action by the AMMC President and suggesting appropriate sanctions post-investigation. The Committee, independent from the Board of Directors, consists of three permanent members. Its President, a magistrate appointed following Law No. 100-13, is nominated by the Minister of Economy and Finance on the recommendation of the President of the Higher Judicial Council. The other two members are selected by the Board based on their integrity and expertise in legal and financial matters.

The Sanctions Committee of the AMMC is responsible for investigating cases referred by the AMMC President and advising on appropriate actions. Its authority includes recommending sanctions for breaches or referring cases to judicial authorities for criminal offenses. After investigation,

the Committee proposes disciplinary actions to the AMMC President, who then pronounces the sanctions. The Committee also meets annually with the Board of Directors to review its activities.

The sanction process involves four key stages:

1. Referral of potential administrative breaches or offenses by the President of the Authority to the Sanctions Committee.
2. Case investigation by the Sanctions Committee.
3. The Committee, depending on the situation, suggests disciplinary action or case referral to the judiciary to the Authority's President.
4. Based on the Committee's recommendation, the President either pronounces the sanction in cases of breaches or forwards the case to the judiciary for criminal offenses.

The Sanctions Committee must convene within 15 days following its referral by the AMMC President and issue its findings within a maximum of three months.

### Box 3: Overview of the “Collège des sanctions” role in enforcing compliance and regulatory framework

Committee must formally notify the accused parties of the charges in writing, who can then respond with written observations and request hearings. The President of the AMMC can provide additional information to the Committee or order on-site inspections to gather necessary details for the case's investigation.

When addressing grievances, the AMMC serves as a receptacle for investor complaints pertaining to transactions involving financial instruments, in particular investment funds operating in Morocco. The Authority engages in thorough investigations to ascertain the legitimacy of these complaints and implements appropriate measures as necessitated:

- On September 10<sup>th</sup>, 2019, the AMMC issued a punitive decision No. DS-07/19<sup>14</sup>, against CDG Capital Bourse, a Moroccan joint-stock company registered under number 77777 in the Casablanca Commercial Registry, functioning as a brokerage firm. In line with Article 20 of Law No. 43-12 concerning the Moroccan Capital Market Authority and the AMMC's General Regulations, the case involving allegations against CDG Capital Bourse was presented to the AMMC's Sanctions Committee. Following a review, the Committee ruled on the case, ensuring the accused's rights to information, defense, and representation. The decision, as outlined here, was made per the

<sup>14</sup> Fiche récapitulative, Décision de sanction n° DS-07/19 du 10 Septembre 2019 prononcée à l'encontre de « CDG Capital Bourse », available at [www.ammc.ma](http://www.ammc.ma)

Committee's advisory opinion under number CS-07/2019, in regards to:

- Omission of mandatory details on certain stock exchange orders.
- Non-compliance with the subscription procedures for a public offer as outlined in the information note.
- A failure in the internal control system to verify the regularity of specific stock exchange orders.

In adherence to Law No. 43-12 and the AMMC's General Regulations, the President of the AMMC imposed the following sanctions on CDG Capital Bourse:

1. A warning for the failure to include mandatory information on certain stock exchange orders;
2. A fine of one hundred thousand Moroccan Dirhams MAD 100,000.00 for not adhering to the subscription modalities of a public offer;
3. Another fine of MAD 100,000.00 for the internal control system's failure to detect cases where mandatory details were omitted from certain stock exchange orders.

On December 17<sup>th</sup>, 2019, the AMMC issued a punitive decision No. DS-13/19<sup>15</sup>, against AD Capital, a Moroccan joint-stock company registered in the Casablanca commercial registry under number 272221 and operating as an OPCVM company, has been formalized. In alignment with the provisions of Article 20 of Law No. 43-12 related to the Moroccan Capital Market Authority and those of the AMMC's General Regulations, the case pertaining to the allegations against "AD Capital" was submitted to the AMMC's Sanctions Committee for review and opinion. Pertaining to:

- Failure to adhere to the exclusive OPCVM management mandate as per the company's defined corporate purpose.
- The managed assets' exposure to financial risks incurred by the management company due to activities conducted on its own account.
- Inadequate measures to prevent a conflict of interest situation involving a senior executive and the execution of an unauthorized financial transaction on behalf of a managed OPCVM.
- Discriminatory rebating of management fees to one of the unit holders.
- Non-compliance with the Circular's requirements regarding due diligence and internal monitoring, particularly concerning the incompleteness of certain client files.

Upon its engagement, the Sanctions Committee proceeded to examine the aforementioned case in strict adherence to the sanction procedure outlined in Articles 49 to 61 of the AMMC's General Regulations. This procedure ensures the rights of the accused party, including the right to be informed, the right to defense, and the right to representation and counsel.

Ruling in accordance with the provisions of the aforementioned Law No. 43-12, the General Regulations of the AMMC, and following the advisory opinion of the Sanctions Committee, the President of the AMMC has issued a reprimand against AD Capital.

On January 19<sup>th</sup>, 2022, the AMMC issued a punitive decision No. DS-02/22<sup>16</sup>, against Atlas Capital Management, a Moroccan joint-stock company registered in the Casablanca commercial registry under number 95559, which operates as an OPCVM management company. Pursuant to Article 20 of Law No. 43-12 regarding the Moroccan Capital Market Authority and the AMMC's General Regulations, the case against Atlas Capital Management was submitted to the AMMC's Sanctions Committee for review and opinion. The Committee conducted its investigation according to the sanction procedure outlined in Articles 49 to 61 of the AMMC's General Regulations, ensuring the rights to information, defense, and representation by counsel of choice for the accused party. The decision was issued based on the Sanctions Committee's advisory opinion under number CS-03/2021, pertaining to:

- Failure to adhere to the exclusive OPCVM management mandate as per the company's defined corporate purpose.
- The managed assets' exposure to financial risks incurred by the management company due to activities conducted on its own account.
- Inadequate measures to prevent a conflict of interest situation involving a senior executive and the execution of an unauthorized financial transaction on behalf of a managed OPCVM.
- Discriminatory rebating of management fees to one of the unit holders.
- Non-compliance with the Circular's requirements regarding due diligence and internal monitoring, particularly concerning the incompleteness of certain client files.

In accordance with the stipulations of Law No. 43-12, the General Regulations of the AMMC, and following the advisory opinion from the Sanctions Committee, the President of the AMMC has issued the following sanctions against Atlas Capital Management: a warning, and a financial penalty of MAD 500,000. This decision reflects the AMMC's

<sup>15</sup> Fiche recapitulative, Décision de sanction n° DS-13/19 du 17 Décembre 2019 prononcée à l'encontre de « AD Capital », available at [www.ammc.ma](http://www.ammc.ma)

<sup>16</sup> Fiche recapitulative, Décision de sanction n° DS-02/22 du 19 Janvier 2022 prononcée à l'encontre de « Atlas Capital Management », available at [www.ammc.ma](http://www.ammc.ma)



commitment to enforcing compliance within its regulatory framework.

In its role of surveillance, inquiries, and enforcement, the AMMC vigilantly ensures that transactions involving financial instruments comply with market regulations, thus safeguarding market integrity. The Authority conducts investigations as required, and upon substantiation of facts, is empowered to impose sanctions against entities found in violation of regulations governing their activities or the functioning of the market. These sanctions are levied following a process that upholds the rights of the concerned parties, thereby maintaining the principles of fairness and due process.

In conclusion, the Moroccan Capital Market Authority steadfastly upholds its mandate as the guardian of market integrity and investor confidence through prudent governance and strategic regulatory oversight. Its establishment and progressive development are testament to Morocco's commitment to fostering a regulated, transparent, and efficient capital market—essential to the nation's economic strength.

The foundational Law No. 52-01, alongside Law No. 43-12, has been pivotal in defining the AMMC's regulatory scope, enabling the authority to manage an increasingly complex financial marketplace. The enforcement of these laws reflects the AMMC's capability to protect investor interests, ensure market transparency, and suppress illicit activities within the stock exchange.

A detailed analysis of the recent legislative reforms reveals the AMMC's critical role in maintaining a delicate equilibrium between rigorous regulatory oversight and the cultivation of an environment that encourages innovation and competitive vigor, especially pertinent to the hedge fund sector. The authority has adeptly aligned Morocco's financial sector with international trends, enhancing the regulatory framework's appeal to hedge funds and contributing to the country's financial progression and international competitiveness.

The AMMC's broad jurisdiction and mandate empower it to supervise a variety of financial entities, emphasizing its adaptability and commitment to fostering fair and orderly markets. With initiatives to promote financial education and a stringent compliance regime, the AMMC reinforces its role as both a regulator and an advocate for investor education, thereby elevating investor confidence and expanding market participation.

The strategic efforts of the AMMC, particularly in democratizing access to capital markets, advancing FinTech, and advocating for sustainable finance, underscore its forward-thinking approach. These endeavors highlight the authority's dedication to shaping a financial landscape marked by inclusivity, innovation, and sustainability.

Looking ahead, the Moroccan financial markets are poised for a promising future, driven by the AMMC's pursuit of regulatory excellence and its proactive adaptation to technological and fiscal advancements. The authority stands as an exemplar in the global economic arena, striving to elevate its financial system while steadfastly upholding the principles of fairness and integrity that are fundamental to any robust economic infrastructure. However, Moroccan markets have traditionally been recognized for the cautious approach and tight regulatory approach and disclosure requirements that could pose issues for potential Hedge Funds.

## Bibliography

1. AMMC. (2023). Priority Actions for 2023, AMMC report, February 2023
2. Arrêté n° 1756-17 du 20 jourada I 1439 (7 février 2018) fixant la liste des fonctions dont l'exercice est soumis à l'habilitation de l'AMMC.
3. Arrêté n° 2304-95 du 17 rabii II 1416 (13 septembre 1995) fixant les conditions d'évaluation des valeurs apportées à un OPCVM ou détenues par lui.
4. Arrêté n° 2541-13 du 12 jourada I 1435 (14 mars 2014) relatif aux règles de composition des actifs des organismes de placement collectif en valeurs mobilières.
5. Arrêté n° 2562-10 du 26 ramadan 1431 (6 septembre 2010) fixant le niveau minimum du montant du capital social des établissements gestionnaires de Fonds de placements collectifs en titrisation.
6. Arrêté n°1786-20 du 21 kaada 1441 (13 juillet 2020) fixant les modalités de réalisation des opérations de garantie du risque de financement par le fonds de placement collectif en titrisation et les conditions en matière de règles prudentielles et de contrôle qui leur sont applicables.
7. Dahir n° 1-13-21 du 1er jourada I 1434 (13 mars 2013) portant promulgation de la loi n° 43-12 relative à l'Autorité marocaine du marché des capitaux. Bulletin officiel n° 6144 du 7 jourada II 1434 (18-4-2013).
8. Fiche recapitulative, Décision de sanction n° DS-02/22 du 19 Janvier 2022 prononcée à l'encontre de « Atlas Capital Management », available at [www.ammc.ma](http://www.ammc.ma)
9. Fiche recapitulative, Décision de sanction n° DS-07/19 du 10 Septembre 2019 prononcée à l'encontre de « CDG Capital Bourse », available at [www.ammc.ma](http://www.ammc.ma)
10. Fiche recapitulative, Décision de sanction n° DS-13/19 du 17 Décembre 2019 prononcée à l'encontre de « AD Capital », available at [www.ammc.ma](http://www.ammc.ma)
11. Hedge Fund Strategy Performance Overview (2022), Eureka Hedge Research.

12. Hnaka, H., Ouassou, F. E., & Riad, L. (2023). The impact of Covid-19 on the behavior of actors and the regulation of the Moroccan stock market. *Annals of Management and Organization Research*, 5(1), 31-48.
13. Law No. 52-01 amending Dahir 1-93-212 of September 1993
14. Lhabitant, F. S. (2007). *Handbook of hedge funds* (Vol. 332). John Wiley & Sons, p. 44-70
15. Loi n° 1-93-213 relative aux OPCVM.
16. Loi n° 19-14 relative à la Bourse des valeurs, aux sociétés de bourse et aux conseillers en investissement financier.
17. Loi n° 26-03 relative aux offres publiques sur le marché boursier.
18. Loi n° 33-06 relative à la titrisation des actifs.
19. MacHarg, M. L. (2003). Waking up to hedge funds: is US regulation taking a new direction?. *Inst. for Law and Finance*.
20. Mader, W. (2008). *Hedge funds: Alternative investment strategies and portfolio models* (Doctoral dissertation, Augsburg, Univ., Diss., 2005).
21. Manzor S. and Bolger C. (2011). Ireland – More than just a tax rate. William Fry. Available at: <https://www.williamfry.com/knowledge/ireland-more-than-just-a-tax-rate/>
22. Marcus, J. S., Nett, L., Scanlan, M., Stumpf, U., Cave, M., & Pogorel, G. (2005). *Towards more flexible spectrum regulation*. Federal Network Agency. Bad Honnef, Germany.
23. Ministère de l'économie et des finances. Note de présentation du projet de loi modifiant et complétant la loi n° 44-10 relative au « statut Casablanca Finance City ».
24. Morley, J. (2013). The separation of funds and managers: A theory of investment fund structure and regulation. *Yale LJ*, 123, 1228.
25. Nabilou, H., & Paccès, A. M. (2015). The hedge fund regulation dilemma: Direct vs. indirect regulation. *Wm. & Mary Bus. L. Rev.*, 6, 183.
26. Naheem, M. A. (2021). Morocco's market economy expansion and its successful strategy in combatting money laundering and terrorist financing. *Journal of Money Laundering Control*, 24(2), 325-347.
27. Note de présentation du projet de loi relatif à Casablanca Finance City, abrogeant et remplaçant la loi No. 44-10 relative au statut de Casablanca Finance City, modifiée et complétée, et la loi No. 58-90 relative aux places financières offshore.
28. Nunes, A., Rott, O., Hirvonen, J., Georgiadis, G., Mosanu, V., Sochirca, A., ... & Laraki, K. (2014). *Morocco environmental performance reviews*.
29. P. de GASQUET, « Les vrais gagnants de la crise du "subprime" », *Les Échos*, 21 déc. 2007
30. Pearson, T. C., & Pearson, J. L. (2007). Protecting global financial market stability and integrity: Strengthening SEC regulation of hedge funds. *NCJ Int'l L. & Com. Reg.*, 33, 1.
31. Pruchnicka-Grabias, I. (2009). The study of the event driven hedge funds performance in the bull and the bear market. *Pravni Vjesnik*, 25, 47.
32. Quaglia, L. (2014). *The European Union and global financial regulation*. Oxford University Press, USA.
33. Slimani, C., & Alaoui, M. (2022). The Economic Regulation And Competition In The Moroccan Monetary And Financial Markets In The Era Of Covid-19 Pandemic. *Journal of Positive School Psychology*, 6(8), 8992-9004.