

Administrative sanction of 2 October 2024 for non-compliance with professional obligations related to the "MiFID II" framework.

Luxembourg, 13 December 2024

Administrative decision

On 2 October 2024, the CSSF imposed an administrative fine amounting to EUR 45,000 on the investment firm 2 PM Europe S.A. (the "Entity"), authorised to provide investment services related to the reception and transmission of orders in relation to one or more financial instruments, execution of orders on behalf of clients, portfolio management and investment advice as well as to act as Family Office according to the provisions of Articles 24-1, 24-2, 24-4, 24-5 and 28-6 of the amended Law of 5 April 1993 on the financial sector (the "LFS").

Legal framework/motivation

The administrative fine was imposed by the CSSF pursuant to Article 63-2a(1) and (4) of the LFS for non-compliance with prudential rules and professional obligations related to the "MiFID II" framework, as defined in Directive 2014/65/EU of the European Parliament and of the Council concerning markets in financial instruments, its delegated acts, and their transposition, where applicable, into national law.

In order to determine the type and amount of the administrative sanction, the CSSF duly took into account all the legal and factual elements set out and contradictorily discussed, as well as the assessment criteria referred to in the provisions of Article 63-4 of the LFS, including in particular the number and gravity of the breaches existing at the time of the on-site inspection.

The Entity provided a general action plan and initiated corrective measures during and after the on-site inspection to address the identified breaches.

The professional obligations in relation to which the breaches were observed are namely quoted in the relevant provisions of:

- (i) the LFS,
- (ii) the Commission Delegated Regulation 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organizational requirements and operating conditions for investment firms and the definition of certain terms for the purposes of that Directive (the "Delegated Regulation 2017/565"), and
- (iii) the Grand-ducal Regulation of 30 May 2018 relating to the safeguarding of financial instruments and funds belonging to clients, product governance obligations, and rules

governing the provision or receipt of fees, commissions, or any monetary or non-monetary benefits (the "Grand-ducal Regulation"),
in their version applicable at the time of the on-site inspection.

Legal bases for the publication

The publication is made in accordance with Article 63-3a(1) of the LFS, insofar as, in the absence of elements which would justify deviating from the principle according to which any administrative sanction is subject to a publication on a nominative basis, the CSSF considers that none of the legal exceptions provided for in Article 63-3a(1) of the LFS is applicable.

Context and major cases of non-compliance with the professional obligations identified

This administrative fine follows a CSSF on-site inspection at the Entity between 7 October 2022 and 27 July 2023 concerning prudential rules and professional obligations relating to the MiFID II framework. During the on-site inspection, the CSSF identified important breaches by the Entity of its MiFID II professional obligations, which related in particular the following points:

- The CSSF identified several conflicts of interest situations potentially detrimental to Entity's clients, which were not identified or recorded by the Entity. The CSSF noted that the Entity did not, consequently, systematically analyse these situations and, therefore, did not define and implement appropriate measures aimed at preventing such conflicts of interest from harming clients' interests. This constituted a breach of Articles 37-1(2), first subparagraph, and 37-2(1) of the LFS, which require the implementation of reasonable and appropriate measures to detect and prevent or manage conflicts of interest situations arising between the Entity (including its representatives) and its clients while taking into account the minimum criteria listed in Article 33, letters a), b), c), and e) of the Delegated Regulation 2017/565 and recording them in a dedicated register pursuant to Article 35 of the Delegated Regulation 2017/565.

Further, the Entity did not implement a framework for identifying and managing personal transactions in order to prevent and mitigate conflicts of interest and avoid the misuse of inside information, constituting a breach of Article 37-1(1), second subparagraph of the LFS and Article 29(1) and (5), first subparagraph of the Delegated Regulation 2017/565, which describe the arrangements to be implemented for identifying and managing personal transactions.

- The Entity did not conduct an analysis demonstrating that the commissions paid to its business introducers were aimed at continuously enhancing the quality of the service provided to the relevant clients and that these commissions did not impair the Entity's

duty to act honestly, fairly and professionally in accordance with the best interests of the relevant clients, constituting a breach of Article 37-3(3d), first subparagraph of the LFS.

Further, the Entity did not inform its clients of the amounts or percentages of commissions paid to its business introducers, which constituted a breach of its information duty as per Article 37-3(3d), second subparagraph of the LFS and Article 10(5) of the Grand-ducal Regulation.

Lastly, the Entity did not establish a framework for recording all relevant information regarding commissions paid to its business introducers, constituting a breach of Article 10(4) of the Grand-ducal Regulation.

- The Entity did not establish a product governance framework enabling it to meet its obligations as a distributor of financial instruments, in particular regarding the definition of the target market for financial instruments distributed to its clients and the systematic verification that investments decision taken on their behalf are within the defined positive target market. This constituted a breach of Articles 37-1(2), fourth and sixth subparagraphs, and 37-3(1a), second subparagraph of the LFS, as well as Article 9(1) of the Grand-ducal Regulation, which define the organizational and conduct of business requirements to be applied when distributing financial instruments.
- The Entity did neither produce, nor provide its clients with regular reports on its discretionary portfolio management activities. Instead, the Entity relied exclusively on the reports provided by the depositary banks, without verifying and ensuring their compliance. This constituted a breach of Article 37-3(8), first subparagraph of the LFS relating to the obligation to provide adequate reports on the investment services rendered, and more specifically of Article 60(1) and (2) of the Delegated Regulation 2017/565 regarding information obligations in respect of portfolio management.

The Entity relied solely on the diligences performed by the depositary banks for informing its clients where the overall value of their portfolio depreciated by 10% and had not implemented any mechanism to verify the compliance of the content of the depositary bank's reports with its information obligations. These elements therefore constituted a breach of Article 37-3(8), first subparagraph of the LFS regarding the obligation to provide adequate reports on investment services rendered, and more specifically of Article 62(1) of the Delegated Regulation 2017/565 regarding information obligations to be provided to clients in the event of significant losses incurred when performing discretionary portfolio management activities.

The Entity failed to adequately inform its clients about the costs and charges due, before entering into discretionary management services, and subsequently during the business relationship with the clients. These elements constituted a breach of Article 37-3(3), first, fourth, and fifth subparagraphs of the LFS relating to information obligations on all costs and charges linked to the investment services provided, and more specifically of Article

50(2), (8), (9), and (10) of the Delegated Regulation 2017/565, which include details on information to be provided to clients about costs and charges related to investment services.

- Shortcomings were identified in the core management system in place at the Entity. In particular, some portfolio management activities were carried out, in whole or in part, outside the Entity's portfolio management system, and as a result, these activities were not subject to the dedicated internal control framework. This constituted a breach of Article 37-1(4) of the LFS, which notably requires the implementation of an appropriate internal control system. Consequently, the Entity could not ensure the continuity, regularity, and monitoring of the discretionary portfolio management services rendered to its clients, constituting a breach of Article 37-1(3) of the LFS, which requires firms to take reasonable steps to ensure continuity and regularity in the performance of investment services provided. Moreover, the Entity failed to implement reasonable measures concerning the retention of records related to investment activities carried out, in accordance with Articles 72(1), 74, first subparagraph, and 75, first subparagraph of the Delegated Regulation 2017/565.
- The Entity's internal control functions failed to independently implement adequate control mechanisms, comprising rules, procedures, risk identification process, and control activities, to ensure compliance with MiFID II professional obligations. These failures constituted a breach of Article 37-1(4) of the LFS, which notably requires the implementation of an appropriate internal control system, and more specifically Articles 22, 23, and 24 of the Delegated Regulation 2017/565 concerning the obligations to respectively establish appropriate compliance, risk management and internal audit functions, which are proportionate to the nature, scale, and complexity of the investment services provided.