

Administrative sanction of 8 February 2024 for non-compliance with professional obligations related to the oversight of its delegates

Administrative decision

Administrative sanction imposed on Lemanik Asset Management S.A.

Luxembourg, 30 April 2024

On 8 February 2024 the CSSF imposed an administrative fine amounting to EUR 55,500 in total on the investment fund manager Lemanik Asset Management S.A. (the "**Manager**") subject to Chapter 15 of the amended Law of 17 December 2010 relating to undertakings for collective investment (the "**Law of 2010**") and authorised as alternative investment fund manager according to the provisions of the amended Law of 12 July 2013 on alternative investment fund managers (the "**Law of 2013**").

Legal framework/motivation

The administrative fine is composed of:

- an amount of EUR 44,800 imposed pursuant to Article 148(2)(j) and Article 148(4)(e) of the Law of 2010 read together for failure to comply with the provisions of Article 110(1)(f) of the Law of 2010 regarding the supervision of delegates; and
- an amount of EUR 10,700 imposed pursuant to Article 51(1) and Article 51(2) of the Law of 2013 for failure to comply with the provisions of Article 18(1)(f) of the Law of 2013 regarding the supervision of delegates.

In order to determine the type and amount of the administrative sanction, the CSSF considered, pursuant to Article 149a of the Law of 2010 and Article 51(2), last sub-paragraph of the Law of 2013, respectively, (i) the nature, gravity and duration of the breaches existing at the time of the on-site inspection, (ii) the conduct and past record of the Manager as well as (iii) the fact that the Manager provided with a detailed action plan and initiated remedial actions in order to resolve the breaches identified.

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

- the Law of 2010;
- the Law of 2013;
- the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the

European Parliament and of the Council of 8 June 2011 on
Alternative Investment Fund Managers;

as applicable at the time of the facts.

Legal bases for the publication

The publication is made pursuant to the provisions of Article 149(1) of the Law of 2010 and Article 51(2) of the Law of 2013, respectively, insofar as, following an assessment of proportionality, the CSSF considered that the present publication on a nominative basis is not disproportionate and does not seriously jeopardise the stability of the financial markets nor cause disproportionate damage to the parties involved.

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

This administrative fine follows an on-site inspection carried out by the CSSF on the Manager between 10 June and 13 July 2021, during which the CSSF identified persistent breaches in the internal governance framework of the Manager (the "**Inspection**") which related in particular to the following points:

1. Breaches subject to administrative sanction pursuant to the Law of 2010

1.1. Breaches in relation with the oversight of the distribution network

The CSSF identified the following persistent breaches in relation to the initial and periodic due diligence and the ongoing monitoring performed by the Manager on some of its distributors:

- breaches in relation to the acceptance of new distributors;
- absence of initial and periodic due diligences;
- inadequate initial due diligence;
- incomplete periodic due diligences;
- delays in the performance of due diligences;
- absence of agreements framing the distribution activities; and
- breaches in the ongoing monitoring of the delegates.

1.2. Breaches in the oversight on the delegated portfolio managers

During the Inspection, the CSSF observed that for 21 delegates acting as portfolio managers, the Manager encountered delays in the performance of the periodic due diligences. The CSSF also observed that the initial due diligence for one particular portfolio manager was not finalised before signing the portfolio management agreement.

In that context, the CSSF concluded that the global monitoring process implemented by the Manager at the date of the Inspection was not functioning in a way enabling it to effectively monitor its delegates.

Although the Manager confirmed having implemented corrective measures to remedy breaches identified, the CSSF concluded that, at the time of the Inspection, the Manager contravened Article 110(1)(f) of the Law of 2010.

2. Breaches subject to administrative sanctions pursuant to the Law of 2013

2.1. Breaches with regard to the oversight of the distribution network

The CSSF identified the following persistent breaches in relation to the initial and periodic due diligence and the ongoing monitoring performed by the Manager on some of its distributors:

- delays in the performance of due diligences;
- absence of agreements framing the distribution activities; and
- breaches in the ongoing monitoring of its distributors.

2.2. Breaches in the oversight of the fund administration

The CSSF identified the following persistent breaches in relation to the initial and periodic due diligence and the ongoing monitoring performed by the Manager on some of its fund administrators:

- lack of quality of the initial due diligence; and
- breaches in the ongoing monitoring of fund administrators.

2.3. Breaches in the oversight of the delegated portfolio managers

The CSSF identified the following persistent breaches in relation to the initial and periodic due diligence performed by the Manager on some of its delegated portfolio manager:



- delay in the performance of the periodic due diligence on the delegates acting as portfolio manager; and
- incomplete initial due diligence for one portfolio manager in particular.

In that context, the CSSF considered that, at the date of the Inspection, the due diligence monitoring process (initial due diligence and periodic due diligence) implemented by the Manager was not functioning in a way that enabled it to effectively monitor the activities of its delegates.

Although corrective measures had been implemented by the Manager to remedy breaches identified, the CSSF concluded that, at the time of the Inspection, it contravened at that time Article 18(1)(f) of the Law of 2013.