

Administrative sanction of 19 December 2024 for non-compliance with professional obligations related to general organisational requirements and rules of conduct

Luxembourg, 30 January 2025

Administrative sanction imposed on Funds Avenue S.A. (formerly Fuchs Asset Management S.A.)

Administrative decision

On 19 December 2024, the CSSF imposed an administrative fine of EUR 696,547 (“six hundred ninety-six thousand five hundred forty-seven euros”) in total on the investment fund manager Funds Avenue 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.

Legal framework/motivation

The administrative fine was imposed by the CSSF pursuant to Article 148(1)(f), Article 148(2)(g), Article 148(2)(k) and Article 148(4)(e) of the Law of 2010 read together, for failure to comply with the provisions of Article 109(1)(a) of the Law of 2010 regarding the requirements to sound administrative procedures and adequate internal control mechanisms, and the provisions of Article 111(a), (b), (c) and (d) of the Law of 2010 regarding the rules of conduct.

In order to determine the type and amount of the administrative sanction, the CSSF considered, pursuant to Article 149a of the Law of 2010 (i) the gravity and duration of the breaches existing at the time of the on-site inspection, (ii) the degree of responsibility of the Manager for the infringement, (iii) the financial strength of the Manager, (iv) the importance of the profits gained or losses avoided by the person responsible, the damage to other persons, and (v) the level of cooperation of the Manager with the CSSF.

In addition, the CSSF duly took into consideration the fact that the Manager confirmed having implemented corrective measures in order to remedy to the identified breaches.

The professional obligations breached are quoted in the relevant provisions of:

- the Law of 2010;
- CSSF Regulation No 10-04 transposing Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk

management and content of the agreement between a depositary and a management company (the “**CSSF Regulation No 10-04**”);

- Circular CSSF 18/698 regarding the authorisation and organisation of investment fund managers incorporated under Luxembourg law (the “**Circular CSSF 18/698**”);

as applicable at the time the facts took place/of the inspection.

Legal basis for the publication

The publication is made pursuant to the provisions of Article 149(1), second subparagraph of the Law of 2010, insofar as, following an assessment of proportionality, the CSSF considered that the present publication on a nominative basis is not disproportionate and does not jeopardise the stability of the financial markets or an ongoing investigation.

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

This administrative fine is imposed following an on-site inspection (the “**Inspection**”) on the Manager, focusing on the corporate governance aspects. During the Inspection, carried out between 19 June 2023 and 29 September 2023, the CSSF identified persistent breaches in the internal governance framework of the Manager which related in particular to the following points:

1. The Manager did not comply with the **general principles surrounding organizational requirements** as set out by Article 109(1)(a) of the Law of 2010, and as detailed below:
 - The CSSF identified shortcomings in relation to the control of the representation expenses of a member of the Executive Committee leading the Company to pay for expenses that were not supported by evidence. As a consequence, the Manager did not comply with point 150 of Circular CSSF 18/698, supplementing Article 5(4) of CSSF Regulation No 10-04 specifying the measures which the management companies are required to take in order to meet the requirements referred to in Article 109(1)(a) of the Law of 2010.
 - The CSSF identified that all the required topics of the Management Information were not properly covered during the meetings of the Executive Committee and that the Manager did not have Executive Committee packs to support the work of the said Committee. As a consequence, the Manager did not comply with point 345 of Circular CSSF 18/698, supplementing Article 5(1) of CSSF Regulation No 10-04 specifying the measures which the management companies are required to take in order to meet the requirements referred to in Article 109(1)(a) of the Law of 2010.
2. The Manager **failed to act honestly and fairly in conducting its business activities in the best interest of the managed UCITS** as set out by Article 111(a) of the Law of 2010 and to **act with due skill, care and diligence, in the best interest of the UCITS it manages** as set out by Article 111(b) of the Law of 2010, as detailed below:

- The CSSF identified that the Manager participated in setting up a transactions fees retrocessions scheme through a business introducer agreement, benefiting a company that provided none of the services mentioned in the said agreement. Furthermore, it was found that one of the Manager's executives had close ties with the responsible person at the company benefiting from these transactions fees retrocessions. This situation led the impacted funds to ultimately pay an excess of transaction fees. As a consequence, the Manager did not comply with Article 25(4) of CSSF Regulation No 10-04 specifying the measures which the management companies are required to take in order to meet the requirements referred to in Article 111(a) and (b) of the Law of 2010.
 - The CSSF identified shortcomings in relation to the monitoring of the delegated portfolio managers with regards to the best execution policy. Indeed, the Company did not ensure the effectiveness of the best execution policy at the level of the delegated portfolio managers by verifying the execution factors specified in the aforesaid policy and by receiving, on a regular basis, key performance indicators regarding the quality of execution. As a consequence, the Manager did not comply with the Article 29(3) of CSSF Regulation No 10-04 specifying the measures which the management companies are required to take in order to meet the requirements referred to in Article 111(a) and (b) of the Law of 2010.
3. The Manager failed to **employ efficiently the resources and procedures that are necessary for the proper performance of its business activities** as set out by Article 111(c) of the Law of 2010, as detailed below:
- The CSSF identified several invoices/expenses paid by the Manager for services/benefits that are not related to its business activity, including private jet expenses for personal trips of an Executive Committee member and its close family, as well as costs related to the maintenance of private vehicles. As a consequence, the Manager did not comply with the Article 111(c) of the Law of 2010.
4. The Manager **did not try to avoid conflict of interests and failed to ensure that the UCITS it manages are fairly treated when conflicts of interests cannot be avoided** as required by Article 111(d) of the Law of 2010, and as detailed below:

The CSSF identified a shortcoming in relation to the identification and management in due time of conflict of interests. As a consequence, the Manager did not comply with Article 22 of CSSF Regulation No 10-04 specifying the measures which the management companies are required to take in order to meet the requirements referred to in Article 111(d) of the Law of 2010.