

Administrative sanction of 1 April 2025 for non-compliance with professional obligations related to general organisational requirements

Luxembourg, 20 May 2025

Administrative sanction imposed on BNY Mellon Fund Management (Luxembourg) S.A.

Administrative decision

On 1 April 2025, the CSSF imposed an administrative fine of 207,310 euros (in words: “two hundred and seven thousand three hundred and ten euros”) on the investment fund manager BNY Mellon Fund Management (Luxembourg) 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 in accordance with Article 5 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 Articles 148(2)(g) and 148(4)(e) of the Law of 2010 read together, for the failure to comply with the provisions of Article 109(1)(a) of the Law of 2010 regarding the requirements to have sound administrative and accounting procedures and adequate internal control mechanisms.

In order to determine the type and amount of the administrative sanction, the CSSF considered, pursuant to Article 149a of the Law of 2010, all the relevant circumstances of the case, in particular (i) the impact, the gravity and duration of the breaches existing at the time of the on-site inspection, and (ii) the conduct and past record of the Manager, including a prior sanction imposed by the CSSF on 8 March 8 2021, notably for failure to implement sound administrative and accounting procedures, and adequate internal control mechanisms in relation to the management of AIFs.

In addition, the CSSF duly took into consideration the fact that remedial actions have already been undertaken by the Manager to address 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.

Legal bases for the publication

The publication is made pursuant to the provisions of Article 149(1) 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 a thematic on-site inspection (the “**Inspection**”) focusing on the supervision made by the Manager on its branches.

On 1 May 2019, the branches were transferred from the Manager’s parent company to the Manager in order to mitigate the impact of Brexit on the parent company’s European distribution businesses. In this context, the CSSF emphasised the importance of ensuring adequate oversight over these branches and made it clear that delegating the supervision of the branches to either the parent company or the group BNY Mellon would not be acceptable.

Nevertheless, during the Inspection, carried out between 29 September 2021 and 22 October 2021, the CSSF identified persistent breaches in the Manager’s internal governance framework for supervising its branches which related in particular to the non-compliance with the **general principles surrounding organisational requirements** as set out by Article 109(1)(a) of the Law of 2010 detailed below:

- The CSSF identified that, prior to the inspection, the Manager’s compliance manual (the “**manual of procedures**”), hosted on a dedicated platform, was not accessible to all branch employees. While access was granted to some employees beginning August 2020, the majority of employees did not have access until January 2022. Furthermore, the Manager was not able to demonstrate that any specific training or communication had been provided to branch employees about the contents of its manual of procedures. Specifically, the CSSF noted that the staff at the Manager’s branches primarily accessed and underwent training on policies and procedures established by either the parent company or the group BNY Mellon. As a result, the

CSSF concluded that the Manager failed to ensure that all branch employees had access to its manual of procedures and were informed about the procedures they were required to follow.

As a consequence, the Manager did not comply with point 358 of Circular CSSF 18/698 supplementing the requirements of Article 5(1)(b) of the CSSF Regulation No 10-04. This article specifies the measures which the Manager is required to take in order to meet the requirements referred to in Article 109(1)(a) of the Law of 2010, specifically by ensuring that employees are aware of the necessary procedures to effectively fulfil their roles and responsibilities.

- The CSSF identified that the Manager had not implemented its own control review process for invoices to be paid by its branches, nor approved them before payment. Specifically, the CSSF noted that invoices paid by its branches were mostly reviewed and approved by employees of the Manager's parent company.

As a consequence, in the absence of internal control mechanism established and implemented by the Manager on the review and approval processes of the invoices to be paid by its branches, the Manager did not comply with Article 5(1)(c) of the CSSF Regulation No 10-04. This article specifies the measures which the Manager is required to take in order to meet the requirements referred to in Article 109(1)(a) of the Law of 2010, specifically by establishing and implementing effective internal controls to ensure compliance with decisions and procedures at all levels.

- The CSSF identified that the Manager failed to establish and implement its own accounting procedures for reviewing and approving payable invoices. Instead, they relied solely on the procedure established by the group BNY Mellon, which had not been approved by the Manager and lacked clear designations of authorised approvers prior to payment.

As a consequence, the Manager did not comply with point 151 of Circular CSSF 18/698 supplementing the requirements of Article 5(4) of the CSSF Regulation No 10-04. This article specifies the measures which the Manager is required to take in order to meet the requirements referred to in Article 109(1)(a) of the Law of 2010, specifically by establishing and implementing accounting procedures to provide accurate financial reports to the CSSF promptly when requested.