

## **Administrative sanction of 28 March 2024 for non-compliance with professional obligations related to general organisational requirements, oversight of delegates, conduct in managing a fund, acting with due care in the best interest of the fund and anti-money laundering/counter financing of terrorism.**

Luxembourg, 4 July 2024

### **Administrative decision**

On 28 March 2024 the CSSF imposed an administrative fine amounting to EUR 45,900 and a warning on the investment fund manager Zeus 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**").

### **Legal framework/motivation**

The administrative sanction is composed of:

- an administrative fine of an amount of EUR 45,900 imposed pursuant to Articles 148(2)(g), 148 (2)(j) and 148 (2)(k) of the Law of 2010 for failure to comply with the provisions of Article 109(1)(a) regarding the requirements to have sound administrative procedures and adequate internal control mechanisms, the provisions of Article 110(1)(f) regarding the supervision of delegates, and the provisions of Article 111(b) of the Law of 2010 regarding the obligation to act diligently in the best interest of the managed undertakings for collective investment in transferable securities ("**UCITS**"); and
- a warning imposed pursuant to Article 8-4(1) and Article 8-4(2)(a) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing (the "**AML/CFT Law**") read together for failure to comply with the provisions of Article 2-2(1) and (3) and Article 3(2)(a) and (d) of the AML/CFT Law regarding the requirements to identify, assess and understand the risks of money laundering in relation to its customers and to carry out controls in relation to the supervision of delegated distributors.

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 8-5 of the AML/CFT Law, respectively, (i) the gravity and duration of the breaches, (ii) the degree of responsibility of the Manager, (iii) the financial situation of the Manager as indicated by its total turnover at the close of the 2020 financial year, (iv) the conduct and past record of the Manager as well as (v) 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 AML/CFT Law;
- the CSSF Regulation No 10-4 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 as amended ("**CSSF Regulation 10-4**"), specifying the measures the management companies are required to take in order to meet the legal requirements referred to, among others, in Article 109(1)(a) and Article 111 of the Law of 2010;
- the CSSF Circular 18 /698 on the authorisation and organisation of investment fund managers incorporated under Luxembourg law ("**CSSF Circular 18/698**");

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 8-6 of the AML/CFT Law, respectively, insofar as, following an assessment of proportionality, the CSSF considered that the present publication on a nominative basis is not disproportionate and does neither jeopardise the stability of the financial markets nor an ongoing investigation.

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

Those administrative sanctions follow a CSSF on-site inspection carried out by the CSSF between 27 January and 9 February 2021 on the Manager, targeting the governance framework of the Manager (the "**Inspection**"). During the Inspection, the CSSF identified persistent breaches in the internal governance framework of the Manager which related in particular to the following points:

### Breaches subject to administrative sanction pursuant to the Law of 2010

I) The Manager did not comply with the **general principles surrounding organisational requirements** as set out by Article 109(1)(a) of the Law of 2010, as detailed below:

- (i) The Manager had not implemented the following internal governance arrangements related to management information, policies and procedures, in breach of Articles 5(1)(a), 5(1)(e), 5(2)

and 5(4) of the CSSF Regulation 10-4 specifying the measures the management companies are required to take in order to meet the legal requirements referred to in Article 109(1)(a):

- incomplete compilation and disclosure of the management information;
- failure to review and approve policies and procedures on a regular basis;
- lack of oversight of the IT function;
- lack of controls to reconcile corporate cash accounts.

(ii) The Manager did not ensure to comply with the following organisational requirements related to the IT function, in breach of Articles 5(2) and 5(3) of the CSSF Regulation 10-4 specifying the measures the management companies are required to take in order to meet the legal requirements referred to in Article 109(1)(a):

- failure to review and update the business continuity plan;
- lack of control over user access rights;
- lack of process and system to identify and manage IT risks.

(iii) The Manager did not ensure to comply with the following organisational requirements of the compliance function, in breach of Articles 11(1) and 11(2)(a) of the CSSF Regulation 10-4 specifying the measures the management companies are required to take in order to meet the legal requirements referred to in Article 109(1)(a):

- failure to review and approve compliance policy and compliance charter;
- lack of approval and documentation of controls related to the compliance monitoring plan.

(iv) The Manager did not ensure to comply with the following organisational requirements related to the internal audit function, in breach of Articles 12(2)(a) and 12(2)(c) of the CSSF Regulation 10-4 specifying the measures the management companies are required to take in order to meet the legal requirements referred to in Article 109(1)(a):

- three recommendations made in the internal audit report for 2019 had been reported as closed by senior management, when in fact they were not;
- the internal audit reports for 2018 and 2019 did not take into account five areas listed in point 299 of CSSF Circular 18/698.

(v) The risk management function failed to provide reporting to the governing body in relation to the funds under management from July to October 2020 until the start of the on-site inspection in January 2021, in breach of Article 13(3)(d) of the CSSF Regulation 10-4 specifying the measures the management companies are required to take in order to meet the legal requirements referred to in Article 109(1)(a).

(vi) The Manager failed to maintain a register of personal transactions, which should have recorded a personal transaction of a member of the management body in 2018, in breach of Article 14(2) of the CSSF Regulation 10-4 specifying the measures the management companies are required to take in order to meet the legal requirements referred to in Article 109(1)(a).

Although the Manager confirmed having implemented corrective measures to remedy breaches identified, the CSSF concluded that, at the time of the Inspection, the Manager lacked a robust administrative and internal control framework, as well as established procedures. Therefore, the CSSF concluded that, at the time of the Inspection, the Manager contravened Article 109(1)(a) of the Law of 2010, as specified in the provisions of the CSSF Regulation 10-4 referred to hereabove.

II) The Manager did not comply with the **professional obligations related to the oversight of its delegates** as set out by Article 110(1)(f) of the Law of 2010, as detailed below:

- (i) The Manager did not comply with the obligation to perform initial and periodic due diligence on some of its delegates, in breach of point 466 and point 468 of CSSF Circular 18/698 specifying Article 110(1)(f) of the Law of 2010:
  - inadequate initial due diligence on a central administrator, and delay in the performance of the of initial due diligence on another central administrator;
  - inadequate initial due diligence on a broker;
  - absence of periodic due diligence on distributors and the IT service provider.
- (ii) The Manager did not comply with the obligation to perform ongoing monitoring of its delegates in breach of point 471, point 473, point 474, point 475 and point 518 of CSSF Circular 18/698 specifying Article 110(1)(f) of the Law of 2010:
  - absence of ongoing monitoring of delegated service providers;
  - absence of ongoing monitoring of the distributors;
  - weaknesses in the agreement with a central administrator;
  - lack of oversight of performance fee calculations;
  - absence of control in relation to the fund units reconciliation.

Although the Manager confirmed having implemented corrective measures to remedy breaches identified, the CSSF concluded that, at the time of the Inspection, the due diligence monitoring process (the initial and periodic due diligence, as well as the ongoing monitoring) implemented by the Manager was not functioning in a way that enabled it to effectively monitor the activities of its delegates. Therefore, the CSSF concluded that, at the time of the Inspection, it contravened Article 110(1)(f) of the Law of 2010, as specified in the provisions of the CSSF Circular 18/698 referred to hereabove.

III) The Manager engaged in a **behaviour that jeopardised the sound and prudent management** of Zeus Capital SICAV, a fund managed by the Manager, as set out by Article 148(1)(f) of the Law of 2010, as detailed below:

- (i) The Manager failed to assess and adequately address the risks identified during the initial due diligence assessments of a broker, despite the identification of previous administrative sanctions imposed by national competent authorities on the broker and its senior management.

- (ii) The Manager failed to adequately address the risks identified in the ongoing monitoring of a broker when the broker was unable to remit liquid funds owed to Zeus Capital SICAV despite repeated request from the Manager.

Although the Manager confirmed having implemented corrective measures to remedy breaches identified, the CSSF considered that the Manager failed to adequately assess the risks in the business relationships with the brokers and failed to take the necessary remedial actions preventing the Manager from acting in the best interest of the investors. Therefore, the CSSF concluded that, at the time of the Inspection, it contravened Article 148(1)(f) of the Law of 2010.

IV) The Manager failed to **act with due skill, care and diligence, in the best interest of the UCITS it manages and the integrity of the market** as set out by Article 111(b) of the Law of 2010, as detailed below:

- (i) The Manager which performed the portfolio management internally failed to implement an adequate portfolio management procedure, in breach of point 477 of CSSF Circular 18/698 supplementing Article 26(3) of CSSF Regulation 10-4, which specifies the measures which the management companies are required to take in order to meet the legal requirements of Article 111(b) of the Law of 2010.
- (ii) The Manager failed to perform an adequate oversight on the effectiveness of the best execution, in breach of Articles 28(4) and 28(5) of CSSF Regulation 10-4 specifying the measures which the management companies are required to take in order to meet the legal requirements of Article 111(b) of the Law of 2010.
- (iii) The Manager failed to publish a best execution procedure on its website, in breach of Article 28(3) of CSSF Regulation 10-4 specifying the measures which the management companies are required to take in order to meet the legal requirements of Article 111(b) of the Law of 2010.

Although the Manager confirmed having implemented corrective measures to remedy breaches identified, the CSSF concluded that, at the time of the Inspection, the Manager did not comply with Article 111(b) of the Law of 2010, as specified in the provisions of the CSSF Regulation 10-4 and of the CSSF Circular 18/698 referred to hereabove.

#### **Breaches subject to administrative sanctions pursuant to the AML/CFT Law**

I) The Manager did not comply with the **obligation to perform a risk assessment** as set out by Article 2-2, paragraphs (1) and (3) of the AML/CFT Law, since CSSF had identified:

- the failure by the Manager to perform documented AML/CFT risk assessments for investors and corresponding controls after March 2020;
- the lack of documentation in relation to the AML/CFT control performed of an asset that the Manager had classified as high risk.

Although corrective measures had been implemented by the Manager to remedy breaches identified, the CSSF concluded that, at the time of the Inspection, the Manager did not comply with Article 2-2 of the AML/CFT Law.

II) The Manager failed to comply with the **obligation to perform customer due diligence** as set out by Articles 3(2)(a) and Article 3(2)(d) of the AML/CFT Law. This was due to the fact that no AML/CFT controls at all were conducted on distributors.

Although the Manager confirmed having implemented corrective measures to remedy the breaches identified, the CSSF concluded that, at the time of the Inspection, the Manager did not comply with Article 3(2)(a) and Article 3(2)(d) of the AML/CFT Law.