

Administrative sanction of 2 April 2024 for non-compliance with professional obligations related to general organisational requirements, oversight of delegates, and anti-money laundering/counter financing of terrorism

Luxembourg, 12 July 2024

Administrative decision

On 2 April 2024, the CSSF imposed an administrative fine amounting to EUR 126,200 in total on the investment fund manager abrdn Investments 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 according to the provisions of the amended Law of 12 July 2013 on alternative investment fund managers.

Legal framework/motivation

The administrative fine is composed of:

- an amount of EUR 109,000 imposed pursuant to Article 148(2)(g), 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 109(1)(a) of the Law of 2010 regarding the requirements to have sound administrative procedures and adequate internal control mechanisms, and the provisions of Article 110(1)(f) of the Law of 2010 regarding the supervision of delegates; and
- an amount of EUR 17,200 imposed pursuant to Article 8-4(3)(a) of the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended (the "**AML/CFT Law**") for failure to comply with provisions of this law and of the CSSF Regulation No 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing as applicable at the time of the Inspection (the "**CSSF Regulation No 12-02**"), regarding customer due diligences obligations.

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 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 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;
- CSSF Regulation No 12-02;
- 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**”);
- Circular CSSF 17/654 on IT outsourcing relying on a cloud computing infrastructure and meanwhile repealed by the Circular CSSF 22/805 (the “**Circular CSSF 17/654**”);

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

This administrative fine follows an on-site inspection carried out by the CSSF on the Manager between 22 April and 19 June 2020, during which the CSSF identified persistent breaches in the internal governance and AML/CFT frameworks 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

- The CSSF identified that the Manager did not have a clear understanding of its distribution network in terms of role and involvement of the entities composing its distribution network. This lack of understanding evidenced that the internal governance arrangements and internal controls implemented by the Manager were not sufficient to enable a sound and prudent management of the distribution activities and their related risks, constituting a failure to comply with the provisions of

point 153 of Circular CSSF 18/698 specifying the requirements of Article 109(1)(a) of the Law of 2010.

- The CSSF identified that the Manager had not established a cloud register and had not performed a risk assessment for the cloud applications used, constituting a failure to comply with the provisions of point 26 of Circular CSSF 17/654 (which was applicable to the Manager by virtue of point 143 of Circular CSSF 18/698 specifying the requirements of Article 109(1)(a) of the Law of 2010).

In addition, the CSSF identified that no management information was reported to the executive committee with regard to IT continuity management and that the Manager did not define any recovery point objectives, evidencing the implementation and maintenance of an effective business continuity plan, constituting a failure to comply with the provisions of point 342 of Circular CSSF 18/698 and Article 5(3) of the CSSF Regulation No 10-04 specifying the requirements of Article 109(1)(a) of the Law of 2010.

- The CSSF observed that the Manager encountered delays in the performance of its periodic due diligences on distributors. In addition, the Manager had not implemented a multi-year due diligence plan.

As such, the CSSF concluded that, at the time of the Inspection, the periodic monitoring of the distribution network was not sufficient to enable the Manager to assess all risks arising from the said business relationships, constituting a failure to comply with the provisions of point 442 of Circular CSSF 18/698 specifying the requirements of Article 110(1)(f) of the Law of 2010.

- The Manager delegated some IT activities to its group. In that regard, the CSSF observed that the conclusion of the periodic due diligence performed by the Manager relied on the ISAE3402 control's report of the Manager's group. However, this control report covered only a small portion of the applications used by the Manager.

In addition, the CSSF observed that, to the exception of the activities related to one IT service, the Manager did not receive any Key Performance Indicators ("KPIs") aiming at monitoring the activities performed by its group, constituting a failure to comply with the provisions of point 442 and point 474 of Circular CSSF 18/698 specifying the requirements of Article 110(1)(f) of the Law of 2010.

In that context, the CSSF concluded that, at the date of the Inspection, the Manager had no sound administrative procedures, internal control, and safeguard arrangements for electronic data processing. In addition, the CSSF concluded that the Manager did not perform a proper oversight of its distribution network and delegated IT activities.

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 109 (1)(a) and Article 110(1)(f) of the Law of 2010.

2. Breaches subject to administrative sanctions pursuant to the AML/CFT Law

- For one delegate acting as distributor for the Manager, the CSSF observed that the agreement had been signed before the completion of an initial due diligence, including the collection of AML/KYC documentation on the intermediary, its representatives and its beneficial owners, constituting a failure to comply with the provisions of Article 3(2)(a) and Article 3(2)(b) of the AML/CFT Law.
- For two delegates acting as distributors for the Manager and for which due diligences should have been performed on a yearly basis as per the Manager's internal policies, the CSSF observed that, after a delay of two years, the due diligences were still not completed, thus constituting a failure to conduct ongoing due diligence to ensure that the documents, data or information collected under the customer due diligence process is kept up-to-date and relevant. In this regard, it was a failure to comply with the provisions of Article 3(2)(d) of the AML/CFT Law.
- For five delegates acting as distributors for the Manager, the CSSF observed that the Manager did not perform initial name screenings controls against international and European financial sanction lists and PEP lists in due time, thus constituting a failure to comply with the obligation to detect persons, entities and groups without delay so that the necessary restrictive measures can be applied to them, and a failure to have appropriate procedures regarding the identification of PEPs. In this regard, it was a failure to comply with the provisions of Article 30, Article 33(1), Article 33(2), Article 39(1), Article 39(2) of CSSF Regulation No 12-02, and with the provisions of Article 3-2(4)(a) of the AML/CFT Law.

In that context, the CSSF concluded that, at the date of the Inspection, the Manager failed to establish and implement adequate control mechanisms with regard to its customer due diligences in the context of the fight against money laundering and terrorist financing.

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 3(2)(a), Article 3(2)(b), Article 3(2)(d), Article 3-2(4)(a) of the AML/CFT Law; and Article 30, Article 33(1), Article 33(2), Article 39(1) and Article 39(2) of CSSF Regulation No 12-02.