

Administrative sanction of 26 March 2024 for non-compliance with professional obligations related to general organisational requirements, oversight of delegates, rules of conduct and EMIR obligations

Luxembourg, 10 September 2024

Administrative sanction imposed on DNB Asset Management S.A. (deleted from the Luxembourg Trade and Company Register on 26 June 2024)

Administrative decision

On 26 March 2024, the CSSF imposed an administrative sanction on the investment fund manager DNB Asset Management S.A., deleted from the Luxembourg Trade and Company Register on 26 June 2024 (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:

- a public statement imposed pursuant to Article 148(4)(a) read together with Article 148(2)(g), Article 148(2)(j) and Article 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(a) of the Law of 2010 regarding the obligation to act honestly and fairly in conducting its business activities in the best interests of the managed undertakings for collective investment in transferable securities (the "**UCITS**"), Article 111(b) of the Law of 2010 regarding the obligation to act diligently in the best interest of the managed UCITS and Article 111(c) of the Law of 2010 regarding the obligation to have and employ efficiently the resources and procedures that are necessary for the proper performance of business activities; and
- a reprimand imposed pursuant to Article 3(3) point 2 and Article 3(1) point 1 of the Law of 15 March 2016 on OTC derivatives, central counterparties and trade repositories as amended (the "**Law of 15 March 2016**") read together with the provisions of Article 9 point 1b. of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 12 July 2012 on OTC derivatives, central counterparties and trade repositories known as the European Market Infrastructure Regulation as amended (the "**EMIR Regulation**").

In order to determine the type of the administrative sanction, the CSSF considered, pursuant to Article 149a. of the Law of 2010 and Article 3(3) last paragraph of the Law of 15 March 2016, respectively, (i) the nature, 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.

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

- the Law of 2010;
- the Law of 15 March 2016;
- the EMIR Regulation;
- 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 amended by CSSF Regulation No 22-05 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**") 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 ;
- 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 of the facts.

Legal bases for the publication

This public statement which identifies the person responsible for the infringement and the nature of the infringement is made pursuant to the provisions of Article 148(4)(a) of the Law of 2010.

The publication of the reprimand is made according to the provisions of Article 3(4) of the Law of 15 March 2016 insofar as, following an assessment of proportionality, the CSSF considered that the present publication on a nominative basis does not seriously jeopardise the financial markets nor causes disproportionate damage to the parties involved.

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

Those administrative sanctions follow an on-site inspection carried out by the CSSF on the Manager between 4 March 2022 and 3 May 2022, during which the CSSF identified persistent breaches in the

internal governance and regarding the respect of the EMIR obligations of the Manager (the “**Inspection**”) which related in particular to the following points:

Breaches subject to administrative sanction pursuant to the Law of 2010

1. 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, and as detailed below:
 - The CSSF identified that the management information of the Manager was insufficient in relation with the portfolio management, best execution and EMIR obligations, constituting a failure to comply with the provisions of points 342 and 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.
 - The CSSF identified that the multi-year internal audit plan of the Manager covering years 2020-2022 did not include controls on the following areas: i) Effectiveness of the best execution policy of the Manager; ii) Compliance with EMIR obligations; iii) Adequacy of the accounting function of the Manager and iv) Monitoring of complaints handling. Consequently, the CSSF considered that the Manager did not comply with the provisions of point 270 of Circular CSSF 18/698, supplementing Article 12(2)(a) 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 did not comply with the professional obligations related to the oversight of its delegated activities as set out by Article 110(1)(f) of the Law of 2010, as detailed below:

The CSSF identified material and persistent breaches in the Manager’s oversight of the distributors, namely:

- Inadequate process for the approval of new distributors;
- Absence of initial due diligence on the distributors;
- Breaches with regards to the periodic due diligence process;
- Lack of ongoing monitoring of the distributors.

Therefore, the Manager did not comply with the provisions of points 354, 355, 441, 463, 468, 474 and 522 of Circular CSSF 18/698, which the management companies are required to comply in order to meet the requirements referred to in Article 110(1)(f) of the Law of 2010.

In that context, the CSSF considered that the global monitoring process implemented by the Manager on its distribution network at the date of the Inspection did not operate in a way that enables the Manager to effectively monitor the activities of its distributors.

3. 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, 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 and to have and employ efficiently the resources and procedures that are necessary for the proper performance of its business activities as required in Article 111(c) of the Law of 2010, and as further detailed below:

- The CSSF identified absence of approvals of the list of brokers used by the portfolio manager of the Manager. In that context, the CSSF considered that at the time of the Inspection, the Manager did not comply with Article 29(2) and (3) of CSSF Regulation No 10-04 establishing rules of conduct of the management companies to act in the best interests of the UCITS referred to in Article 111 of the Law of 2010.
- The CSSF identified a lack of involvement of the Manager in the valuation process due to an excessive reliance on the pricing committee of the group to which the Manager belonged. The Manager missed significant elements required for its analysis of pricing recommendations received from the group pricing committee and necessary for its well-informed decision in relation with difficult to price instruments. Hence, the Manager was not in compliance with Article 25(3) of CSSF Regulation No 10-04 establishing rules of conduct of the management companies to act in the best interests of the UCITS referred to in Article 111 of the Law of 2010.

Breaches subject to a reprimand pursuant to the Law of 15 March 2016

The Manager failed to act in accordance with the **reporting obligations** as set out in Article 3(1) point 1 of the Law of 15 March 2016 read together with Article 9 point 1b. of the EMIR Regulation.

- The CSSF identified that the oversight arrangements of the Manager did not enable it to assess the quality of the reporting in accordance with the EMIR Regulation as performed by its delegated portfolio manager. Therefore, the Manager was unable to ensure that data as reported by the delegate to the trade repository were correct, complete and sent without delay.
- The contractual arrangement between the Manager and its delegate regarding the obligations pursuant to the EMIR Regulation did not contain specific clauses on the rights and the obligations of each party. In that context, the Manager was not able to control its delegate and could not have full recourse against its delegate in case the latter had not been performing the EMIR reporting and/or did not provide the Manager with sufficient feedback on the work performed in relation to the obligations in accordance with the EMIR Regulation.

Subsequent events

The CSSF brings to the attention of the public that since the said administrative sanction, the following events took place:

- By the Extraordinary General Meeting dated 13 May 2024, the sole shareholder of the Manager decided to amend the corporate purpose of the Manager and to put it into a voluntary liquidation;
- Following the closure of the voluntary liquidation of the Manager, the latter was deleted from the Luxembourg Trade and Company Register on 26 June 2024;
- As a result of these events, the CSSF removed the Manager from the official list of management companies authorised under Chapter 15 of the 2010 Law on 10 July 2024 with effect from 13 May 2024.