

## **Administrative sanction of 5 December 2024 for non-compliance with professional obligations related to general requirements, organisational requirements, oversight of delegates, disclosure to investors, risk and liquidity management systems, conflicts of interests and valuation.**

Luxembourg, 20 December 2024

### **Administrative decision**

On 5 December 2024 the CSSF imposed an administrative fine of EUR 250,000, the maximum amount foreseen by the amended Law of 12 July 2013 on alternative investment fund managers (the "**AIFM Law**"), on the investment fund manager UBS Asset Management (Europe) S.A. (formerly known as UBS Fund Management (Luxembourg) S.A. into which Credit Suisse Fund Management S.A. was merged on 1 October 2024) (the "**AIFM**"), subject to Chapter 15 of the amended Law of 17 December 2010 relating to undertakings for collective investment and authorised as an alternative investment fund manager in accordance with the provisions of the AIFM Law.

The administrative fine is imposed in relation to breaches committed by Credit Suisse Fund Management S.A. **prior to the merger** of the AIFM into the UBS group.

### **Legal framework/motivation**

The administrative fine was imposed by the CSSF, pursuant to the provisions of Article 51(1), first indent of the AIFM Law, for failure to comply with the following provisions:

- the provisions of Article 18(1)(f) and last sub-paragraph of the AIFM Law regarding the supervision of delegates;
- the provisions of Article 21(1)(a) and (i) of the AIFM Law regarding the disclosure to investors;
- the provisions of Articles 11(1)(a)(b)(c) and 16 of the AIFM Law regarding the general principles and organisational requirements;
- the provisions of Article 14(2) and (3)(b) of the AIFM Law regarding the implementation of adequate risk management systems;
- the provisions of Article 15(1) of the AIFM Law regarding the employment of an appropriate liquidity management system;

- the provisions of Articles 11(1) last sub-paragraph, 11(1)(d), 13(1), second sub-paragraph and 13(2) of the AIFM Law regarding preferential treatment and the management of conflicts of interests;
- the provisions of Article 17(1), (8) and (10) of the AIFM Law regarding the valuation of AIF assets.

In order to determine the type and amount of the administrative fine, the CSSF considered, pursuant to Article 51(2), last sub-paragraph of the AIFM Law, (i) the nature, duration and gravity of the breaches, (ii) the conduct and past record of the AIFM and (iii) the damage caused to third parties.

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

- the AIFM Law;
- Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (the "**AIFM Directive**");
- Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing the AIFM Directive (the "**CDR 231/2013**"),

as applicable at the time of the facts.

## **Legal bases for the publication**

This publication is made pursuant to the provisions of Article 51(2), second sub-paragraph of the AIFM Law, insofar as, following an assessment of proportionality, the CSSF considered that this publication on a nominative basis does not jeopardise the stability of the financial markets or cause disproportionate damage to the parties involved, and that it is in the public interest to inform market participants as well as investors of the breaches that were identified, given their number, severity and persistence.

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

Credit Suisse Fund Management S.A., acting as AIFM, managed the following sub-funds (hereafter the "**SCF Funds**") from their launch until their liquidation on 4 March 2021:

- CREDIT SUISSE VIRTUOSO SICAV-SIF - Credit Suisse (Lux) Supply Chain Finance Fund launched on 24 April 2017, suspended on 1 March 2021 and in liquidation since 4 March 2021 (the "**VIRTUOSO SCFF**");

- CREDIT SUISSE NOVA (LUX) - Credit Suisse Nova (Lux) Supply Chain Finance High Income Fund launched on 28 March 2018, suspended on 1 March 2021 and in liquidation since 4 March 2021 (the "**NOVA HIF**"); and
- CREDIT SUISSE NOVA (LUX) - Credit Suisse Nova (Lux) Supply Chain Finance Investment Grade Fund launched on 24 February 2020, suspended on 1 March 2021, liquidation starting on 4 March 2021 and terminated on 6 February 2023 (the "**NOVA IGF**").

The SCF Funds invested primarily in notes issued by securitisation vehicles, with the notes being backed by cash flows from trade receivables originating from supply chain finance activities (hereafter the "**SCF Notes**" or "**Notes**"). These Notes were originated and structured by Greensill Capital (UK) Limited or one of its affiliates (hereafter "**Greensill**"), an entity founded by the Australian businessman Lex Greensill, and then proposed to the delegated portfolio manager for investment by the SCF Funds. Some of the Notes were covered by credit insurance arrangements.

The administrative fine follows an investigation by the CSSF (i) to assess the compliance of the organisational and internal governance arrangements of the AIFM with the applicable legal and regulatory requirements, thereby considering these arrangements in view of the activities and operations of the SCF Funds, as well as (ii) to proceed to specific controls and assessments, by reference to the applicable legal and regulatory requirements, concerning the activities and operations of the AIFM concerning the SCF Funds (hereafter the "**Investigation**").

During the Investigation, the CSSF identified severe and persistent breaches of the applicable legal and regulatory requirements governing the activities of the AIFM concerning the SCF Funds, which related in particular to the following points:

- (i) The AIFM did not comply with the requirements set out in Article 18(1)(f) of the AIFM Law, concerning the **oversight of the delegated portfolio manager of the SCF Funds**, as detailed below:
  - The AIFM did not perform specific due diligence work on the delegated portfolio manager for the novel activity of portfolio management of the SCF Funds, which involved a specific investment process with Greensill. In addition, the amendments and strengthening of the investment process over time did not trigger any amended due diligence assessment on the delegated portfolio manager by the AIFM, while they changed in a significant manner the investment process.

As a result, the AIFM did not implement formalised assessments and controls over the delegated portfolio manager concerning the portfolio management setup for the SCF Funds.

- The AIFM addressed the monitoring of the investment process of the SCF Funds by limiting itself to raising general questions to the delegated portfolio manager. The ongoing service quality monitoring did thus not allow the AIFM to get sufficient information on critical aspects and risks, respectively, in relation to the portfolio management of the SCF Funds.

As a result, the AIFM did not have in place a formalised reporting for allowing an adequate ongoing service quality monitoring of the delegated portfolio manager.

On that basis, the AIFM did not comply with the provisions of Article 75(e) and (f) of the CDR 231/2013, supplementing Article 20 of the AIFM Directive which is transposed by Article 18(1)(f) of the AIFM Law.

- (ii) The AIFM did not comply with the requirements set out in Article 21(1)(a) and (i) of the AIFM Law, concerning the **disclosure to investors**, as detailed below:

- The AIFM did not make available to investors an adequate description of the so-called “notes backed by future account receivables”, in which the VIRTUOSO SCFF and NOVA HIF invested, and it did not disclose in this context all the information necessary for investors to be able to make an informed judgment of the investment proposed to them and of the risks attached thereto.

The AIFM did further not disclose to investors in the VIRTUOSO SCFF and NOVA IGF an adequate description of the risks relating to the insurance coverage in place for some SCF Notes in which these funds invested, as it did not identify them at the level of the AIFM as further set out under (iv) below.

As a result, the AIFM did not comply with the provisions of Article 21(1)(a) of the AIFM Law. In addition and as further developed under point (iii) hereafter, the absence of an adequate disclosure to investors of the “notes backed by future account receivables” caused the AIFM to invest in SCF Notes that were not eligible under the offering documents of the SCF Funds.

- The AIFM did not make available to investors in the VIRTUOSO SCFF and NOVA HIF an adequate description of all fees, charges and expenses and of the maximum amounts thereof which were directly or indirectly borne by investors, as it did not inform the investors of fees paid to or withheld by Greensill from the

funds provided through the SCF Notes and programs, although this represented material information for the investors in these funds.

As a result, the AIFM did not comply with the provisions of Article 21(1)(i) of the AIFM Law. In addition and as further developed under point (iii) below, undue costs were charged as a consequence to the investors in the VIRTUOSO SCFF and NOVA HIF.

- (iii) The AIFM did not ensure and verify on a periodic basis that the general investment policy, the investment strategies and risk diversification limits of the SCF Funds were properly and effectively implemented and complied with and did thus not comply with the requirements set out in Articles 11(1)(a), (b) and (c), 16 and 18(1)(f) and last sub-paragraph of the AIFM Law, concerning the **general principles**, the **organisational requirements in relation to internal control mechanisms** and the **supervision of delegates**, as detailed below:

- First of all, the AIFM and the delegated portfolio manager did not verify the existence and nature of the receivables underlying the SCF Notes bought by the delegated portfolio manager. In addition, the AIFM did not verify that the types of Notes in which the delegated portfolio manager invested on behalf of the SCF Funds effectively corresponded to the types defined in the investment policy and instruments of the SCF Funds as described in the successive versions of their offering documents.

As a result of the above, the AIFM did not at all times act with due skill, care and diligence and did not have and effectively employ the resources and procedures that are necessary for the proper performance of its business activities. Furthermore, the AIFM did not have in place adequate internal control mechanisms ensuring inter alia that the assets of the AIFs managed by the AIFM were invested in accordance with the AIF management regulations or instruments of incorporation, having regard also to the nature of the AIFs managed by the AIFM.

Also, the AIFM was thus not able to monitor effectively at any time the delegated portfolio management activity and did not review the services provided by the delegated portfolio manager on an ongoing basis. In particular, the AIFM did not monitor whether its delegate complied with the investment policy on an ongoing basis.

- Secondly, the CSSF observed during the Investigation, as a result of the breaches relating to the disclosure to investors as referred to under point (ii) above, the following:

- the investments by VIRTUOSO SCFF and NOVA HIF in notes backed by future account receivables caused the AIFM to have active non-compliances with the investment policy set out in the offering documents;
- the investments by VIRTUOSO SCFF and NOVA HIF in SCF Notes, for which not all costs / fees were disclosed to investors, caused the AIFM to charge undue costs to these funds.

On the basis of the elements above, the CSSF observed that the AIFM's processes in place to control *inter alia* that the assets of the AIFs managed by the AIFM were invested in accordance with the AIF management regulations or instruments of incorporation presented breaches in relation to the provisions of Articles 11(1)(a), (b) and (c), 16 and 18(1)(f) and last sub-paragraph of the AIFM Law, Article 60(2)(e) of the CDR 231/2013, supplementing Articles 12 and 18 of the AIFM Directive which are transposed into Luxembourg legislation by Articles 11 and 16 of the AIFM Law, Article 75(i) of the CDR 231/2013, supplementing Article 20 of the AIFM Directive which is transposed into Luxembourg legislation by Article 18 of the AIFM Law, as well as Article 17(2) of the CDR 231/2013, supplementing Article 12(1) of the AIFM Directive which is transposed by Article 11(1) of the AIFM Law.

(iv) The AIFM did not comply with the requirements set out in Articles 14(2) and 14(3)(b) as well as 15(1) of the AIFM Law concerning the implementation of adequate **risk management systems** and the employment of an appropriate **liquidity management system**, as detailed below:

- The risk management systems of the AIFM, with the risk management policy and risk profiles in place over the lifetime of the SCF Funds, did not
  - (i) address all relevant risks to which the SCF Funds that the AIFM managed were exposed; and
  - (ii) implement the necessary and adequate techniques, tools and arrangements for assessing the exposure of the SCF Funds to all relevant risks to which these funds were or might have been exposed.

More particularly, the risk management systems did not address in an adequate manner the credit risk relating to some Notes (notably notes backed by future account receivables), the risks relating to the insurance coverage of SCF Notes, the concentration risks arising from the exposure to groups / alliances of companies / businesses linked to a common ultimate beneficial owner as a result

of the investments in SCF Notes, as well as the concentration risks in relation to the insurance coverage in place for some SCF Notes.

Furthermore, in respect of the volume of the SCF Funds (USD 9.32 billion as of 26 February 2021, i.e. before the suspension on 1 March 2021) and the complexity of the SCF Funds, the risk management policy as well as the arrangements, processes and techniques for assessing the exposure of the SCF Funds to all relevant risks were not appropriate given the nature, scale and complexity of the SCF Funds.

The permanent risk management function of the AIFM failed to assess, monitor and periodically (at least annually) review the adequacy and effectiveness of the risk management policy and the related arrangements, processes and techniques, which it also did not review in case of material changes to the investment strategy and objectives of an AIF and external events indicating that an additional review is required.

In addition, the reporting by the AIFM's permanent risk management function to the senior management and the board of directors of the AIFM did not provide for a comprehensive overview of the risks of the SCF Funds, as in particular, based on the failure of the AIFM to establish, implement and maintain an adequate risk management policy identifying all relevant risks, the risk management reporting did not provide for a coverage of all relevant risks, including the specific risks linked to the set-up of these funds.

As a result of the above, the AIFM did not comply with the legal and regulatory requirements of Articles 14(2) and 14(3)(b) of the AIFM Law and Articles 39(1)(a), (d) and (e), 40(1), 40(2), 40(5), 41(1)(a), 41(2)(b) and (c), 41(3), 44(1), 44(2), 44(3), 45(1)(a) and 45(2) of the CDR 231/2013 supplementing Article 15 of the AIFM Directive which is transposed into Luxembourg legislation by Article 14 of the AIFM Law.

- The AIFM did not implement for a prolonged period of time an appropriate liquidity management system and related procedures to assess in an adequate manner the asset liquidity risk of the SCF Notes as it did not reflect correctly the potentially low liquidity of the SCF Notes, set out in the offering documents and in the risk profiles of the SCF Funds.

As a result of the above, the AIFM did not comply with Article 15(1) of the AIFM Law, and Article 47(1)(d) of the CDR 231/2013 supplementing Article 16 of the AIFM Directive which is transposed into Luxembourg legislation by Article 15 of the AIFM Law.

(v) The AIFM did not comply with the requirements set out in Article 11(1) last sub-paragraph of the AIFM Law concerning **preferential treatment** as well as the requirements, as set out in Articles 11(1)(d), 13(1), second-sub-paragraph and 13(2) of the AIFM Law, concerning the **management of conflicts of interest**, as detailed below:

- The AIFM entered into a side letter agreement with a client company granting a preferential treatment to that company. The execution of that side letter was not complying with Article 11(1), last sub-paragraph, of the AIFM Law as well as with the offering documents of the SCF Funds, as it was only disclosed to the investors in the SCF Funds after its signature and termination.
- Conflicts of interest in relation to the SCF Funds, which existed at the level of Greensill acting as sole originator of SCF Notes, have not been identified, respectively identified in due time, by the AIFM. Consequently, the AIFM did not record these conflicts of interest in the AIFM's conflicts of interest registers dated 2017 to 2020. More particularly, multiple investments made by the delegated portfolio manager on behalf of the SCF Funds, upon proposals of Greensill, were made in a context where there was a potential conflict between the interests of Greensill on the one hand and the interests of the SCF Funds and their investors on the other hand, thus exposing the SCF Funds to conflicts of interest with a material risk of damage for the investors. The AIFM was exposed in the context of these investments to the risk that Greensill would not be objective in the sourcing of the SCF Notes which were proposed to the delegated portfolio manager and subsequently invested into by the delegated portfolio manager.

In addition, the failure by the AIFM to identify (in due time) these conflicts of interest did also prevent the AIFM from managing and monitoring in an adequate manner these conflicts of interest. The AIFM also did not inform the investors about these conflicts of interest for which the management / monitoring efforts revealed ineffective.

As a result of the elements above, the AIFM did not comply with the provisions of Articles 11(1)(d) and 13(1), second sub-paragraph and 13(2) of the AIFM Law, and Article 35(1) of the CDR 231/2013, supplementing Article 14 of the AIFM Directive which is transposed into Luxembourg legislation by Article 13 of the AIFM Law.

(vi) The AIFM did not comply with the requirements set out in Article 17(1), (8) and (10) of the AIFM Law concerning the **valuation of assets of AIFs**, as detailed below:



- The valuation policies and procedures of the AIFM were incomplete as they did not contain specific information on the valuation method used for the SCF Notes held by the SCF Funds. They also did not include any controls put in place for the ongoing valuation process during the regular lifespan of the SCF Funds and did not foresee any ongoing valuation checks at asset level.

As a result, the AIFM did not comply with Article 67(1) and (2) of the CDR 231/2013, supplementing Article 19 of the AIFM Directive, which is transposed by Article 17(1) of the AIFM Law.

- The AIFM did not perform regular assessments of the adequacy of the asset valuation method, as there were no regularly conducted comprehensive impairment tests / checks, adapted to the credit risk profile and related mitigants, for the Notes held by the SCF Funds.

As a result, the AIFM did not comply with Article 71(1) and (3) of the CDR 231/2013, supplementing Article 19 of the AIFM Directive, which is transposed by Article 17(8) and (10) of the AIFM Law.

(vii) The AIFM did not comply, as a result of the points (iii) and (vi) above, with the requirements, as set out in Articles 11(1)(a), (b) and (c) and 16 of the AIFM Law, concerning the **general principles** and the **organisational requirements** applicable to AIFMs, as detailed below:

- The AIFM's senior management, in accordance with point (iii) above, did not ensure and verify on a periodic basis that the general investment policy, the investment strategies and the risk limits of the SCF Funds are properly and effectively implemented and complied with.

As a result, the AIFM did not comply with Article 60(2)(e) of the CDR 231/2013 supplementing Articles 12 and 18 of the AIFM Directive which are transposed into Luxembourg legislation by Articles 11 and 16 of the AIFM Law.

- The AIFM's senior management, in accordance with point (vi) above, did not ensure that valuation policies and procedures were established and implemented in accordance with Article 67(1) and (2) of the CDR 231/2013, supplementing Article 19 of the AIFM Directive which is transposed by Article 17(1) of the AIFM Law.

As a result, the AIFM did not comply with Article 60(2)(c) of the CDR 231/2013 supplementing Articles 12 and 18 of the AIFM Directive which are transposed into Luxembourg legislation by Articles 11 and 16 of the AIFM Law.