

Administrative sanction of 18 June 2024 for non-compliance with professional obligations related to general organisational requirements, oversight of delegates, and use of external valuers

Luxembourg, 19 September 2024

Administrative decision

On 18 June 2024, the CSSF imposed an administrative fine amounting to EUR 23,000 on the investment fund manager Vistra Fund Management S.A. (the "**Manager**") authorised as alternative investment fund manager according to the provisions of the amended Law of 12 July 2013 on alternative investment fund managers (the "**Law of 2013**").

Legal framework/motivation

The administrative fine was imposed by the CSSF pursuant to the provisions of Article 51(1), first indent of the Law of 2013, for failure to comply with the provisions of Article 16 of the Law of 2013 regarding the requirements to have sound administrative and accounting procedures as well as adequate internal control mechanisms, the provisions of Article 17(4)(a) of the Law of 2013 regarding the independence of external valuers, and the provisions of Article 18(1)(f) of the Law of 2013 regarding the supervision of delegates.

In order to determine the type and amount of the administrative sanction, the CSSF considered, pursuant to Article 51(2), last sub-paragraph of the Law of 2013, (i) the nature, duration and the severity of the breaches existing at the time of the on-site inspection, as well as (ii) the conduct and past record of the Manager.

In addition, the CSSF also duly took into consideration the fact that the Manager had fully cooperated with the CSSF throughout the on-site inspection, and confirmed having implemented corrective measures to remedy breaches identified.

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

- the Law of 2013;
- 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 "**AIFM Regulation**");
- 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

The publication is made pursuant to the provisions of Article 51(2), second sub-paragraph of the Law of 2013, insofar as, following an assessment of proportionality, the CSSF considered that the present publication on a nominative basis does neither seriously jeopardise the financial markets nor cause disproportionate damage to the Manager.

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 11 July and 19 August 2022 (the "**Inspection**"), during which the CSSF identified persistent breaches in the internal governance framework of the Manager which related in particular to the following points:

- (i) The Manager did not comply with the **general principles surrounding organisational requirements** as set out by Article 16 of the Law of 2013, as detailed below:
 - The CSSF identified that the conducting officers met only once during the year 2021 and did not meet on a monthly basis over the period from January 2022 to June 2022, which constitutes a failure to comply with the provisions of point 345 of Circular CSSF 18/698 specifying Article 57(1)(e) of the AIFM Regulation supplementing Article 18 of the AIFM Directive which is transposed by Article 16 of the Law of 2013.

The CSSF also identified that the Manager failed to implement a proper management information system as no management information was prepared nor presented during the conducting officers' meetings for the period from January 2021 to June 2022 as required by point 341 and point 345 of Circular CSSF 18/698 respectively, specifying Article 57(1)(e) of the AIFM Regulation supplementing Article 18 of the AIFM Directive which is transposed by Article 16 of the Law of 2013.

Furthermore, the said meetings did not cover all the topics listed under point 342 of Circular CSSF 18/698, which did not enable the conducting officers to monitor all the activities of the Manager and those of its delegates and constitutes a failure to comply

with the provisions of point 342 of Circular CSSF 18/698 specifying Article 57(1)(e) of the AIFM Regulation supplementing Article 18 of the AIFM Directive which is transposed by Article 16 of the Law of 2013.

- At the time of the Inspection, the Manager had not implemented any compliance monitoring plan and was therefore not in a position to monitor and evaluate the adequacy and effectiveness of the measures, policies and procedures put in place at the level of the Manager and to take actions in order to address deficiencies in the Manager's compliance with its obligations, which constitutes a failure to comply with the provisions of Article 61(2)(a) of the AIFM Regulation supplementing Article 18 of the AIFM Directive which is transposed by Article 16 of the Law of 2013.
 - The Manager failed to comply with the provisions of point 151 of Circular CSSF 18/698 specifying Article 57(4) of the AIFM Regulation supplementing Article 18 of the AIFM Directive which is transposed by Article 16 of the Law of 2013, as detailed below:
 - The Manager did not put the necessary safeguards in place to prevent the use of the accounting system for fraudulent purposes. In particular, the CSSF identified that the Manager had not implemented any control aiming at verifying the accuracy of the banking details used for the payment of invoices issued by its suppliers, neither in case of invoices issued by a new supplier nor in case of change of banking details of an existing supplier.
 - In addition, the CSSF identified that the Manager had not put in place its own distinct accounting procedure. Instead, the Manager was relying on a manual established by the Manager's group for consolidation and reporting purposes under IFRS, which was not relevant for the Manager that prepares its annual accounts under Lux GAAP standards.
- (ii) The Manager failed to ensure **that the valuation function for some AIFs it manages was performed independently** as set out by Article 17(4)(a) of the Law of 2013, as detailed below:
- The CSSF identified two cases where external valuers acted also as delegated portfolio managers or (sub)-investment advisors for the same fund(s) which could not guarantee the independent valuation of the AIFs' assets.
- (iii) The Manager did not comply with the **professional obligations related to the oversight of its delegates** as set out by Article 18(1)(f) of the Law of 2013, as detailed below:
- The Manager failed to comply with the provisions of point 441 and point 463 of Circular CSSF 18/698 specifying Article 75(e) and (f) of the AIFM Regulation supplementing Article 20 of the AIFM Directive which is transposed by Article 18 of the Law of 2013, as detailed below:

- With the exception of one delegated portfolio manager, the CSSF identified that the Manager had not finalised any initial due diligence with its delegated portfolio managers prior to the signature of the agreements.
- The Manager did not complete any initial due diligence on its marketing intermediaries prior to the signature of the agreements.
- The Manager failed to comply with the provisions of point 442 of Circular CSSF 18/698 specifying Article 75(e) and (f) of the AIFM Regulation supplementing Article 20 of the AIFM Directive which is transposed by Article 18 of the Law of 2013, as detailed below:
 - The Manager was not receiving any KPIs from its delegated portfolio managers or any other information aimed at monitoring on an ongoing basis the services provided by the latter.
 - With the exception of one marketing intermediary, the CSSF identified that the Manager was not receiving any KPIs from its other marketing intermediaries or any other information aimed at monitoring on an ongoing basis the services provided by the latter.

The CSSF also identified that the internal audit function of the Manager reported some of those breaches in its 2019 and 2020 reports, but that no effective action had been taken by the Manager in response to these internal audit recommendations at the date of the Inspection.

In that context, the CSSF concluded that, at the date of the Inspection, the Manager had no sound administrative and accounting procedures nor adequate internal control mechanisms. In addition, the CSSF concluded that the Manager failed to establish an independent valuation of some of its AIFs' assets and did not perform a proper oversight of its portfolio management and distribution functions.

Therefore, the CSSF concluded that, at the time of the Inspection, the Manager contravened Article 16, Article 17(4)(a) and Article 18(1)(f) of the Law of 2013.