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The Enforcement Committee of the Autorité des Marchés Financiers fines an investment management company and its chief executive officer for breaching their professional obligations, as well as three companies of the same group for obstructing an AMF audit

In its decision of 19 November 2019, the Enforcement Committee imposed fines of €300,000 each on Novaxia Investissement and Joachim Azan, its chief executive officer at the time of the facts, and a warning against Mr. Azan. It also fined Novaxia Développement, Novaxia Gestion and Novaxia €50,000, €10,000 and €20,000 respectively for obstructing the conduct of the inspection.

- The breaches of their professional obligations by Novaxia Investissement and its chief executive officer

The Committee first considered that several breaches relating to Novaxia Investissement's (formerly Novaxia Asset Management) relations with the other companies of the Novaxia group were fully established. In particular, it found that Novaxia Investissement was not independent because of the composition of its investment committee, which included persons from outside the company, and therefore did not correspond to its investment selection procedure.

Secondly, it decided that Novaxia Investissement's conflict of interest management procedure was not operational since it did not provide sufficiently discriminatory criteria to carry out the allocation of real estate projects between Novaxia Investissement and Novaxia Développement (formerly Novaxia Sarl). It also considered that several conflict of interest situations had neither been identified nor managed by Novaxia Investissement.

The Committee also found that Novaxia Investissement had failed to comply with the administrative and personnel costs ceilings defined annually in the prospectuses of its funds, although there was no evidence that these overruns constituted unwarranted costs.

It also found that many of the commercial documents issued by Novaxia Investissement contained, individually, unbalanced information. It therefore ruled that its procedure for drawing up commercial documents was not operational, and that it had not implemented effective and traceable controls of this documentation.

Lastly, the Committee considered that Novaxia Investissement had failed to fulfil its obligation of diligence and loyalty towards the inspectors, noting that its answers to the inspectors' requests were vague or inaccurate and provided within excessive delays.

The Committee ruled that the breaches found against the company were attributable to its CEO, Joachim Azan.

— Obstruction committed by Novaxia Développement, Novaxia Gestion and Novaxia

For the first time, the Committee ruled that persons that were not subject to the inspection were guilty of obstructing an inspection. This decision was based on the refusal of Novaxia Développement, Novaxia Gestion and Novaxia (formerly Novaxia Finance) to provide the inspectors with their ledgers covering the three years that were subject to the inspection.

It considered that the inspectors' requests, which had a limited scope and did not cover an unduly long period, were necessary for the purposes of the inspection given the strong financial ties between the various companies of the Novaxia group and the very close nature of their business relations.

It noted that the inspectors' repeated request for disclosure was made in the context of a factual situation in which these companies, although third parties to the inspection, belonged to the same group, were managed by the same natural person and had been informed by the inspectors of the proceedings initiated against Novaxia Investissement, and

informed of the special attention paid by the inspectors to the issue of managing conflicts of interest within the group.

Furthermore, the Committee specified that the excuse of business secrecy invoked by these three companies as grounds for their refusal to provide the documents was not enforceable against the AMF.

An appeal may be lodged against this decision.

Appeal lodged by Novaxia Développement, Novaxia Gestion and Novaxia before the Cour de Cassation against the judgment of the Paris Court of Appeal of 16 February 2021.

By order of 16 February 2023 (No. 68009), the President of the Commercial Division of the Cour de Cassation noted that Novaxia Développement, Novaxia Gestion and Novaxia had withdrawn their appeal lodged before the Cour de Cassation (No. 21-15.308) against the judgement of the Paris Court of Appeal of 16 February 2021.

Preliminary question of constitutionality (Question Prioritaire de Constitutionnalité) raised by Novaxia Développement, Novaxia Gestion and Novaxia in their appeal before the Cour de cassation against the judgment of the Paris Court of Appeal of 16 February 2021

By judgment of 4 November 2021 (No. Y 21-15.308), the Cour de Cassation referred to the Conseil Constitutionnel the preliminary question of constitutionality raised by Novaxia Développement, Novaxia Gestion and Novaxia in relation to their appeal lodged against the judgement of the Paris Court of Appeal of 16 February 2021.

In its judgment of 28 January 2022 (No. 2021-965), the Conseil Constitutionnel ruled that :

- paragraph II f) of Article L. 621-15 of the Monetary and Financial Code, in the wording resulting from Law 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life, is contrary to the Constitution ;
- this declaration of unconstitutionality takes effect under the conditions set out in paragraphs 23 and 24 of this judgment;
- paragraph III c) of Article L. 621-15 of the Monetary and Financial Code, in the same wording, complies with the Constitution.

Appeal lodged by Mr Joachim Azan before the Conseil d'Etat against decision SAN-2019-15

By judgment of 30 December 2021 (No. 437950), the Conseil d'Etat dismissed the appeal lodged by Mr Joachim Azan against the Enforcement Committee's decision of 19 November 2019.

Appeal lodged by Novaxia Développement, Novaxia Gestion and Novaxia before the Paris Court of Appeal against decision SAN-2019-15

By judgment of 16 February 2021 (No. 20/01342), the Paris Court of Appeal dismissed the appeal lodged by Novaxia Développement, Novaxia Gestion and Novaxia against the Enforcement Committee's decision of 19 November 2019.

Preliminary question of constitutionality (Question Prioritaire de Constitutionnalité) raised by Novaxia Développement, Novaxia Gestion and Novaxia in their appeal to the Paris Court of Appeal against decision SAN-2019-15

By judgment of 7 January 2021 (No. RG 20/05169), the Paris Court of Appeal declared inadmissible the request for referral of a preliminary question of constitutionality of Novaxia, Novaxia Développement and Novaxia Gestion in support of their appeal lodged against the Enforcement Committee's decision of 19 November 2019.

About the Enforcement Committee

The Enforcement Committee, which is made up of judges and professionals, has total freedom to make decisions. It can impose sanctions on any person or company whose practices contravene laws and regulations that fall within the jurisdiction of the AMF. It ratifies settlement agreements signed by the Secretary General and respondents. And it takes part in the AMF's educational efforts by clarifying financial regulations when explaining its décisions.

PRESS CONTACT: _____

Read more

SAN-2019-15 - Décision de la Commission des sanctions du 19 novembre 2019 à l'égard des sociétés Novaxia Investissement, Novaxia Développement, Novaxia

📄 Gestion, Novaxia et de M. Joachim Azan (In French only)

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