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The AMF Enforcement Committee fines a management company and its chairman for breaches of their professional obligations

In its decision of 24 September 2020, the Enforcement Committee fined the asset management company, Société de gestion des fonds d'investissement de Bretagne ("Nestadio Capital") €10,000, and also issued a reprimand. It also imposed a fine of €100,000 on Florent de Kersauson, the manager of the company at the time of the events, together with a five-year prohibition to practice as manager or director of a management company.

Nestadio Capital is an asset management company that was managing some €44 million on behalf of 21 funds as at 31 December 2017.

The Enforcement Committee upheld six of the seven breaches alleged against this company.

It found that Nestadio Capital had not established the operational procedures needed to regulate its investment procedure.

It also found that the company had made an investment on behalf of a fund without ensuring that this investment was in the interest of the unitholders of this fund.

The Committee also considered that the company had compromised the interests of unitholders by granting advances on current account and bank transfers to a company facing

such difficulties that there was a very high risk that these payments would not be recovered. The Committee also found that the company had not succeeded in effectively managing a situation of potential conflict of interest resulting from the dual mandates of Mr de Kersauson, who was a manager both of Nestadio Capital and of the company that received the above-mentioned bank transfers and advances on current account.

The Committee also considered that by failing to distribute the cash resulting from the liquidation of the two funds to the unitholders concerned as and when these transactions are completed, the management company had not acted with the diligence, care, competence and professionalism required to best serve the interests of these unitholders.

It also noted that between September 2017 and April 2018, the management company did not have a compliance officer.

Lastly, the Committee found that the management company had failed to fulfil its obligation of diligence and loyalty in cooperating with the investigation, in particular with regard to the number of unanswered or incomplete requests, which was clearly disproportionate to the total number of requests made by the investigators.

The Committee considered that all these breaches were attributable to Mr. de Kersauson in his capacity as executive manager of Nestadio Capital at the time of the events.

The Committee however dismissed the alleged breach concerning the absence of an effective and transparent procedure for reasonable and prompt handling of complaints received from clients, as well as part of a breach concerning the failure to identify and correct the inappropriate and non-operational nature of applicable procedures.

An appeal may be lodged against this decision.

Cross-appeal lodged by the AMF's Chairman before the Conseil d'Etat against decision SAN-2020-09

By judgement of 17 February 2023 (No. 445507), the Conseil d'Etat (i) dismissed the appeal lodged by Société de Gestion des Fonds d'Investissement de Bretagne and Mr de Kersauson, (ii) increased the fine imposed on Mr de Kersauson from €100,000 to €150,000, (iii) reversed the decision of the AMF Enforcement Committee to the extent that it conflicted with its own decision, (iv) rejected the remainder of the cross appeal submissions of the Chairman of the AMF, (v) ordered the publication of its

decision on the AMF website under the same conditions as the Enforcement Committee's decision and (vi) condemned Société de Gestion des Fonds d'Investissement de Bretagne and Mr de Kersauson to pay the Autorité des Marchés Financiers the sum of €3,500 each, under the provisions of article L. 761-1 of the Code of Administrative Justice.

Appeal lodged by Société de Gestion des Fonds d'Investissement de Bretagne Mr Florent de Kersauson before the Conseil d'Etat against decision SAN-2020-09

By judgement of 17 February 2023 (No. 445507), the Conseil d'Etat (i) dismissed the appeal lodged by Société de Gestion des Fonds d'Investissement de Bretagne and Mr de Kersauson, (ii) increased the fine imposed on Mr de Kersauson from €100,000 to €150,000, (iii) amended the decision of the AMF Enforcement Committee to the extent that it conflicted with its own decision, (iv) rejected the remainder of the cross appeal submissions of the the AMF's Chairman, (v) ordered the publication of its judgement on the AMF website under the same conditions as the Enforcement Committee's decision and (vi) condemned Société de Gestion des Fonds d'Investissement de Bretagne and Mr de Kersauson to pay the Autorité des Marchés Financiers the sum of €3,500 each under the provisions of article L. 761-1 of the Code of Administrative Justice.

Application for a stay of enforcement (référé-suspension) of decision SAN-2020-09 filed by Mr Florent de Kersauson before the Conseil d'Etat

By order of 10 November 2020 (No. 445534), the judge hearing the application for interim measures (juge des référés) of the Conseil d'Etat dismissed Mr Florent de Kersauson's application for suspension of enforcement of the decision of the Enforcement Committee of 24 September 2020.

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 decisions.

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📄 Florent de Kersauson (In French only)

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