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The AMF Enforcement Committee fines Elliott Advisors UK Limited and Elliott Capital Advisors L.P. for failing to comply with their reporting obligations in connection with a simplified public tender offer and, in the case of the former, for obstructing an AMF investigation

In its decision of 17 April 2020, the Committee imposed fines of €15 million and €5 million on Elliott Advisors UK Limited and Elliott Capital Advisors L.P., managers of several investment funds. The Committee found that both companies had filed inaccurate and late reports in connection with the simplified public tender offer filed in 2015 by XPO for the shares of Norbert Dentressangle SA. It also found that Elliott Advisors UK Limited had obstructed the AMF's investigation.

In April 2015, XPO announced its intention to launch a simplified public tender offer for a portion of Norbert Dentressangle SA shares. Between 8 May and 21 July 2015, Elliott Advisors UK Limited, acting on behalf of several Elliott funds, acquired shares and derivatives relating to the securities of Norbert Dentressangle SA through numerous market transactions during this period. On 21 July 2015, the AMF published the results of the offer, announcing that only 86.25 % of the capital of Norbert Dentressangle SA was held by XPO, with Elliott funds holding 9.18 % of the shares and 9.076 % of the voting rights in the company, thereby preventing the squeeze-out initially contemplated by XPO.

The Enforcement Committee found inaccuracies and delay in Elliott Capital Advisors L.P. reporting on behalf of Elliott funds, in connection with their acquisition of a stake in Norbert Dentressangle SA.

It first noted that, by reporting that the transactions at stake involved cash-settled CFDs when they actually involved equity swaps, the respondents had filed inaccurate reports on the nature of the financial instruments acquired as part of this investment.

The Committee then considered that Elliott Capital Advisors L.P. had not complied with its obligation to report its intention to tender the securities acquired to the offer, once the offer has been filed. The Committee found that it declared belatedly, on 10 July 2015, its intention not to tender the Norbert Dentressangle SA securities to the offer, while, at the beginning of the offer period, on 11 June 2015, Elliott funds held, by assimilation, more than 2% of Norbert Dentressangle SA shares and subsequently, on 18 June 2015, exceeded its 5% share ownership threshold.

The Enforcement Committee also found that Elliott Advisors UK Limited had obstructed the AMF's investigation by providing lately and incompletely the information requested by the investigators. However, the Committee deemed that Elliott Capital Advisors L.P. had not obstructed the investigation.

In assessing the fines imposed on the respondents, the Enforcement Committee considered, among other elements, the following: first, the fact that the inaccurate reportings and the delay in submitting a declaration of intent to the AMF were intended to conceal from the market, for as long as possible, the strategy of blocking the squeeze-out offer in order to negotiate a reassessment of XPO's offer price; and, second, the fact that Elliott Advisors UK Limited had already been fined €8 million by the Committee in 2014 in an insider trading case.

An appeal may be lodged against this decision.

Appeal lodged by Elliott Advisors UK Limited and Elliott Capital Advisors L.P. before the Cour de Cassation against the judgment of the Paris Court of Appeal of 24 March 2022

By its decision of 4 april 2024 (n°22-19.127), the Cour de cassation dismissed the appeal lodged by Elliott Advisors UK Limited et Elliot Capital Advisors L.P. agaisnt the judgement of the Paris Court of appeal of 24 march 2022.

Appeals lodged by Elliott Advisors UK Limited and Elliott Capital Advisors L.P. before the Paris Court of Appeal against decision SAN-2020-04

By judgment of 24 March 2022 (No. 20/08390), the Paris Court of Appeal (i) dismissed the application to annul the decision of 17 April 2020, (ii) reversed that decision insofar as it held that the declaration made on 15 May 2015 by Elliott Advisors UK Limited and Elliott Capital Advisors L. P, pursuant to Article 231-47 of the AMF's General Regulation, was inaccurate regarding the nature of the derivatives acquired, (iii) also amended this decision in so far as it imposed a fine of fifteen million euros on Elliott Advisors UK Limited and a fine of five million euros on Elliott Capital Advisors L. P., (iv) imposed a fine of fourteen million euros on the first company and a fine of four million five hundred thousand euros on the second company.

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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SAN-2020-04 - Décision de la Commission des sanctions du 17 avril 2020 les

sociétés Elliott Advisors UK Limited et Elliott Capital Advisors L.P. (In French only)

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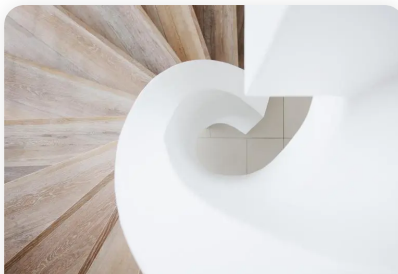
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