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Voting instructions for general meetings: for the first time, the AMF Enforcement Committee fines an intermediary for breaches of its professional obligations

In its decision of 25 November 2020, the Enforcement Committee, after declaring that it had jurisdiction to rule on the objections notified to the company X, imposed a fine of €1 million on the company.

The company X is an investment services provider authorised to provide custody account-keeping of financial instruments on behalf of third parties.

The Enforcement Committee found three series of breaches against the company X for acts related to the processing of the voting instructions of its bearer shareholder clients for general meetings. This is considered to be an ancillary activity to the custodian account-keeper's tasks of registration and custody of financial instruments.

Lack of professionalism and due care in facilitating the exercise of voting rights at general meetings

The Committee considered that the company had breached its professional obligations to act with due care and professionalism in the best interests of its clients by sending erroneous voting instructions to 44 issuers on behalf of its bearer shareholder clients as a result of technical anomalies or human errors in April and May 2018.

Insufficient resources allocated to the processing of voting instructions

The Committee found that these voting incidents were the result of the limited resources allocated by the company to the processing of voting instructions for general meetings which, according to the Committee, were neither appropriate nor sufficient. It also sanctioned the absence of operational systems and procedures to safeguard the integrity of information on the general meeting voting instructions of bearer shareholder clients.

Deficiencies in reporting, internal control, compliance and internal audit systems

The Committee sanctioned the company X for the lack of an efficient internal reporting system in connection with its custody account-keeping activity. It also sanctioned the company X for making an incorrect assessment of the level of risk associated with the process of counting voting instructions for general meetings, and failing to implement appropriate internal control mechanisms on a sufficiently recurring basis. The Committee also found against it for not having established an appropriate organisation to minimise the risk of loss of rights related to its clients' financial instruments due to negligence. The Committee lastly considered that the internal audit function had failed to ensure the consistency and effectiveness of the processing of voting instructions and the appropriateness of the corresponding procedures, in breach of applicable laws and regulations.

Conversely, the Committee dismissed the alleged breach concerning the failure to maintain a record of the electronic data relating to the processing of voting instructions for general meetings.

An appeal may be lodged against this decision.

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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