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## The AMF Enforcement Committee fines the British company H2O AM LLP and two of its executives at the time of the facts for several breaches of their professional obligations

**In its decision of 30 December 2022, the Committee imposed fines on H2O AM LLP, Mr. Bruno Crastes and Mr. Vincent Chailley of respectively €75 million, €15 million and €3 million, each with a disciplinary sanction, for several breaches committed in the management of French funds relating to investments in financial instruments.**

The AMF Board (Collège) had notified the respondents of complaints relating to investments made by H2O AM LLP on behalf of 7 French UCITS (Adagio, Allegro, Moderato, Multibonds, Multiequities, Multistrategies and Vivace) in financial instruments issued by companies of the Tenor group, either directly or through transactions consisting of an immediate purchase coupled with a forward sale of securities at a pre-agreed date and price (“buy & sell back” transactions).

In its decision, the Committee upheld all the complaints.

As regards the direct acquisitions of securities, the Committee considered that H2O AM LLP had invested on behalf of some of these UCITS in financial instruments issued by companies of the Tenor group that were not eligible for investment by UCITS, for three reasons:

- the lack of liquidity of these financial instruments compromised the ability of the funds to meet redemption requests from holders and H2O AM LLP had not properly taken this liquidity risk into account at the time of the investments;
- these financial securities were not within the scope of the investment policy set out in the fund prospectuses, as they were not rated by a rating agency or issued by an issuer rated by a rating agency;
- H2O AM LLP did not have enough information to value these financial instruments reliably.

The Committee also found that H2O AM LLP had not complied with an investment ratio applicable to these UCITS, since some of them held more than 10% of debt securities issued by a single issuer in the Tenor group.

With regard to investments made through buy & sell back transactions, the Committee considered that H2O AM LLP had carried out these transactions whose underlying securities were issued by companies of the Tenor group, even though these transactions were not eligible for investment by UCITS on several grounds. In particular, the Committee considered that H2O AM LLP had not taken sufficient account of the risks preventing the funds from unwinding these transactions at their market value, at their initiative and at any time. It also found that some of these transactions were not taken into account in calculating the maximum 5% counterparty risk exposure to a single counterparty.

The Committee found that these breaches were attributable to Mr. Crastes and Mr. Chailley, respectively Chief Executive Officer and Chief Investment Officer of H2O AM LLP at the time of the events.

Considering the serious nature of the breaches, the involvement of the executives in committing them, and the damage suffered by investors resulting in particular from the blocking of their savings, the Committee imposed:

- a fine of €75 million and a reprimand against H2O AM LLP;
- a fine of €15 million against Mr. Crastes and a five year-ban on operating as a manager, directly or by delegation, or as an executive of one of the legal entities mentioned in paragraphs 7, 7bis and 7ter of II of Article L. 621-9 of the Monetary and Financial Code. These provisions primarily concern collective investment schemes, collective investment management companies and management companies from another EU Member State with a branch or providing services in France that manage one or more UCITS or alternative investment funds;

- a fine of €3 million and a reprimand against Mr. Chailley.

An appeal may be lodged against this decision.

### **Preliminary question of constitutionality (Question Prioritaire de Constitutionnalité) raised by H2O AM LLP, Mrs. Crastes and Chailley in their appeal before the Conseil d'Etat against decision SAN-2023-01**

By judgment of 7 August 2023, the Conseil d'Etat ruled that there was no need to refer to the Conseil constitutionnel the question prioritaire de constitutionnalité submitted by Mr Chailley and Mr Crastes in their appeal against the Enforcement Committee's decision of 30 December 2022.

### **Appeal lodged by H2O AM LLP, Ms. Crastes and Ms. Chailley before the Conseil d'Etat against decision SAN-2023-01**

H2O AM LLP, Mr Crastes and Mr Chailley have lodged an appeal before the Conseil d'Etat against the Enforcement Committee's decision of 30 december 2022.

#### ***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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