



## SETTLEMENT PROPOSED BY THE FSMA'S INVESTIGATION OFFICER AND ACCEPTED BY BELFIUS BANK SA/NV

This settlement, based on a proposal made by the investigation officer of the Financial Services and Markets Authority (hereinafter "FSMA") to Belfius Bank SA/NV (hereinafter "Belfius") and agreed upon by the latter on 3 September 2024, was accepted on 4 September 2024 by the management committee of the FSMA in accordance with article 71, § 3 of the law of 2 August 2002 on the supervision of the financial sector and on financial services (hereinafter the "law of 2 August 2002").

Having regard to Articles 70 to 72 of the law of 2 August 2002;

Having regard to the decision by the FSMA management committee dated 2 October 2023 to open an investigation into Belfius regarding possible non-compliance with the prospectus requirement<sup>1</sup>;

Having regard to the investigations conducted by the investigation officer and the preliminary findings which it has set out;

Having regard to Article 71, § 3, paragraph 1 of the law of 2 August 2002, pursuant to which the management committee of the FSMA may accept a settlement before notice of the offences is given and provided that the person concerned has cooperated in the investigation and previously agreed to the said settlement;

\*\*\*

1. Whereas the investigation resulted in the following findings:
  - a) In 2022 and 2023, Belfius made detailed announcements to the public through various channels concerning its ongoing offer of deposit certificates, including in the form of product information sheets and a specific landing page on its website.  
  
The increase in the interest payment resulted in an increase in subscriptions for these Belfius deposit certificates from March 2023 onwards.
  - b) No later than 4 April 2023, the amount of deposit certificates issued by Belfius reached the threshold of €75 million calculated over a 12-month period, which is the upper limit for exemption from the requirement to publish a prospectus<sup>2</sup>.  
After 4 April 2023, Belfius:
    - i) made further communications and continued its offer of deposit certificates to the public without publishing the required prospectus; and
    - ii) engaged in advertising for its offer of deposit certificates without prior approval of the advertisements by the FSMA, which it was required to obtain.

---

<sup>1</sup> Article 3(1) of Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (hereinafter the "Prospectus Regulation").

<sup>2</sup> Article 1(4)(j) of the Prospectus Regulation.

On 13 April 2023, an internal e-mail referred to the expected imminent breach of the €75 million threshold. It was not until 5 May 2023 that the breach of the threshold was confirmed internally and Belfius conducted further analyses on the applicability of the prospectus requirement to the deposit certificates.

- c) Belfius stopped marketing its deposit certificates with effect from 1 June 2023.

Between 4 April and 1 June 2023, Belfius raised a total of €289,218,514 through the ongoing issue of deposit certificates without a published prospectus.

2. Whereas, in law:

- a) Credit institutions may call on the public to invest funds for subsequent repayment<sup>3</sup>. However, when offering securities to the public with an aggregate equivalent value in the European Union of €1 million or more on an annual basis, they must publish a prospectus after approval by the FSMA<sup>4</sup>.

An offer of securities to the public is "*a communication addressed to persons in any form and by any means providing sufficient information on the terms of the offer and the securities being offered so as to enable an investor to purchase or subscribe for those securities*"<sup>5</sup>.

Securities are negotiable securities which include all categories of securities negotiable on the capital market, excluding instruments of payment, such as bonds and other debt instruments, among others<sup>6</sup>.

Securities, including non-equity securities, are also investment instruments<sup>7</sup>.

- b) The legislation provides for several exemptions from the prospectus requirement<sup>8</sup>, including for offers to the public of non-equity securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the European Union for the securities offered is less than € 75 million per credit institution calculated over a period of 12 months , provided that those securities<sup>9</sup>:
- i) are not subordinated, convertible or exchangeable; and
  - ii) do not give a right to subscribe for or acquire other types of securities and are not linked to a derivative instrument.
- c) Where an issuing institution<sup>10</sup> engages in advertising related to its offer of investment instruments to the public, the advertisements must be approved in advance by the FSMA<sup>11</sup>. These include communications relating to a specific offer of investment instruments to the

---

<sup>3</sup> Article 28 of the Law of 11 July 2018 on the offer of investment instruments to the public and the admission of investment instruments to trading on a regulated market (hereinafter "the Prospectus Law") and Article 14 of the Law of 25 April 2014 on the status and supervision of credit institutions and listed companies.

<sup>4</sup> Article 1(1) and (3) *in conjunction with* Article 3(1) of the Prospectus Regulation and Article 20 of the Prospectus Regulation.

<sup>5</sup> Article 2 of the Prospectus Regulation.

<sup>6</sup> Article 4(1)(44) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directives 2002/92/EC and 2011/61/EU (MiFID II Directive).

<sup>7</sup> Article 3(1)(1) of the Prospectus Law.

<sup>8</sup> Article 1 of the Prospectus Regulation.

<sup>9</sup> Article 1(4)(j) of the Prospectus Regulation.

<sup>10</sup> Within the meaning of Article 2(k) of the Prospectus Regulation.

<sup>11</sup> Article 24(1) of the Prospectus Law.

public and aiming to specifically promote the potential subscription or acquisition of investment instruments<sup>12</sup>.

- d) In addition, unless the FSMA has validly approved the prospectus for an offer to the public of investment instruments that are subject to a prospectus requirement, it is prohibited to make announcements within territory of Belgium concerning investment instruments that are addressed to more than 150 non-qualified investors, with the intention of providing information/counselling or generating demand for these<sup>13</sup>.
3. Based on the investigation file, the FSMA considers that Belfius committed breaches during the period from no later than 4 April to 31 May 2023 of the following:
- a) The obligation to publish a prospectus for its offer of deposit certificates to the public, which was subject to the prospectus requirement<sup>14</sup>, in view of the following:
- i) The fact that, during the period from no later than 4 April to 31 May 2023, Belfius made communications to the public about its issue of deposit certificates in the territory of Belgium in the form of product information sheets and a specific landing page on its website;
  - ii) these communications contain sufficient information on the terms of the offer and the deposit certificates being offered to enable an investor to purchase the deposit certificates, and thus comply with the communication referred to in the definition of "*offer of securities to the public*";
  - iii) deposit certificates are securities as defined by the applicable legislation;
  - iv) the subscriptions for deposit certificates issued by Belfius reached the quantitative threshold of €75 million calculated over a period of 12 months allowing exemption from the prospectus requirement no later than 4 April 2023, so that from that time onwards Belfius' offering of deposit certificates to the public was no longer covered by the exemption from the prospectus requirement; and
  - v) Belfius issued internal instructions to discontinue its offering of deposit certificates to the public with effect from 1 June 2023.
- b) The obligation to obtain FSMA approval for advertisements in the context of investment products offered to the public prior to their publication<sup>15</sup>, as Belfius published the advertisements and other documents and notices relating to its public offering of deposit certificates subject to the prospectus requirement without approval from the FSMA; and
- c) The prohibition on making announcements to the public within the territory of Belgium concerning offers that are subject to the prospectus requirement without an approved prospectus<sup>16</sup>, since Belfius made announcements to the public about its offer that was subject to the prospectus requirement but for which a prospectus had not been validly approved by the FSMA.
4. This is the second time the FSMA has established breaches by Belfius of a similar nature. Specifically, on 29 June 2021, the management committee of the FSMA entered into a settlement

---

<sup>12</sup> Article 2, k) of the Prospectus Regulation and Article 4, 3° of the Prospectus Law.

<sup>13</sup> Article 27 of the Prospectus Law.

<sup>14</sup> Article 3(1)(j) of the Prospectus Regulation.

<sup>15</sup> Article 24, § 1(1) of the Prospectus Law.

<sup>16</sup> Article 27(1)(1) and (3) of the Prospectus Law.

of €300,000 with Belfius for, among other things, failing to submit an advertising campaign for the *Cure* sub-fund of the *Belfius Equities* UCI to the FSMA for prior approval.

The FSMA considers that the facts described under marginal note 1 and this initial shortcoming indicate certain deficiencies in Belfius' organisation and a lack of the necessary legal reflexes and legal risk culture within certain business lines.

For this reason, the FSMA was only willing to consider a settlement in this matter if Belfius took organisational measures to prevent similar failures from occurring in the future.

Specifically, this proposal for a settlement is based on the following elements:

- a) Subject to approval by the competent bodies and supervisory authorities, Belfius undertakes to add a new member with a robust legal background to its management committee .
- b) An obligation for Belfius, as of 1 January 2025 and for as long as the above-mentioned member has not yet been added, to set up an executive committee comprising at least one member with a robust legal background, to assist and advise the management committee on the implementation of Belfius' strategy and policy. In principle, meetings of the management committee and the executive committee are always held together.
- c) As a result of the FSMA's findings, Belfius' management committee has already decided to introduce a number of organisational measures at various levels within its organisational structure to strengthen its legal risk culture and risk management:
  - i) In the management committee:
    - a. All matters handled by the management committee are subject to prior legal review and are accompanied by a separate legal opinion.
    - b. In addition to having two legal experts from the General Secretariat attending the management committee, the head of the legal department should assess all agendas, documents and minutes of the management committee from a legal point of view. If a legal risk is identified, this official should participate on an ad-hoc basis in the deliberations of the management committee on the relevant matter.
    - c. As of 1 January 2025, a direct reporting line will be established between the legal department and the chair of the management committee.
  - ii) In regard to the '*Private, Business & Retail*' and '*Wealth, Enterprises & Public*' business lines, a senior legal expert specialising in the legislation and regulations concerning product development and service provision relating to financial instruments should attend the meetings of their management committees.
  - iii) The marketing department of each business line and the '*Financial Markets*' department will be supported by additional, hierarchically independent senior legal experts, to advise on the proper implementation of their projects, product development and customer services.

The Chief Risk Officer is responsible for second-line control and must ensure that the advice of the senior legal experts mentioned above is properly implemented.

Those in charge of the business lines are expected to strengthen the legal risk culture including through more systematic involvement of the legal department.

\*\*\*

Having regard to the fact that Belfius cooperated in the investigation and that this cooperation made a settlement possible under the conditions referred to in article 71, §3 of the Law of 2 August 2002;

Whereas the amicable settlement allows for a rapid and definitive settlement of the proceedings;

Whereas:

- a) The prospectus is intended to protect investors by removing information asymmetries between them and the issuing institution and by providing investors with the information they need, according to the nature of the issuing institution and of the securities, to make informed investment decisions;
- b) Disclosure in the prospectus is considered an effective means of increasing confidence in securities and thus of contributing to the proper functioning and development of securities markets;
- c) Failure to comply with the prospectus requirement is subject to administrative, criminal and civil sanctions, and the essential importance of prospectus disclosures to investors is emphasised in case law;
- d) The information provided by Belfius fails to show that, after subscriptions to its deposit certificates had increased sharply in March 2023 and were approaching the threshold of €75 million, it took the necessary measures in good time to avoid making offerings to the public that were in breach of the prospectus requirement;
- e) Belfius ceased its unlawful offering of deposit certificates with effect from 1 June 2023 and later submitted a draft prospectus relating to its issue of deposit certificates to the FSMA; and
- f) Belfius will make the adjustments referred to in marginal note 4, paragraphs a) to c).

Whereas the amount of the settlement should be proportional to the nature of the offences and should have a deterrent effect;

Whereas Article 71, §3 of the Law of 2 August 2002 requires settlements be published on the FSMA's website;

Whereas the publication of the amicable settlement on the FSMA's website, including the disclosure of names, is important for market and consumer confidence and also ensures the transparency and objectivity of the FSMA's actions and procedures;

Whereas acceptance of a settlement does not constitute a legal admission of guilt.

\*\*\*

For these reasons,

the investigation officer proposes the following settlement to Belfius, as defined in article 71, §3 of the law of 2 August 2002:

- payment of the sum of €1 million;
- a requirement, subject to approval by the competent bodies and supervisory authorities, for Belfius to add a new member with a robust legal background to its management committee;
- an obligation for Belfius, as of 1 January 2025 and for as long as the above-mentioned member has not yet been added, to set up an executive committee comprising at least one member with a robust legal background to assist and advise the management committee on the implementation of Belfius' strategy and policy; and
- publication of this settlement , including disclosure of names, on the FSMA's website.

\*\*\*

Belfius does not dispute the factual elements outlined above under marginal note 1, and declares that it agrees to this proposal for a settlement, consisting of:

- payment of the sum of €1 million;
- its requirement, subject to approval by the competent bodies and supervisory authorities, to add a new member with a robust legal background to its management committee;
- its obligation, as of 1 January 2025 and for as long as the above-mentioned member has not yet been added, to set up an executive committee comprising at least one member with a robust legal background to assist and advise the management committee on the implementation of Belfius' strategy and policy; and
- for this settlement to be published, including disclosure of names, on the FSMA's website.

Belfius has taken note that this proposal cannot take effect until it has been accepted by the management committee of the FSMA, in accordance with article 71, §3 of the law of 2 August 2002, and that no appeal is possible against the decision of the management committee.

For agreement,

BELFIUS BANK SA/NV

FREE TRANSLATION