Administrative Measure Publication Notice

This Notice is being published by the Financial Intelligence Analysis Unit ("FIAU") in terms of Article 13C of the Prevention of Money Laundering Act ("PMLA") and in accordance with the policies and procedures on the publication of AML/CFT penalties established by the Board of Governors of the FIAU.

The Notice provides select information from the FIAU's decision imposing the respective administrative measure, and is not a reproduction of the actual decision.

DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:

16th November 2020

SUBJECT PERSON:

Credence Corporate and Advisory Services Limited

RELEVANT ACTIVITY CARRIED OUT:

Company Service Provider

SUPERVISORY ACTION:

On-Site Compliance Review carried out in 2019

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of EUR 143,119 and a Follow-Up Directive in terms of Regulation 21(4)(c) of the Prevention of Money Laundering and Funding of Terrorism Regulations ("PMLFTR").

LEGAL PROVISIONS BREACHED:

1) Regulation 5(1) of the PMLFTR;
2) Regulation 5(5)(a)(ii) of the PMLFTR;
3) Regulation 7(1)(b) and 7(3) of the PMLFTR and Section 3.1.3.2 of the Implementing Procedures Part I[1];
4) Regulation 11(1), 11(2) and 11 (5) of the PMLFTR;
5) Regulation 7(1)(c) of the PMLFTR;
6) Regulation 7(2)(a) and 7(2)(b) of the PMLFTR and Section 3.1.5 of the Implementing Procedures Part I;
7) Regulation 13 of the PMLFTR;
8) Regulation 15(1)(c) of the PMLFTR.

[1] For the purposes of clarification, any references to the Implementing Procedures within this publication shall be construed to refer to the Implementing Procedures in place at the time when the breach has occurred.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Regulation 5(1) of the PMLFTR

The Committee determined that, although the Company did have a Business Risk Assessment ("BRA") in place, said BRA only marginally referred to the ML/FT risks that the Company is or may be exposed to and what measures the Company is taking to mitigate these risks. Instead, the Company's risk assessment focused on risks unrelated to ML/FT (e.g. legal, financial, organizational and reputational risks). Furthermore, the assessment failed to consider the threats and vulnerabilities emanating from the services the Company offers, the likelihood of these risks materialising and their resulting impact. Additionally, the Company also failed to assess its control measures, and consequently, to determine the level of residual risk it was still exposed to.

Throughout the review, it was also highlighted that the Company was not assessing the geographical risks arising from the business relationships with, or the occasional transactions carried out for, its clients. In fact, officials onsite noted that the Company had failed to carry out a jurisdictional risk assessment on at least 26 jurisdictions; the jurisdictional risk assessment is intimately linked to the understanding geographical risk.

In light of these findings and shortcomings, the Committee determined that the Company failed to carry out an adequate BRA and therefore found the Company in systematic breach of its obligations under Regulation 5(1) of the PMLFTR, including the requirement to carry out jurisdictional risk assessments so as to adequately understand the geographical risk to which the Company is exposed.

Regulation 5(5)(a)(ii) of the PMLFTR

The compliance review revealed that, although the Company had a Risk Assessment Policy and a Risk Assessment Form as part of its Procedures Manual, there was no methodology and/or scoring system in place to allow one to determine how customers were assigned their respective risk rating. Thus, although the client list that was provided to the Officials contained the risk rating assigned to each customer, it was not possible to reconstruct the reasoning why a particular risk rating was assigned to one customer and not another.

Furthermore, it transpired that the Customer Risk Assessment ("CRA") that the Company was making use of up until the time of the compliance examination was not adequate as it failed to take into consideration aspects that are important to properly assess the risks associated with its customers. Additionally, it was also noted that in a small number of files which held a documented CRA, such assessments were either carried out after the establishment of the business relationship or else were not dated. Moreover, in six of the files reviewed, the risk rating that was listed on the client list differed from that reported on the Company's own internal system.

Although the Company in its representations indicated that following the compliance examination it has remediated these shortcomings and is now using an updated and more adequate CRA process, the Committee determined that at the time of the compliance examination the Company was in systematic breach of Regulation 5(5)(a)(ii) of the PMLFTR.

Regulation 7(1)(b) and 7(3) of the PMLFTR and Section 3.1.3.2 of the Implementing Procedures Part I

The compliance examination revealed that the Company fell short of the abovementioned provisions in seven of the files reviewed. The Committee noted shortcomings in the Company's obligations specifically failing to: identify and verify an ultimate beneficial owner ("UBO") in one file; obtain documentation that a person is authorised to act on behalf of the customer in two files; verification of

the residential address of an agent in one file; collection of verification documents for the UBO in one file; verification of the residential address of the agent, UBO and applicant for business in two files; and failure to verify the identity and residential address in two files.

The Committee thus found the Company to be in breach of Regulation 7(1)(b) and Regulation 7(3) of the PMLFTR and Section 3.1.3.2 of the Implementing Procedures.

Regulation 11(1), 11(2) and 11 (5) of the PMLFTR

Findings with respect to the obligation to carry out Enhanced Due Diligence ("EDD") measures were noted in five files.

- EDD for High Risk Customers:

During the onsite examination, it was revealed that six of the files reviewed were classified as 'High' risk. Following due consideration of each of the said files, the Committee concluded that three of these files did indeed merit a 'High' risk rating, due to the jurisdictions involved in the business relationships, the customers' activities, and the transactions effected. In the absence of any EDD measures, the Committee found the Company in breach of its obligation to perform EDD measures for these three files.

In another file, it resulted that the client had connections with Iran and Panama, both of which appear on the FATF's list of high risk and other monitored jurisdictions. Although the Company did collect additional documentation on this client and even appointed two in-house Directors, these measures were not deemed sufficient as the nature of the activities involved demanded a higher level of on-going monitoring and a better understanding of the economic rationale behind the transactions taking place.

It was also revealed that in another file, apart from the fact that the UBO of the entity serviced by the Company was featured in adverse media, the Company failed to take action to duly understand the activity of the company and mitigate the risks associated with the same. While the Committee acknowledges that the Company obtained a copy of a loan agreement to justify the funds flowing into the client's accounts, the Committee also noted that the Company failed to gather essential information on why the Company necessitated to borrow such a considerable amount (which amounted to USD 30 million). In addition, while the said funds were to be used to provide loans to end customers, the Company failed to understand the nature of these end customers, why they would necessitate such loans and how the client would be generating a sufficient return to meet the eventual repayment of the loan.

- EDD for Politically Exposed Persons:

From the compliance examination, it also transpired that the UBO of one of the clients was a Politically Exposed Person ("PEP") who had also featured in adverse media in relation to bribery and corruption. Although the Company appointed an in-house Director as the signatory on the client's bank account, this measure was not considered as sufficient to mitigate the risks of the customer. The Committee also noted how no senior management approval was sought despite the UBO being a PEP, and that no supporting documentation in relation to the PEP's source of wealth and funds were obtained.

In light of the above findings, the Committee concluded that the Company was in breach of Regulation 11(1) and 11(2) for its failure to carry out EDD on high-risk customers in five files and in breach of Regulation 11(5) for its failure to carry out EDD on PEPs in one file.

Regulation 7(1)(c) of the PMLFTR

Various shortcomings were noted with regard to the Company's obligation to obtain sufficient information on the purpose and intended nature of its customers' business relationship. Such weaknesses ranged from the failure to collect information on the origin of the source of wealth and source of funds as well as the lack of information on the anticipated level and nature of the activity to be undertaken. While the Company in its representations conceded to the fact that for a number of these files no formal documentation was held, the Committee accentuated that the lack of or incomplete and insufficient information gathered on the purpose and intended nature of the business relationship could affect the monitoring of such business relationship.

Although the Company may have remediated such shortcomings since the onsite examination, the Committee determined that during the time of the visit the Company had failed to obtain the required information on the anticipated level and nature of the activity to be undertaken throughout the relationship and was therefore in breach of its obligations under Regulation 7(1)(c) of the PMFLTR.

Regulation 7(2)(a) and 7(2)(b) of the PMLFTR and Section 3.1.5 of the Implementing Procedures Part I

During the review, shortcomings relating to the obligation to carry out on-going monitoring were identified as is being explained hereunder:

- Transaction Scrutiny

In one of the files reviewed, a transaction of EUR 200,000 was questioned. The Company explained that this transaction was part of a EUR 5 million loan between the client and another company, providing a copy of the loan agreement as supporting documentation. However, the Committee noted that the loan agreement was not sufficient since it did not explain the purpose as to why the loan was being granted. Furthermore, although the Company explained that a listed fund was providing the funding for the client to provide such a loan, it failed to ensure that the funds the client received were indeed originating from this fund nor did it establish whether there was any agreement between the two governing the provision of the said funding. Therefore, the Committee could not ascertain the exact source of the EUR 5 million.

In another file reviewed, the officials highlighted three substantial transactions, with one of them being a debit transaction exceeding USD 2,500,000. During the visit, the Company's officials explained that the accounts and payments of this client are not prepared by the Company and that information had been requested from the client. However, this information was not received from the client during the review. The Committee expressed its concern that the Company was dependent on the client's third party accountant to provide the information needed, despite the fact that the Company was also offering Directorship services.

Despite the fact that the Company explained that it had a procedure for scrutinising transactions, the Committee noted that this procedure was not being followed. The Committee reiterated that the purpose of scrutinising transactions is not simply to collect documentation to support the transactions, but to understand the context of such documentation. The Committee therefore concluded that the Company was in breach of its obligations under Regulation 7(2)(a) of the PMLFTR and Section 3.1.5 of the Implementing Procedures Part I.

- Updating of Documentation

The review revealed that the Company was falling short of its obligations to monitor and update the documentation on the clients. Findings in relation to updating of documentation were noted in six different files. In its representations, the Company conceded to such findings and informed the

Committee that remedial action will take place. The Committee concluded that the Company was in breach of Regulation 7(2)(b) of the PMLFTR and Section 3.1.5 of the Implementing Procedures.

Regulation 13 of the PMLFTR

The Committee was informed how the Company was unable to provide an accurate list of its active customers, and also failed to submit the inactive client list prior to the onsite examination. Although this formed part of the requests made by the Supervision Section of the FIAU in preparation for the onsite compliance examination, the Company failed to satisfy said requirements. In fact, the client list that was eventually provided was not complete and did not provide sufficient detail as to the services being offered by the Company to its customers.

In light of these findings, the Committee proceeded to find the Company in breach of its obligations under Regulation 13 of the PMLFTR.

Regulation 15(1)(c) of the PMLFTR

The Money Laundering Reporting Officer ("MLRO") and the Designated Employee did not have full and unlimited access to the information pertaining to the transactional activity of the Company's customers. Such limited access undermined the MLRO's ability to analyse suspicious activities or transactions in order to submit suspicious transaction reports to the FIAU. The officials also noted that the MLRO was unaware of some of the processes employed by the Company in relation to AML/CFT matters.

The Committee determined that during the time of the compliance examination, the MLRO could not exercise her duties in terms of Regulation 15(1)(c) of the PMLFTR and therefore, the Company was in breach of this Regulation.

ADMINISTRATIVE MEASURE TAKEN BY THE FIAU'S COMPLIANCE MONITORING COMMITTEE:

In view of the findings identified, the Committee concluded that the Company was in breach of the various AML/CFT obligations, which necessitated the imposition of an administrative penalty. An administrative penalty of EUR 143,119 with regards to the below mentioned breaches was imposed on the Company:

- Regulation 5(1) of the PMLFTR;
- Regulation 5(5)(a)(ii) of the PMLFTR;
- Regulation 11(1), 11(2) and 11(5) of the PMLFTR;
- Regulation 7(1)(c) of the PMLFTR;
- Regulation 7(2) of the PMLFTR and Section 3.1.5 of the Implementing Procedures, Part I;
- Regulation 13 of the PMLFTR;
- Regulation 15(1)(c) of the PMLFTR.

With regard to the findings under Regulation 7(1)(b) and 7(3) of the PMLFTR and Section 3.1.3.2 of the Implementing Procedures; and Regulation 7(2)(b) of the PMLFTR and Section 3.1.5 of the Implementing Procedures, the Committee decided that a reprimand shall be imposed on the Company.

In terms of its powers under Article 21(4)(c), the Committee also served the Company with a Follow-up Directive in order to ensure that the Company is effectively addressing the breaches set out above. The Committee directed the Company to provide an Action Plan which shall, as a minimum, address the findings explained above, as well as any other additional enhancements being implemented. A summary of the process carried out by the Company to address the action points together with evidence to prove that these action points have actually been implemented in practice were also requested. Specifically, as a minimum, the Action Plan is to cover the following action points:

- An updated BRA addressing the shortcomings identified during the review, and containing an explanation as to how the Company arrived at the final risk ratings;
- An explanation of the measures being used to carry out jurisdiction risk assessments;
- An updated Risk Assessment Policy and Customer Risk Assessment Form and Questionnaire, along with an explanation of the risk assessment methodology used;
- The Company's plan to remediate the risk assessment of its active customers;
- The procedures and measures adopted by the Company in relation to obtaining information on the purpose and intended nature of the customers' business relationships;
- An update of the measures to monitor customer relationships and transactions effected;
- Procedures and measures in relation to the application of EDD;
- The Company's plan to review its high risk customers and ensure that the necessary EDD is being carried out;
- Updated record-keeping procedures;
- A declaration that the MLRO and Designated Employee have been granted access to transactional data;
- Training plan for the MLRO.

In determining the appropriate administrative measure to impose, the Committee took into consideration the representations submitted by the Company together with the remedial actions that the Company had already started to implement. The nature and size of the Company, the overall impact, both actual and potential, of the AML/CFT shortcomings identified vis-à-vis the Company's own operations and also the local jurisdiction, together with the seriousness of the breaches were also considered.

The Committee positively noted that it has been informed by the Company's representatives that remedial actions are currently being undertaken by the Company with the aim to remediate the AML/CFT shortcomings revealed during the onsite examination and in fact, the Company has already provided the Enforcement Section with a draft Action Plan.

23rd November 2020