



## Administrative Measure Publication Notice

This Notice is being published by the Financial Intelligence Analysis Unit (FIAU) in terms of Article 13C(2) of the Prevention of Money Laundering Act ("PMLA") and in accordance with the policies and procedures on the publication of AML/CFT administrative measures established by the Board of Governors of the FIAU. It is pertinent to note that this Notice provides select information from the FIAU's decision imposing the respective administrative measures, and is not a reproduction of the actual decision.

### DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:

20<sup>th</sup> November 2020

### RELEVANT ACTIVITY CARRIED OUT:

Credit Institution

### SUPERVISORY ACTION:

On-site Compliance Review carried out in 2019

### DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Follow-Up Directive in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations ("PMLFTR").

### LEGAL PROVISIONS BREACHED:

- Regulation 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures Part I ("IPs");
- Regulation 5 of the PMLFTR and Section 3.5 of the IPs;
- Regulation 7(1)(c) of the PMLFTR and Section 4.4 of the IPs; and
- Regulations 7(1)(d) and 7(2) of the PMLFTR and Section 4.5 of the IPs.

### REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

#### Regulation 5(1) of the PMLFTR and Section 3.3 of the Implementing Procedures:

The compliance review revealed that despite theoretically highlighting the inherent ML/FT risk factors faced by the Bank, the BRA omitted the inclusion of the analysis and risk scenarios, the likelihood of any risk materialising and the possible impact thereof. Although the BRA explained the risk assessment tool used by the Bank and provided a general understanding of the risks taken into consideration, this was considered by the Committee to be merely a summary of the IPs. Therefore the BRA did not provide a holistic approach and assess the various risk factors that may arise out of the Bank's activities. As a result, the Bank was not in a position to establish the areas in which the Bank's AML/CFT measures, policies, controls and procedures, need to be the strongest and the specific measures to implement in order to mitigate the inherent risk identified.

The Committee considered that the Bank had established a BRA within its operations prior to the obligation of having a business risk assessment in place came into force and although as indicated by the findings it

transpired that this was not considered comprehensive enough, the pro-active approach adopted by the Bank was evident. The Committee also noted the Bank's acceptance that the BRA needed to be better tailored to address its business and based on the suggestions put forward by the Officials during the review, the Bank proceeded to review and update its BRA immediately following the compliance review. Such acknowledgement was further evidenced through the submission of the newly updated BRA as an addendum to the Bank's Risk Evaluation Questionnaire in 2020. In the taking of the decision, the Committee also considered that in the newly established BRA, further explanation on the risks the Bank is exposed to have now been included, and that the Bank's total exposure is clearly identifiable.

The remedial actions outlined above were all positively acknowledged by the Committee in the taking of the decision in relation to this finding. However given that the BRA in place at the time of the onsite examination was not robust enough, the Bank was found in breach of Regulation 5(1) of the PMLFTR and 3.3 of the Implementing Procedures Part I.

Regulation 5 of the PMLFTR and Section 3.5 of the Implementing Procedures:

The compliance review revealed that although the Bank's risk assessment procedures were in place at the time of the compliance review, the Officials considered that the process of risk rating clients is not widely effective to proactively detect and prevent ML/FT activities. This in view of the fact that the risk rating pertaining to some of the files sampled during the onsite examination displayed a level of inconsistency between one profile and another which could not always be justified. More specifically, three customers who were being offered similar products and/or services, as well as all having links to high risk non-EU jurisdictions, were assigned different risk ratings from each other despite having very similar risk factors. This led the Committee to determine that whilst the risk factors taken into consideration by the Bank were sufficient and comprehensive, the 'calibration' of the scoring/ weightings within the RAT (Risk Assessment Tool) require improvement. In reaching a final determination on the matter, the Committee also considered the Bank's acknowledgement of this deficiency, even at a stage where the compliance review had not yet been concluded. The Officials at the time were informed that the RAT was undergoing a revamp to include further data input which would enhance the overall risk assessment of the business relationship and provide a better understanding of the associated threats.

After taking all of the aforementioned facts into consideration, the Committee determined that the Bank was in breach in terms of Regulation 5 of the PMLFTR and Section 3.5 of the Implementing Procedures Part I for failure to have a comprehensive methodology in place and the resultant inconsistencies in ratings within customers with similar risk exposures.

Regulation 7(1)(c) of the PMLFTR and Section 4.4 of the Implementing Procedures:

The Committee considered that as part of the due diligence exercise undertaken during the account opening process for one customer file, the Bank had looked into the trading company's website since the SoF for the holding company being on-boarded was expected to be derived from same. This contained a detailed profile of the company including the commodity products they trade in, as well as the geographic locations and partners they deal with, however such information was not kept on file. The Committee also noted the Bank's admittance that it should have recorded this information better.

On this point, the Committee reiterated that although the RAT form as presented within the Bank's representations was found on file and taken due note of by the officials conducting the onsite examination, no evidence that the company's website was referred to was found. Therefore the explanation that the

website was referred to in order to understand the activity of the subsidiary of the Bank's customer could not be confirmed by the Committee. In addition, the Committee also considered that although some information pertaining to this relationship was found on file, this could not be considered as sufficient for the Bank to establish a comprehensive profile of its customer, that would in turn facilitate the monitoring of the transactions taking place throughout the established relationship. This since while some information was recorded on the subsidiary of the Bank's customer, further information was expected to be obtained by the Bank, such as which sectors the Company would be dealing in, the main focus of the trading company's activities and its jurisdictional exposures.

In view of the aforementioned reasons therefore, the Committee determined that the Bank is in breach of Regulation 7(1)(c) of the PMLFTR and Section 4.4 of the Implementing Procedures for failure to obtain sufficient information in relation to the purpose and intended nature of the relationship in one of the files reviewed.

Regulations 7(1)(d) and 7(2) of the PMLTFR and Section 4.5 of the Implementing Procedures:

The Officials were notified by the Bank that at the time of the compliance inspection, the number of overdue periodic reviews amounted to 400 files. The Committee noted the Bank's letter of response in which the Bank explained that the shortcoming occurred as a result of significant time and energy being dedicated to the implementation of a new Core Banking System, and a Financial Crime Mitigation System.

In its discussions, the Committee considered that following the compliance examination, the Bank had already taken steps towards rectifying such deficiency by allocating specific resources to this task with priority being given to high risk and corporate customers and thus following the risk-based approach. In fact following such remedial actions, the backlog experienced by the Bank diminished significantly. More specifically, the Committee positively acknowledged that following the compliance review and up until the date of representations the total overdue reviews not concluded amounted to 229 of which 177 were low risk files with the vast majority of these pending reviews resulting from clients still having to submit information to the Bank.

However, in view of the facts outlined above relating to the monitoring of the customer relationships and ensuring that information and documentation held are up to date, the Committee determined that the Bank has failed to honour its obligations in terms of Regulations 7(1)(d) and 7(2) of the PMLTFR and Section 4.5 of the Implementing Procedures.

**ADMINISTRATIVE MEASURES TAKEN BY THE FIAU'S COMPLIANCE MONITORING COMMITTEE (CMC):**

In view of the breaches identified and as highlighted in the previous sections of this Notice, the CMC proceeded to serve the Company with a Follow-Up Directive. The aim of this administrative measure is to direct the Bank into implementing several requirements in order to ensure that it understands the risks surrounding its operations and that the Bank has implemented sufficient controls to mitigate such identified risks. To ensure that the Bank is effectively addressing the breaches set out above, the Committee directed the Bank to provide it with an Action Plan setting out the actions already taken by the Bank, what actions it still has to implement and in both instances how these resolve the issues with the Bank's AML/CFT policies, procedures and measures set out here above. The Action Plan is to cover amongst others the following:

- The Bank is to re-review on a risk sensitive basis all of its active clients and ensure that the information/documentation in relation to SOW/SOF/anticipated turnover are adequate as per the relevant sections of the PMLFTR and IPs;
- An update on the revamp being carried out by the Bank on its RAT;
- A detailed timeline explaining the different phases of the Bank's plan to update the expired customer file reviews; and
- The implementation of measures to ensure that the Bank avoids becoming overdue in the review of customer relationships.

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

Finally, the Bank has also been duly informed that in the eventuality that the Bank fails to provide the above mentioned action plan and supporting documentation available within the specified deadline, the Bank's default shall be communicated to the Committee for its eventual actions, including the possibility of the imposition of an administrative penalty in terms of the FIAU's powers under Regulation 21(1) of the PMLFTR.

27 November 2020

