



## 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 administrative measures 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:**

24 January 2023

### **RELEVANT ACTIVITY CARRIED OUT:**

Fund Administrator

### **SUPERVISORY ACTION:**

Onsite compliance review carried out in 2021

### **DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:**

Remediation Directive in terms of Regulation 21(4)(c) of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR)

### **LEGAL PROVISIONS BREACHED:**

- Regulation 5(1) of the PMLFTR and Sections 3.3.1 and 3.3.2 of the FIAU's IPs.
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5.1(a) of the FIAU's IPs.

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

#### Business Risk Assessment – Regulation 5(1) of the PMLFTR and Sections 3.3.1 and 3.3.2 of the FIAU's IPs

The Business Risk Assessment (BRA) reviewed at the time of the compliance examination did not include a breakdown of risk scenarios or vulnerabilities, or how numerous these were to the Company. Thus, the methodology adopted was not adequate. The Company in its representations acknowledged that the BRA did not outline why the identified risk factors were assigned with scores such as low, medium, or high. However, it did not agree with the finding stating that risk scenarios were not incorporated in the methodology of the BRA. After reviewing the BRA that was provided to the Officials at the time of the compliance examination, the Committee, noted that the risk factors identified are not specific to the business activities of the Company and were generic in nature. The Committee took into consideration that while certain information on the customers was being collected from the 'Establishment Worksheet', this information was not being used in the BRA. In view of this, the Committee determined that the methodology of the BRA failed to include risks prevalent to the Company. Therefore, it found the Company in breach of Regulation 5(1) of the PMLFTR and Sections 3.3.1 and 3.3.2 of the Implementing Procedures (IPs).

## Customer Risk Assessment – Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5.1(a) of the FIAU’s IPs

### Finding 1: Jurisdiction Risk Assessment

Although the Company had risk scores for jurisdictions, an independent risk assessment was not provided to the Officials. The Company informed the Committee that the methodology of the jurisdiction risk assessment (JRA) was compiled from sources listed in the FIAU’s IPs. After reviewing the JRA methodology the Committee, noted that although the assessment was quite robust in terms of the sources that were used to compile it, it did not portray an adequate understanding of the risks that such sources had identified. Thus, whilst the same risk score may have been assigned to two different jurisdictions, the rationale behind the risk scoring denoted may not be the same. Furthermore, it did not identify what control measures were necessary. Moreover, specific considerations to the risk factors were not documented. The Committee explained that a risk scoring system cannot stand on its own and must be supported with the rationale of such scoring, including what risk factors are driving the ultimate risk rating (i.e., low, medium, high, extreme). Thus, the Committee determined that the Company was in breach of its obligations as specified under Regulation 5(5)(a)(ii) of the PMLFTR.

### Finding 2: Name screening not performed or recorded

Four of the files reviewed had the screening carried out after onboarding. Deficiencies in the frequency of the screening were also identified. The Company acknowledged the findings and informed the Committee that it has since strengthened its screening process and that all customers are now being screened daily and that new customers are being screened prior to onboarding. In its deliberations the Committee, acknowledged the prompt remedial actions taken by the Company, as delineated at the time of the compliance examination. However, the Committee concluded that the Company was in breach of its obligation as stipulated under Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5.1(a) of the IPs.

### **ADMINISTRATIVE MEASURES TAKEN BY THE FIAU’S COMPLIANCE MONITORING COMMITTEE:**

After taking into consideration the above mentioned findings together with (i) the nature of the services and products offered by the Company; (ii) the size of the Company; (iii) the seriousness of the obligations breached and whether these were systematic in nature; and (iv) the impact that these breaches could potentially have on both the Company and the local financial system, the Committee, in terms of its powers under Regulation 21(4)(c) of the PMLFTR, decided to impose a Remediation Directive (Directive) with regards to the breaches identified in relation to:

- Regulation 5(1) of the PMLFTR and Section 3.3.1 and 3.3.2 of the FIAU’s IPs.
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5.1(a) of the FIAU’s IPs.

The aim of the Directive is for the FIAU to ensure that the Company enhances its AML/CFT safeguards and that it becomes compliant with the obligations imposed in terms of the PMLFTR and the FIAU’s IPs issued thereunder. The Company was directed to remediate the breaches identified and submit the below mentioned documentation for Enforcement Officials to attest that the necessary remediation has indeed taken place:

- An updated BRA which must include risk factors that are relevant to the customers of the Company.
- An update on the CRA methodology of the Company, including a documented report on the prevalent risks applicable to the jurisdictions that the Company’s customers are linked to, as well as actions to be taken to ensure that the Company adheres to its obligation to perform name screening.

In the event that the requested information and/or documentation are not made available within the stipulated timeframes or the Company falls short of its obligations in terms of this Directive, the Committee will be informed of this default. This could result in the possibility of action being taken, including the potential imposition of an administrative penalty in terms of the FIAU's powers under Regulation 21 of the PMLFTR.

#### Key take-aways

- The BRA needs to include risk factors that are relevant to the business activities that the Subject Person carries out. For example, since this subject person is a Fund Administrator, the BRA was expected to include risk factors relating to:
  - the types of funds it services;
  - the target market of the funds;
  - the types of assets that would be included in the fund;
  - the types of customer that the fund will attract;
  - how the Company monitors the investments and transactions taking place.
- In a JRA, a subject person should be able to highlight the specific risks that are prevalent to a country in question, and what kind of measures need to be applied to mitigate the risks identified.

**24 January 2023**

