Administrative Measure Publication Notice

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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:

Corporate Services Provider

SUPERVISORY ACTION:

Onsite compliance review carried out in 2020

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:

Administrative Penalty of Euro 32, 077 and a 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(5)(a)(ii) of the PMLFTR and Section 3.5 of the Implementing Procedures (IPs).
- Regulation 7(1)(c) of the PMLFTR and Sections 4.4.2 and 4.4.3 of the IPs.
- Regulation 11(1)(b) of the PMLFTR and Section 4.9 of the IPs.
- Regulation 7(1)(d) of the of the PMLFTR and Section 4.5.3 of the IPs.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Customer Risk Assessment – Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs

The methodology of the Customer Risk Assessment (CRA) used at the time of the compliance examination was not adequate since it mostly focused on the interface risk. Moreover, it was noted that although the CRA checklist in use had risk indicators requiring completion to determine the risk score, the risk indicators were not being marked, and thus it could not be confirmed how the Company arrived at the risk score assigned to the customer. Committee members expressed that, in the absence of what considerations were taken by the Company to determine the customer's risk score, the CRA methodology cannot be considered as adequate. Moreover, one of the customer files reviewed, was assigned a low-risk score, this was later determined to have been assigned on the basis that the BO of the customer was previously known to the Company via another customer.

Committee members took into consideration the Company's representations, whereby they indicated that at the time when the CRA was implemented, the risk-based approach was not mandatory, and that prior to the publication of the 2019 IPs, non-face-to-face customers had to be considered as presenting a high-risk. Moreover, the Company also argued that the pre-2019 the IPs did not provide indications with regards to the risk factors. Notwithstanding this, the Company informed the Committee that it has since revised its CRA methodology and that all customer files will be reviewed and reassessed with the new methodology.

The Committee explained that the IPs issued in August 2011 had provided guidance on how to identify and assess risks for the purpose of a CRA, together with guidance on how to manage risks in higher risk situations (Section 4.1.2 of the IPs issued in August 2011). Additionally, CMC Members expressed that a risk rating without considerations cannot be considered as an assessment having been carried out.

In view of this, the Company was found in breach of Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs.

Purpose and Intended Nature of the Business Relationship – Regulation 7(1)(c) of the PMLFTR and Section 4.4.2 and 4.4.3 of the IPs

A number of shortcomings relating to the obligation to understand and obtain information on the purpose and intended nature of a business relationship or an occasional transaction were noted during the compliance examination. Examples of the shortcomings identified are being relayed below:

Case 1: The incorporation form of the customer indicated that the estimated net-worth of the customer was around Euro 70 million (as opposed to the Euro 70,000 indicated by the Company in its representations) which consisted of investments. This customer was an investment holding company, and the incorporation form indicated that it would only be receiving dividend income. However, the Committee noted that the Company did not hold any information on the underlying investments, how these were generating the indicated Euro 70 million or whether these investments were really valued at this amount. In the absence of such information, the Committee determined that the Company was in breach of its obligations.

Case 2: The findings report highlighted that the Company did not hold information on the anticipated level of activity of this customer. The Committee noted that the Company's representations explained that the customer was a blockchain start up, based on a crowdfunding platform which was intended to provide fundraising tools for projects. No further information was collected since the client informed the Company that additional details would be provided once the project kicks off and would be in a more advanced stage. The Company was eventually informed that the project did not gain sufficient backers and that the BO planned to use the customer as a Payment Service Provider, however this project was still developing. Committee members considered that the activities of the customer represented an element of high-risk, and thus, more information on the anticipated level of activity and the expected turnover of the customer, together with information on the customer's source of wealth was expected to be collected. Moreover, the Committee expressed that both from the representations submitted and incorporation form of the customer, it was observed that the Company was not fully aware of the activities the customer would be undertaking and relied on the fact that the client would provide more information once the project kicks off. In view of this, the Committee determined that the Company was in breach of its obligations.

The Committee therefore concluded that the Company had breached its obligations as stipulated under Regulation 7(1)(c) of the PMLFTR and Sections 4.4.2 and 4.4.3 of the IPs.

Enhanced Due Diligence – Regulation 11(1)(b) of the PMLFTR and Section 4.9 of the IPs

Shortcomings relating to enhanced due diligence (EDD) measures were identified during the compliance examination. Case examples of the shortcomings identified are being relayed hereunder:

Case 1: EDD measures were not carried out in four of the files reviewed. The activities of these four files ranged from trading in precious metals and stones to bovine genetic exports. The customers also had links (through their source of wealth and source of funds) to jurisdictions posing higher risks. Whilst taking into consideration that the Company had collected some information and documentation on these customers, including stone grading reports and veterinary bills, these were not considered as sufficient in view of the elevated risk exposure. The Committee noted that in its representations, the Company only referred to the collection of certified copies of the identification documents without providing more information on the activities of the customers. The Committee expected that as part of the EDD measures, the Company obtains documentation establishing that the information provided is legitimate, has information on the trades of the precious metals and the bovine genetic exports, as well as to have

an understanding on the divergent change in the business. Further information should also have been obtained on whether the BOs have any experience in these two distinct industries.

In view of this, the Committee determined that the Company has breached its obligations as stipulated under Regulation 11(1)(b) of the PMLFTR and Section 4.9 of the IPs.

Ongoing Monitoring: Updating of Documentation and/or information – Regulation 7(1)(d) of the of the PMLFTR and Section 4.5.3 of the IPs

The ongoing monitoring sheet in two of the files reviewed was not dated, and thus it could not be confirmed whether the ongoing monitoring was carried out in a timely manner. Moreover, the ongoing monitoring reviews of eight other files were not carried out within the timeframes that the Company itself had stipulated in its policies and procedures. In its representations the Company acknowledged that its ongoing monitoring procedures required improvement and it also informed the Committee that it will be increasing its resources for ongoing monitoring purposes. The Committee acknowledged that the Company had acknowledged/accepted the findings reported and also took into consideration that the Company has already started to remediate the shortcomings. However, it could not ignore the shortcomings that were identified at the time of the compliance examination, and thus determined that the Company had breached its obligations as laid out in Regulation 7(1)(d) of the PMLFTR and Section 4.5.3 of the IPs.

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

After taking into consideration the abovementioned 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 decided to impose an administrative penalty of Euro 32,077 with regards to the breaches identified in relation to:

- Regulation 5(5)(a)(ii) of the PMLFTR Section 3.5 of the IPs.
- Regulation 7(1)(c) of the PMLFTR and Sections 4.4.2 and 4.4.3 of the IPs.
- Regulation 11(1)(b) of the PMLFTR and Section 4.9 of the IPs.

In addition to the above, in terms of its powers under Regulation 21(4)(c) of the PMLFTR, the FIAU also served the Company with a Remediation Directive (Directive). The Directive is intended to assess the Company's remediation for all the above mentioned breaches as well as the identified breaches of:

- Regulation 7(1)(d) of the PMLFTR and Section 4.5.3 of the 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. 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:

- A documented update on the CRA methodology including explanations of how risk scores are being assigned in view of the breaches identified under Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs.
- The updated procedures in relation to the information and documentation being collected and obtained for the purpose and intended nature of the business relationship together with supporting documentation on specific files in view of the breaches identified under Regulation 7(1)(c) of the PMLFTR and Sections 4.4.2 and 4.4.3 of the IPs.
- The updated procedure in relation to the EDD measures being carried out with regards to high-risk customers, together with specific information and supporting documentation for a number of files reviewed during the compliance examination, in view of the breaches identified under Regulation 11(1)(b) of the PMLFTR and Section 4.9 of the IPs.

- Updates on how the Company is ensuring that it abides with its ongoing monitoring obligations together with the updated procedure being followed and the timelines of the periodic reviews in view of the breaches identified under Regulation 7(1)(d) of the PMLFTR and Section 4.5.3 of the IPs.

In the event that the requested information and/or documentation are not made available within the stipulated timeframes or if 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 imposition of an administrative penalty in terms of the FIAU's powers under Regulation 21 of the PMLFTR.

The administrative penalty imposed is not yet final and may be appealed before the Court of Appeal (Inferior Jurisdiction) within the period as prescribed by law. It shall become final upon the lapse of the appeal period or upon final determination by the Court.

Key take-aways

- A customer risk rating without considerations and a rationale explaining the reason why this particular risk rating was assigned cannot be considered as an assessment having been carried out.
- Sufficient information on the purpose and intended nature of the business relationship, including the expected value and volume of the transactions need to be obtained at the onset of the relationship. This is especially required to ensure that the Subject Person may perform other obligations, including transaction monitoring, effectively.
- Enhanced due diligence measures should not solely consist of collecting documentation and certifying copies of identification documents. Enhanced measures should entail the collection of documentation, and their reviewing to ensure that the information relayed by the high-risk customers is legitimate and to mitigate the high-risks identified. These measures therefore also include verifying that the information being submitted is legitimate and that it makes sense with the business profile of the customers.

24 January 2023