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 measures and is not a reproduction of the actual decision.

DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:
20 March 2023

RELEVANT ACTIVITY CARRIED OUT:
Collective Investment Scheme (Retail)

SUPERVISORY ACTION:
Off-site compliance examination carried out in 2022.

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:
Administrative Penalty of €49,969 in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

LEGAL PROVISIONS BREACHED:
- Regulations 5(5)(a) and 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1, 3.5.1(a) and 3.5.3 of the IPs.
- Regulations 13(1) and 13(2) of the PMLFTR and Section 9.1 of the IPs.

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Customer Risk Assessment (CRA) – Regulations 5(5)(a) and 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1, 3.5.1(a) and 3.5.3 of the IPs

By way of background, the Company's risk assessment methodology was being managed by the Former fund administrator since inception of the fund until the Current Fund Administrator started managing it in April 2021. The compliance examination revealed that, within its former CRA methodology, the Company did not consider all the risk pillars. The Committee noted that this rendered the Company's CRA inadequate and insufficient. Nonetheless, it considered that the product/service risk and interface risk would be constant in the business relationships established by the Company with its customers, as the same services are being provided and as customers are always onboarded in the same manner. Consequently, this reduced substantially the Committee's concerns in regard to the ML/FT risks that the Company was exposed to.

As regards the current CRA methodology, the risk assessment tool implemented by the Company considers three of the four risk pillars as it excluded yet again the Interface Risk factor. Moreover, the nature and behaviour of the customers serviced by the Company was not being considered. There was also no comprehensive consideration of the jurisdictional links of customers. In fact, despite considering sources such as the FATF and EU Third Country list, the Company was focusing on high risk jurisdictions, omitting the consideration of other non-high risk jurisdictions.

Albeit noting the need for some additional improvements, the Committee positively noted how the newly implemented methodology includes more details as regards the Product, Service & Transaction risk through the inclusion of the details of the Investments being made. While being comparatively more rigorous than the former CRA methodology, the Committee held that there was some subjectivity in how each risk factor should be addressed.

Furthermore, the Committee noted instances wherein adverse media screening was not performed or it was performed late. In the case of 33% of the files reviewed, no adverse media screening was found on file for both the applicant for business and the BOs, whilst in another 33% of the files reviewed, the adverse media screening was performed late. In its representations related to this finding, the Company stated that to ensure that it has everything in order and to eliminate any information gaps, once appointed, the Current Fund Administrator conducted screening checks, including those related to adverse media on all customers. Such checks were performed for all investors.

In determining this breach, the Committee considered that the requirement for Subject Persons to carry out adverse media screening came into force with the updated IPs issued in July 2019. Therefore, given that the Company was licensed in October 2019, that is, following the introduction of this requirement, it was expected to conduct adverse media screening of its customers at the onboarding stage and to carry out such checks in a timely manner and on a risk sensitive basis following the introduction of such obligation.

The Committee also observed that the Company's Customer Acceptance Policy (CAP) was performed late and just before the start of the compliance examination. It commented that the IPs require subject persons to prepare a CAP prior to offering their services and establishing business relationships with potential customers. In doing so, the Company will be able to establish the basis on which potential customers are accepted or rejected for onboarding and whether the same fall within the Company's risk appetite.

In view of the above considerations, the Committee concluded that at the time of the compliance examination, the Company was in breach of its obligations emanating from Regulation 5(5)(a) and 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1, 3.5.1(a) and 3.5.3 of the IPs for the aforementioned shortcomings.

<u>Record-Keeping – Regulations 13(1) and 13(2) of the PMLFTR and Section 9.1 of the IPs</u>

Officials performing the examination noted shortcomings in terms of the Company's former systems and records. Indeed, the Company did not retain documents supporting consideration given as to alerts relating to PEP screening, adverse media screening in regard to certain customers, transfers and

purchases, transaction documents, and CDD documents as previously gathered by the Former Fund Administrator. Additionally, there were also discrepancies noted between customer numbers on the client list and those on transaction sheets.

In its representations, the Company clarified that the change in fund administrators impeded the Company from migrating all records and data and hence from submitting all documents available. Nonetheless, the CMC did not accept this argument and held that the change in the fund administrators should not exonerate the Company from ensuring compliance to its AML/CFT obligations.

The Committee additionally noted that whilst the Company did have an understanding of the purpose and intended nature of a very good number of its customers, the Company did not retain a record of the same understanding. These customers, which were regulated collective investment schemes and were investing funds obtained through their own customers, were licensed institutions based in jurisdictions of good standing and repute and therefore subject to good levels of monitoring and scrutiny. In addition, they were also themselves being subject to AML/CFT obligations. Therefore, they did not expose the Company to high ML/FT risks. In spite of this, the CMC reiterated that this shortcoming resumed to demonstrate the Company's lack of regard towards its recordkeeping obligations. The Committee explained that the Company should at all times ensure that it retains all pertinent documentation to demonstrate compliance to its AML/CFT obligations.

In its representations, the Company stated that the Current Fund Administrator retains the supporting documentation reflecting the subscriptions, redemptions and transfers made by investors in the Company to verify all such transactions. By way of corroboration, the Company submitted a sample of the same with its submissions. While the Committee noted such representations, it remarked that this was not provided during the compliance review. Additionally, in taking a decision on this breach, the CMC reiterated that there were issues with the Company's records not being retained following a change in fund administrator.

In view of the above considerations, the Committee concluded that at the time of the compliance examination, the Company was in breach of its obligations emanating from Regulations 13(1) and 13(2) of the PMLFTR and Section 9.1 of the IPs.

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

After taking into consideration the above-mentioned findings together with (i) the nature of the services and products offered by the Company including the fact that its customers were regulated entities in reputable jurisdictions subject to rigorous monitoring; (ii) the size of the Company being a relatively small institution; (iii) the seriousness of the obligations breached; (iv) the impact that these breaches could potentially have on both the Company and the local financial system, and (v) the fact that the Company initiated a surrender process with the Malta Financial Services Authority the Committee, in terms of its powers under Regulation 21(4)(c) of the PMLFTR, decided to impose an administrative penalty of Euro 49,969 with regards to the breaches identified in relation to:

- Regulations 5(5)(a) and 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1, 3.5.1(a) and 3.5.3 of the IPs;
- Regulations 13(1) and 13(2) of the PMLFTR and Section 9.1 of the IPs.

Under normal circumstances, a Remediation directive would be imposed for the breaches identified in terms of Regulation 21(4)(c) of the PMLFTR, however the Committee took into consideration that

the Company is in the process of surrendering its licence. Had the Company not initiated the surrender of its licence, a process to follow up on the measures necessary to ensure compliance with the local AML/CFT legislative provisions, both in relation to the failures for which the Company has been found in breach (as relayed above), as well as on the remedial actions that the Company would have initiated. However, in view of the Company's decision to surrender its license, it can no longer being considered as a Subject Person and hence the Follow up Directive cannot be served.

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

<u>Key take-aways</u>

- When conducting a customer risk assessment, it is essential to consider the reputation, nature and behaviour of the customer. A subject person is expected to consider what is known about a customer or a beneficial owner, including any criminal conviction, sanctions, or seizure of assets in relation to that that customer. Additionally subject persons are also required to take into account the behaviour of a customer, including whether they are cooperative in providing information or whether the documentation provided is authentic or otherwise.
- While a jurisdiction may be considered as reputable, it still may have risks associated with it that should be properly assessed, understood and managed. Certain risks prevalent in each country such as transparency issues, corruption and bribery alongside other prevalent crimes should be evaluated. Such considerations are indispensable to have a sound understanding of the risks presented by a jurisdiction to which a customer is exposed and to determine the level of controls necessary, and this in addition to assessing each jurisdiction's reputability.
- The fact that there were two different fund administrators does not preclude the Company from ensuring that it is compliant to its AML/CFT obligations, including the obligation to keep records of all information/documentation satisfying its AML/CFT obligations. The Committee reiterated the importance of adhering to this obligation; not only for the purposes of being able to demonstrate compliance to the FIAU but also to effectively discharge certain aspects of its AML/CFT obligations, including monitoring of customer relationships as well as the provision of such information/documentation to competent authorities upon request.

22 March 2023