Administrative Measure Publication Notice

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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:

11 April 2023

SUBJECT PERSON:

Trive Financial Services Malta Limited (previously AKFX Financial Services Limited)

RELEVANT ACTIVITY CARRIED OUT:

Investment Services

SUPERVISORY ACTION:

Compliance Review carried out in 2019

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of €133,148 and a Follow-Up Directive in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

LEGAL PROVISIONS BREACHED:

- Regulation 8(1) of the PMLFTR and Section 4.6.6 of the Implementing Procedures (IPs)
- Regulations 5(1), 5(3) and 5(4) of the PMLFTR and Sections 3.3 and 8.1 of the IPs
- Regulations 5(5)(a) and 5(6) of the PMLFTR and Section 3.4 of the IPs
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs
- Regulation 7(1)(c) of the PMLFTR and Section 4.4 of the IPs
- Regulation 7(2)(a) of the PMLFTR and Section 4.5 of the IPs
- Regulation 15 of the PMLFTR and Section 5.1.3 of the IPs

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Acquisition of Business of One Subject Person by Another - Regulation 8(1) of the PMLFTR and Section 4.6.6 of the IPs

The Company acquired over 6,000 customers from a foreign institution. The acquisition of such business necessitated either an assessment of the CDD carried out by the institution from where the business is acquired or else the carrying out of fresh CDD information and documentation at onboarding by the Company on a risk sensitive basis.

Yet the Company did not provide any evidence of it having ascertained the relevant AML/CFT policies, procedures, and controls that had been adopted by the transferor and the extent to which these satisfied the Company's local AML/CFT regulatory requirements. Similarly, the Company did not provide any documentation to indicate that it had examined a sample of the transferor's customer files to obtain assurance that any relevant policies, procedures and controls had been effectively implemented as designed. Moreover, no CDD had been conducted for any of the transferred customers. Although the Company claims this to be attributable to the low-risk nature of the customers migrated, in the absence of proper CRAs as shall be outlined below this could not be ascertained.

While the company claimed to have implemented certain mitigating measures by ensuring that CDD information and documentation is obtained prior to carrying out transfers to a customer's benefit, evidence obtained during the review confirmed otherwise. Indeed, in a number of instances no review of the customer's identification documents, or proof of address had been logged, even if the Company accepted or transferred funds on the customer's behalf or else allowed customers to withdraw funds.

The Committee further considered how the Company's AML/CFT failures when acquiring such business had an impact on the degree and extent of its compliance with the CDD obligations and risk understanding of the over 6,000 customers

Business Risk Assessment (BRA) – Regulations 5(1), 5(3) and 5(4) of the PMLFTR and Sections 3.3 and 8.1 of the IPs

In reviewing the BRA, the Committee noted the Company's inability to understand its business risks and the means to mitigate such identified risks given that the document failed to identify the threats and vulnerabilities both in a quantitative as well as a qualitative manner. For instance:

- Under customer risk there was no indication of the volume of business the Company transacts in, nor any information regarding the number of customers it has by risk category

- The assessment of the geographical risk exposure was merely a list of external information sources, including a generic reference to FATF statements and the Transparency International Corruption Perceptions Index. No detail was given as to how these sources of information may have been used or interpreted by the Company in relation to its own risk assessment.

Moreover, despite assigning a likelihood and impact rating for each risk scenario, no empirical rationale (both verbal or in writing) was given to support any of the scores used to calculate the residual risk exposure. For example, the BRA identified eight risk scenarios that arise as a result of carrying out transactions on behalf of customers. In each case, the Company claimed to face a reduced, moderate residual risk on the basis of mitigating measures that have not been adopted in practice. Therefore, the basis against which the residual risk has been calculated is not supported in any manner with the level of controls put in place.

The Company was also required to revise and update its BRA whenever there were changes to its business model/structures/ activities. Nevertheless, although during the second quarter of 2019, the Company acquired over 6,000 customers, the BRA, made no reference to the significant expansion of its client base. Neither did the BRA include any consideration of how a multiplicative increase in the volume of the Company's customer base might affect the probability that any risk scenarios previously

identified materialise. Similarly, the Company also had to revise and update its BRA whenever there were changes to the external environment such as regulatory changes. Notwithstanding, the BRA primarily comprised text taken mostly verbatim from the outdated IPs, as last amended in January 2017 and replaced in July 2019.

Policies, Controls and Procedures - Regulations 5(5)(a) and 5(6) of the PMLFTR and Section 3.4 of the IPs

Once the Company identified the ML/FT risks it is exposed to through the BRA, it had to take measures to prevent these risks from materializing or at least manage such risks in order to mitigate their occurrence as much as possible. Also, the initial as well as subsequent measures, policies, controls, and procedures are clearly documented and approved by senior management. Yet, the compliance examination revealed that none of the documented policies or procedures were signed off by senior management and hence it was unclear which, if any, had been formally adopted by the Company.

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

1. CRA not carried out at On-Boarding

No CRA was documented for 69% of the files reviewed and in this respect the Committee learnt that risk ratings are summarily assigned on the basis of only two factors both related to geography. Nevertheless, geographical risk assessment on the jurisdictions exposed to were not retained, and any particular risks arising from a customer's links to a given jurisdiction were not documented in any of the files reviewed on the CAT system, nor in any additional documents relating to the reviewed customer files.

2. CRA is not appropriate and lacks sufficient depth

A standalone CRA was only documented within 31% of the customer files reviewed which took the form of a standardised checklist. Each scenario included in this checklist was attributed a specific numerical value, which varied significantly without any reference to a coherent approach. Additionally evidence found during the review highlight that the first CRA measure was only implemented in June 2019, way after the CRA obligation came into force. Furthermore, the CRA adopted was not rigorous and comprehensive enough to enable the Company to understand the risks posed by customers and to effectively apply the risk-based approach. Failures observed included:

- The Company does not factor any risk potentially arising from the jurisdiction(s) in which the funds processed through the business relationship are actually generated. Similarly, although the customer's trading account may be funded from a customer's bank account in a third country, no assessment is made regarding the jurisdiction in which a customer's account is held.

- The factors inputted with respect to the expected Source of Funds (SoF) and Source of Wealth (SoW) are rather generic and do not factor in the details provided by the client at on-boarding. Additionally, consideration by the Company should have also been made to the business or professional activity carried out by the customer from which the funds to be used in the course of a business relationship are expected to be derived.

Hence, although the Company had a risk assessment procedure in place, the risk rating process implemented was not widely effective to depict a correct risk image of the customer and to thus ensure the necessary control are taken.

Information on the Purpose and Intended Nature of the Business Relationship– Regulation 7(1)(c) of the PMLFTR and Section 4.4. of the IPs

The Company's online account application required customer to indicate their annual income, savings and investments by selecting from five (5) pre-determined bands which widen as the declared value increases. Nonetheless, the brackets used to obtain the expected transaction volumes were deemed to be too wide to be able to distinguish better different types of customers and to be able to effectively monitor actual against expected level of activity. Besides, the maximum bracket includes anything over €150,000 which was considered by the Committee as being too wide and generic, and hence the account application form alone does not collect comprehensive information regarding the value of customer funds which may be used during the business relationship.

One further observation was that the application form drew no connection between a customer's employment and the source and origin of funds expected to be used during the business relationship. Specifically, where a customer declares significant savings, no additional information is collected to determine the activities from which these might have accrued. Some examples are being illustrated hereunder:

- In one file the customer declared an annual income of over €150,000 in addition to savings and investments of over €150,000 as well as indicated that he was self-employed as a business consultant. Yet no additional information was found on file that identified the nature of the activity by which these funds and/or assets had been generated or acquired. While the Company clarified the customer was resident in an EU jurisdiction that corroborated with the amounts declared by the customer, the Company failed to gather more understanding with regards to the customer's consultancy business.

- Another customer declared an income of over €150,000, in addition to savings and investments in excess of €150,000 the application form only indicated that the customer was employed as an investment broker in the UK.

  In this instance the Company obtained a copy of an account statement. However, while the account statement shows the individual's account balance, this still does not show from where the funds were derived given that there was no record of any salary income or other income such as investment income. Also despite the client providing a signed declaration from his employer stating that he was earning an annual salary of £225,000 same was not dated and therefore when such information was obtained by the Company could not be ascertained.

The Committee stressed that where a customer is investing money that is claimed to have been accumulated over time, information on the current business/occupation/employment would certainly need to be complemented with information on the source that generated that wealth. Moreover, where the collection of this information is deemed relevant, subject persons are not to limit themselves to obtaining information of a generic nature. Therefore, the Company was to collect information on its

customers' source of wealth and expected source of funds, the detail of which would depend on the risk perceived from the customer.

On-Going Monitoring – Regulation 7(2)(a) of the PMLFTR and Section 4.5 of the IPs

The scrutiny of transactions consists in using the Company's knowledge of the customer to identify any transactions that are unusual, in other words, transactions that are inconsistent with the customer's profile or are significantly different to what is usually carried out or requested by the customer. Moreover, the Company is required to examine those transactions that do not have any apparent or economic lawful purpose and increase the degree and nature of ongoing monitoring to determine whether the transactions are suspicious. On such occasions the Company should have reached out to the customers to obtain the necessary information and/or documentation. Yet, this was not what was happening in practice as is relayed hereunder:

- Despite declaring an annual income of €50,000 - €150,000, just one day after on-boarding, one customer affected a single transaction of around €89,000. Considering this transaction is relatively large especially in comparison to an average annual income of €100,000 the transaction should have been flagged and the customer contacted for information and/or documentation explaining how such funds were generated or acquired.

- The application form indicated that the customer was retired with an annual income between €25,000 and €49,000, as well as savings worth of €50,000 - €150,000. However, in less than a month a total of €145,000 in deposits were made. While this customer may have accumulated savings in line with the indicated bracket, unless the Company obtained clarifications and evidence on the customer's sources of funding, including on the ability to invest €145,000 in a month the Company cannot ascertain that the funds derived from legitimate means.

The Company did not have a sufficiently robust measures to ensure that it can effectively monitor transactions carried out for and on behalf of its customers. While both manual and automated monitoring may be effective, the implementation of a more automated system becomes imperative when the volume of transactions processed would be such that the human resources would not be sufficient to ensure effective monitoring.

Reporting Obligations - Regulation 15 of the PMLFTR and Section 5.1.3 of the IPs

As necessitated by its legal obligations, the Company was to notify the FIAU of the resignation or removal of its MLRO as soon as reasonably practicable on becoming aware of the proposed resignation or removal. Notwithstanding, the Company never communicated the MLRO's resignation to the FIAU, or of any replacement. The Committee here stressed that when the existing MLRO resigns or is dismissed and the new MLRO is pending approval by a supervisory authority, the subject person should inform the FIAU of this and provide the FIAU with the details of the employee who, for the interim period, will be assuming the role of reporting officer and to whom the FIAU can address any requests or queries.

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

After taking into consideration the abovementioned findings together with (i) the nature of the services and products offered by the Company including the size of the Company which is not considered to be a large investment services company; (ii) the Company was overall cooperative throughout the whole process, (iii) the remedial action the Company had started to implement on its own motion before it was directed to do so by the FIAU including the good level of commitment portrayed by the Company following the compliance review to ensure compliance with its AML/CFT legal obligation; (iv) the seriousness and at times systemic nature of some of the obligations breached; (v) the degree to which the company's failures could impact the risk faced both through its own operations as well as the jurisdiction at large; and (vi) the Company's minimal regard to its AML/CFT obligations at the time of the examination the Committee decided to impose an administrative penalty of one hundred thirty-three thousand one hundred and forty-eight Euro (€133, 148) in relation to the following breaches:

- Regulations 5(1), 5(3) and 5(4) of the PMLFTR and Sections 3.3 and 8.1 of the Implementing Procedures (IPs)
- Regulation 8(1) of the PMLFTR and Section 4.6.6 of the IPs
- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5 of the IPs
- Regulation 7(1)(c) of the PMLFTR and Section 4.4 of the IPs
- Regulation 7(2)(a) of the PMLFTR and Section 4.5 of the IPs

The Committee also imposed a Reprimand for the Company's breaches of:

- Regulations 5(5)(a) and 5(6) of the PMLFTR and Section 3.4 of the IPs
- Regulation 15 of the PMLFTR and Section 5.1.3 of the IPs

The Committee also served the Company with a Follow-up Directive (Directive) in virtue of the FIAU's powers under Regulation 21(4)(c) of the PMLFTR. The aim of the Follow-up Directive is for the FIAU to ensure that the Company enhances its AML/CFT safeguards and that it becomes fully compliant with the obligations imposed in terms of the PMLFTR and the FIAU's IPs, as well as perform any required follow-up measures in relation to the Company's adherence to its AML/CFT legal obligations

In virtue of this Directive, the Company is expected to make available an Action Plan indicating the remedial actions that it has carried out and implemented since the compliance examination, together with remedial actions which are expected to be carried out to ensure compliance following the identified breaches, this including but not limited to:

- An updated BRA clearly outlining how the Company has tackled the shortcomings identified by the Committee.

- Updated Policies and Procedures which reflect the procedures that are adopted in practice and that are in line with the Company's legal obligation.

- Updated CRA measures including methodologies that cater for a comprehensive understanding of risks and that allows for the assessment to incorporate all the information considered to risk assess customers.

- The procedure relating to the collection of information and/or documentation on the purpose and intended nature of the business relationship and the measures the Company plans to implement in order to ensure that all necessary information is collected.

- The procedure and measures adopted or planned to be adopted in relation to the scrutiny of transactions. The Company is required to enhance the measures it has in place to monitor the customer activities to be able to determine instances where the activity is not in line with the information available on the customer or otherwise where there are material deviations from the patterns of usual trading activity.

Finally, the Company has also been duly informed that if it fails to provide the above-mentioned action plan and supporting documentation within the specified deadline, the Company's default will 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 of the PMLFTR.

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

Key Take aways:

- Subject persons need to assess the risks that they are exposed to because of the business relationships they engage in. This needs to be done by assessing the inherent risk which depends on the identification of the existent threats and vulnerabilities as specified by Regulation 5(1) of the PMLFTR.

- The geographical risk assessment is not merely about having a rating but rather it is about understanding where the risk derives from in order for the subject person to be able to mitigate the same. Therefore, it is not enough to provide a list without understanding and be able to explain and evidence the rationale behind it

- When acquiring the business of another subject person or third party, it is not necessary to undertake CDD measures anew on all existing customers, provided that the subject person is satisfied that the procedures adopted by the previous subject person or third party, including its CRA procedures, were in line with the provisions of the PMLFTR and the IPs. This should not be limited to an evaluation of the policies and procedures adopted and applied but should also include taking a sample of customers to ensure that these policies and procedures were being implemented in practice. However, if subject persons opt not to carry out such a process, than it is indispensable to ensure that they follow the CDD obligations required at onboarding.

- The CRA is one of the pillars of a sound AML/CFT compliance program, as well as a measure which is necessary both to determine the level of due diligence required to build comprehensive customer profiles, as well as to ascertain the degree of on-going monitoring necessary. Therefore, the CRA is one where all the risk criteria are exhaustively considered, and an understanding of risk is obtained. The rationale which led the customer to be rated in a particular manner is to be clearly outlined by a subject person's CRA and in turn it is to be ensured that appropriate mitigating

measures/controls are applied to minimize the specific increased ML/FT risk identified. Documenting this process is at all more important both to confirm when the assessment was done, as well as the considerations taken to arrive at the final risk score

- The purpose and intended nature of the business relationship includes important information that is crucial to create a good customer business and risk profile. Details of the employment of business endeavours, the source of the customer's wealth, the expected source that would fund the operations through the relationship established, need to be understood and on a risk sensitive basis evidenced.

- Subject persons are to have effective transaction monitoring procedures in place. It is only through the monitoring of customer transactions or activities that subject persons can (a) identify that the customers' behaviour/transactions are not in line with their profile, (b) identify suspicious and anomalous transactions or activity, and (c) determine whether the initial risk assessment requires updating. Voluminous activity may be rather impossible to be monitored manually. In such circumstances, the use of transaction monitoring systems may indeed be key to be able to effectively monitor the activity and transactions taking place.

12 April 2023