



Administrative Measure Publication Notice

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DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:

16 November 2023

RELEVANT ACTIVITY CARRIED OUT:

Collective Investment Scheme

SUPERVISORY ACTION:

Off-site compliance examination carried out in April 2020

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:

Administrative Penalty of €48,004 and a Remediation Directive

LEGAL PROVISIONS BREACHED:

- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1 and 3.5.3 of the IPs
- Regulation 5(5) of the PMLFTR and Section 3.4 of the IPs
- Regulation 7(1)(c) of the PMLFTR and Section 4.4 of the IPs
- Regulation 5(5)(e) of the PMLFTR and Sections 7.1 and 7.2 of the IPs

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

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

The compliance examination report revealed that the CRA methodology applied by the Company at the time of the compliance examination was ineffective. Indeed, the risk assessment carried out by the Company on its customers failed to adequately cover three out of the four risk pillars (customer risk, geographical risk and product/service/transaction risk) in sufficient detail. Examples of shortcomings noted in relation to the assessment of each of the aforementioned three risk pillars are highlighted below:

- Customer risk – This risk factor primarily focused on whether the customer was a natural or legal person. In the case of legal entities, the CRA made reference to a list of limited corporate structures, such as foundations and non-profit organisations (NPOs). It also considered whether the customer is a PEP or subject to any sanctions. However, this risk factor failed to take into account other pertinent

elements such as the customer's economic activity, source of wealth (SOW) and source of funds (SOF), as well as the complexity of the structure involved, where applicable.

- Geographical risk – The assessment of this risk factor revolved around the nationality or country of incorporation of the customer. Any jurisdictions involved were classified as domestic, an EU member state, a reputable jurisdiction, a non-reputable jurisdiction, or a country subject to sanctions. However, the Company failed to factor in any further links to other jurisdictions with which the customer may have strong trading, financial and/or personal connections, as well as the jurisdictions through which funds are expected to pass.
- Product/service/transaction risk – This risk factor concentrated on the nature of the specific products/services offered by the Company, which in this case consisted of subscriptions made into a fund facilitated by a reputable institution. While acknowledging that the Company's products do not vary significantly from one customer to another, the Company was expected to incorporate a more detailed analysis regarding the complexity, value and size of its products in the CRA.

It is important to note that although the list above provides an overview of the main considerations that formed part of the Company's analysis for each risk pillar, not all customer files contained this level of detail. This issue stems from the fact there was a lack of uniformity in the CRA documentation used by the Company during the customer onboarding and ongoing monitoring processes, resulting in the analyses of the risk pillars pertaining to some customer files being significantly limited. Other deficiencies observed in relation to the CRA methodology is that the Company failed to appropriately explain the outcomes of the individual risk items assessed under each risk pillar, as well as document the rationale behind the risk scores and corresponding risk ratings assigned.

Notwithstanding the above, the Committee positively acknowledged the Company's intention to update its risk assessment procedures in line with the updated regulations to ensure that the CRA sufficiently addresses the risks emanating from all four risk pillars.

Policies and Procedures – Breach of Regulation 5(5) of the PMLFTR and Section 3.4 of the IPs

During the compliance examination, it was observed that the Company's Compliance Manual was not reviewed and updated following the introduction of the IPs in July 2019. The issuance of these regulations should have acted as a trigger event, prompting the necessary revisions to take place, especially given that the 2019 IPs provided additional guidance and clarifications with respect to various AML/CFT obligations. In its representations, the Company outlined that despite the Manual preceding the changes made to the 2019 IPs, in practice, it had still been applying the revised procedures to align with the existing regulations at the time. The Committee also recognised the Company's commitment to updating its Manual in order to incorporate the newly introduced and amended requirements.

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

As highlighted in the compliance examination report, there were various instances where information and/or supporting documentation regarding the customers' anticipated level of activity, SOW and SOF was either not obtained or deemed inadequate.

In all the customer files reviewed, the anticipated level of activity was described in a generic manner, specifically using phrases such as “*initial subscription and redemptions*”. Therefore, there was lack of details about the customers’ potential to invest or the expected value and frequency of their transactions. The Committee positively noted that in an attempt to remediate the above issue, the Company introduced a ‘Monitoring Sheet’, designed to provide the MLRO with insights into the anticipated activity of customers throughout their longstanding business relationships, as well as facilitate the identification and monitoring of any deviations between the actual and expected levels of activity. Despite the implementation of this Sheet, it was determined that further enhancements were necessary given that the anticipated level of activity was not always being updated to reflect the customers’ subsequent activity.

Moreover, it was noted that 60% of the customer files reviewed did not contain any documentary evidence to substantiate the information provided in the SOW/SOF Declaration Form. Some examples of situations that should have necessitated the collection of additional SOW/SOF information and/or supporting documentation include the following:

- For one customer file, it was noted that the customer made an initial subscription exceeding €700,000 and an additional in-kind subscription of approximately €300,000 a few months later. At the time when these two transactions were executed, the Company had not obtained any information regarding the customer’s SOW/SOF. However, around one year after the additional subscription, the customer completed the SOW/SOF Declaration Form. This Form indicated that the customer’s SOW/SOF was derived from inheritance and investment profits, and his estimated total assets, amounting to less than €500,000, primarily consisted of investments and real estate. While collecting the previously mentioned information was a step in the right direction, this alone was not sufficient, especially when considering the large amounts involved. Consequently, the Company was expected to verify the information provided by gathering supporting documents.
- For another customer file, which pertained to a legal entity, it was observed that at the time of the initial subscription of over €150,000, the customer had not yet completed the SOW/SOF declaration form. As a result, considering the relatively significant value of this transaction, the Company should have collected SOW/SOF information and documentation for this customer at this early stage. Subsequently, during the course of the business relationship, apart from filling in the Form, the customer entity’s beneficial owner also submitted a business register extract and financial statements related to other companies presumably owned by him. The said financial statements were dated several years after the transactions were affected, and only presented a limited extract of the companies’ assets and liabilities. For these reasons, it was determined that these documents were inappropriate for corroborating the customer’s SOW/SOF, particularly since an additional subscription of circa €200,000 had also taken place in the meantime.

In its deliberations, the Committee, while acknowledging that the Company appeared to have a good understanding of its customers’ personal and financial backgrounds, highlighted that depending on the ML/FT risks posed by its customers’, the Company should have ensured that it gathered the necessary SOW/SOF information and/or supporting documentation from its customers.

Training and Awareness – Breach of Regulation 5(5)(e) of the PMLFTR and Sections 7.1 and 7.2 of the IPs

In the case of one of the individuals who served as an executive director of the Company at the time of the compliance examination, no evidence of any training sessions attended by this director was found in

the training log or included as part of the Company's representations. Therefore, it could not be confirmed whether the senior managing official in question had undergone the necessary training as stipulated in the PMLFTR and the IPs. Nevertheless, the Committee acknowledged that going forward, the Company plans to conduct AML/CFT training sessions for its employees on a regular basis.

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

After taking into consideration the findings detailed above, the Committee decided to impose an administrative penalty of €48,004 for the breaches identified in relation to:

- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1 and 3.5.3 of the IPs
- Regulation 7(1)(c) of the PMLFTR and Section 4.4 of the IPs

In arriving at the final amount of the administrative penalty to impose, the Committee considered the importance of the AML/CFT obligations that the Company has breached, together with the seriousness of the findings and their material impact. The Committee also took into account that the Company was providing services to customers without adequate safeguards in place, which could have led to the unintentional facilitation of ML/FT. Furthermore, the Committee factored in the nature, size and operations of the Company, and how the services it rendered and the AML/CFT controls in place or lack thereof may have impacted the local jurisdiction as a whole. The Committee also took into consideration the level of cooperation exhibited by the Company throughout the whole process, and the overall regard that the Company has towards its obligations. Additionally, the Committee took note of the Company's commitment towards updating and enhancing specific AML/CFT processes, as well as the remedial actions that the Company stated it will be implementing. Finally, the Committee ensured that the penalty imposed is effective, dissuasive and proportionate to the failures identified and the ML/FT risks that were perceived during the compliance examination.

In addition to the imposition of the administrative penalty, the FIAU also served the Company with a Remediation Directive in terms of its powers under Regulation 21(4)(c) of the PMLFTR. The purpose of this Directive is for the FIAU to ensure that the Company enhances its AML/CFT safeguards and performs all the necessary remedial actions to attain full compliance with its AML/CFT legal obligations imposed in the PMLFTR and the IPs issued thereunder. The Company was directed to remediate the breaches identified, this including but not limited to:

- Updating the CRA methodology applied and the CRA template utilised by the Company to demonstrate that the shortcomings identified in the CRA Section have been duly rectified.
- Revising both the Compliance Manual, as well as other relevant policies and procedures, in a manner which reflects the latest requirements emanating from the PMLFTR and the IPs.
- Remediating the customer files for which deficiencies were identified concerning the collection of information on the purpose and intended nature of the business relationship.
- Ensuring that the Company's directors, other senior managing officials and relevant employees receive the required training, and that such training is properly recorded.

The Directive served on the Company shall ascertain that sufficient and tangible progress is achieved on the adoption and implementation of all the procedures and measures referred to above. In the event that the requested information and/or supporting documentation is not made available within the stipulated timeframes, 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(1) 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 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

- To ensure that the specific ML/FT risks associated with customers are adequately identified and assessed, it is essential that the CRA exhaustively covers all four risk pillars, i.e., customer risk, geographical risk, product, service and transaction risk, and interface/delivery channels risk. To achieve this, each risk pillar needs to encompass a variety of risk items and other factors. Although certain risk items may be self-explanatory, for instance, when determining whether the customer is legal or a natural person, there are other risk items that require further detail to be provided, for instance, including information about the legal arrangement involved if the customer is a corporate entity.
- The rationale behind the risk scores and corresponding risk ratings assigned to customers should be clearly documented. Properly recording the justifications underpinning the outcome of the CRA is crucial to ascertain that the risk rationale is well-substantiated.
- When changes to measures, policies, control and procedures are intended to address a variation in ML/FT risks caused through a planned change in the subject person's activities, it should be ensured that the revised measures, policies, controls and procedures are adopted prior to the planned change taking place. Updates to measures, policies, controls and procedures could also be initiated due to other trigger events, such as substantial changes made to the regulatory framework.
- To establish a comprehensive business and risk profile for their customers, subject persons are required to obtain information on the purpose and intended nature of the business nature. Amongst other things, this includes information on the activities from which the customer derives his/her wealth, as well as information on the expected source and origin of the funds to be used throughout the business relationship. On a risk-sensitive basis, it may be necessary for subject persons to verify the information collected with supporting documentation, especially if the transactions involved are unusually large or not in line with the customer's profile.
- Depending on whether the customer is a natural or a legal person, examples of documentary evidence that could be gathered consist of payslips, tax returns, bank statements, company financial statements, invoices, purchase orders, shipping documents, contracts of sale, wills/testaments, investment certificates and certificates of winnings.
- Awareness and training should be provided to all employees and other company officials whose duties include the handling of either relevant financial business or relevant activity, irrespective of their level of seniority. The training sessions attended by relevant personnel should be duly recorded in a training log or a similar document to provide tangible evidence that the necessary training has indeed been undertaken. Training should be targeted but also proportionate depending on the subject person's activities, the risks it is exposed to, and the size of its business or operations. Organising regular training sessions is indispensable because the effectiveness of the subject person's AML/CFT policies and procedures ultimately depends on its employees being fully aware of them and sufficiently knowledgeable to implement them.

16 November 2023