



## Administrative Measure Publication Notice

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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:**

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:**

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
- Section 3.5.1(a)(a) of the IPs
- Regulation 7(1)(c) of the PMLFTR and Sections 4.4 and 4.4.1 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

For one customer file, the customer's risk rating was manually overridden from medium to low. This decision was taken on the basis that the customer was well known to the Company and an internal AML/CFT review performed around a year earlier had not identified any material shortcomings. However, given the lack of supporting evidence provided regarding this review, and in the presence of adverse media noted in relation to the one of the customer's UBOs, the Committee emphasised that retaining a medium risk rating for this customer would have more accurately reflected the risks associated with this business relationship.

It was also noted that CRA methodology in use by the Company for several years up to 2019 was deemed inadequate. This is primarily because the questions contained in the CRA were limited in scope and did not exhaustively cover all relevant aspects pertaining to the four risk pillars, as explained below.

- With regard to customer risk, although the CRA included certain questions that focused on the nature of the customer, the complexity of any structures involved and the customer's PEP status, no reference was made to the customer's economic activity, source of wealth (SOW) and source of funds (SOF).
- In relation to geographical risk, the CRA only featured one question related to domicile and/or nationality, without taking into consideration 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.
- In the case of interface/delivery channels risk, the CRA exclusively concentrated on third party reliance and failed to assess how the Company interacts with the customer and the channels it uses to provide a given product or service.

Moreover, it was observed that under the former CRA methodology, the considerations for each risk pillar were insufficiently detailed and inappropriately documented, resulting in the overall risk rating assigned to customers not being properly justified.

Notwithstanding the above, the Committee positively acknowledged the proactive approach taken by the Company in updating the CRA template post-2019, which remediated the majority of the deficiencies associated with the former CRA methodology. Notably, the revised CRA template contains more detailed questions on each of the four risk pillars, and even covers reputational risk. Further to this, for some of the questions listed, the CRA now includes information regarding certain mitigating controls adopted, where applicable.

#### Customer Screening for Adverse Media – Section 3.5.1(a)(a) of the IPs

During the compliance examination, it was noted that adverse media results delineated in the customer screening reports were not appropriately annotated to confirm review. Furthermore, the rationale for discounting the adverse media hits and any follow-up actions taken to address the potential risks were not documented. The compliance examination report referred to a screening report dated 2020 concerning the UBO of a particular customer, revealing adverse media related to the said UBO. According to the Committee, in this instance, the Company failed to: (a.) substantiate and record the decision for dismissing the hit in question; and (b.) provide an explanation regarding the outcome of the review carried out due to the adverse media finding.

Despite the deficiencies outlined above, the Committee recognised and commended the Company's efforts to address the issues identified, such as its commitment to start documenting the discounting factors in greater detail for false positives.

#### Purpose and Intended Nature of the Business Relationship – Regulation 7(1)(c) of the PMLFTR and Sections 4.4 and 4.4.1 of the IPs

Despite the Company having a limited customer base and being somewhat aware of its customers' anticipated level of activity and SOF, it failed to adequately document this information, and where required,

collect all the necessary supporting documentation. It is also important to note that although an extract from the financial statements of some of the customers' parent company was found on file, this document did not encompass the accounts of the company, and only provided certain details regarding the shareholders involved. As a result, the Committee determined that the aforementioned financial statements extract was insufficient as a source of information about the customer's SOF.

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

After taking into consideration the findings detailed above, the Committee decided to serve the Company with a Remediation Directive in terms of its powers under Regulation 21(4)(c) of the PMLFTR, specifically addressing the following breaches:

- Regulation 5(5)(a)(ii) of the PMLFTR and Sections 3.5.1 and 3.5.3 of the IPs
- Section 3.5.1(a)(a) of the IPs
- Regulation 7(1)(c) of the PMLFTR and Sections 4.4 and 4.4.1 of the IPs

In arriving at its decision regarding the administrative measure(s) to impose, the Committee took into consideration all the information made available by the Company, both during the compliance examination, as well as in the representations submitted. The Committee also considered the importance of the AML/CFT obligations that the Company has breached, together with the seriousness of the findings and their material impact. Furthermore, the Committee took into account the nature, size and operations of the Company, and how the services it rendered and the AML/CFT controls in place may have impacted the local jurisdiction as a whole. Another key consideration is the fact that the Company has a limited customer base and had good understanding of its customers and their activities. In addition, the Committee factored in the level of cooperation exhibited by the Company throughout the whole process, and the overall regard that the Company has towards its obligations. Lastly, 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 has already implemented.

The main 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 terms of the PMLFTR and the IPs issued thereunder. The Company is being directed to remediate the identified breaches through the following remedial actions:

- Ensuring that the risk ratings assigned to customers through the CRA are not manually overridden without sufficient justification. Additionally, the Company is to ascertain that the customers' CRAs are reviewed on an ongoing basis, and that any new customers onboarded are subject to a risk assessment prior to the establishment of the business relationship.
- Updating existing customer screening policies and procedures to ensure that the rationale for discounting adverse media hits, as well as any follow-up actions taken, are duly documented.
- Remediating the customer files for which deficiencies were identified concerning the collection of information on the purpose and intended nature of the business relationship.

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 are not made available within the stipulated timeframes, or the Company falls short of its obligations in terms of this Directive, 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.

## Key Take-aways

- In terms of timing, the CRA is to be carried out whenever a new business relationship is to be entered into or an occasional transaction is to be conducted. Complying with this requirement is essential because without an adequate CRA in place, subject persons will not be in a position to evaluate the specific risks they will be exposed to in providing products or services to customers linked to particular jurisdictions through one or more channels. On the basis of the CRA, subject persons will be able to formulate comprehensive business and risk profiles for their customers, as well as determine the proper level of CDD measures to be applied.
- If the subject person's CRA methodology is enhanced to capture more information, and the risk factors are re-assessed, the rationale behind a change in the risk rating for one or more customers is typically self-evident. In fact, in these cases, there would generally be no expectation for such a change to be justified. However, if as part of the ongoing monitoring process, the risk rating assigned to a specific customer in the CRA is updated because of changes identified in the customer's operations, structure or transactional activity, or in response to trigger events, the reasons for this adjustment in the risk rating would need to be thoroughly substantiated.
- The risk rating awarded to a customer through the CRA process should not be manually overridden without sufficient justification, particularly in the presence of potentially high-risk factors present, such as adverse media related to the customer or its beneficial owners. In support of an override to a lower risk rating, subject persons should clearly document, and where applicable, also provide evidence for, the mitigating factors to validate this decision.
- In line with Section 3.5.1(a)(a) of the IPs, subject persons are required to consider "*whether a customer or its beneficial owner has been the subject of adverse reports linking him/her to crime (especially financial crimes) and/or terrorism*". It is recommended that in addition to annotating false positives or true matches, subject persons also document the rationale for discounting the hit and any follow-up actions taken to address the potential risks. Particularly, it is advisable that the following information is recorded:
  - The factors used and criteria employed to discount or confirm the hit;
  - An explanation of the reasoning behind classifying the hit as material or otherwise;
  - Details of the investigation process surrounding the hit, including any escalations made;
  - In cases where a material true match is identified, the justification behind the decision to retain or terminate the customer relationship; and
  - When a material true match is identified and the choice is made to continue the relationship, the enhanced measures implemented to ascertain the effective management of the ML/FT risks associated with the customer in question, including ongoing monitoring procedures.
- In establishing their customers' business and risk profiles, subject persons must, *inter alia*, obtain information, and where necessary, supporting documentation, regarding the activities from which the customers derived their wealth, as well as the expected sources and origin of the funds to be used throughout the business relationship. If there is a need to collect SOW/SOF documentation, subject persons should not only seek to acquire such documents, but also scrutinise them to ensure that they adequately explain the customers' SOW/SOF and make sense in the broader context of the customers' profiles.

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