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 measures established by the Board of Governors of the FIAU.

This Notice provides extracts 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 November 2021

RELEVANT FINANCIAL ACTIVITY CARRIED OUT:
Investment Services

SUPERVISORY ACTION:
On-site compliance review carried out in 2020

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:
Administrative Penalty of forty-two thousand, nine hundred and ninety-two euro (€42,992).

LEGAL PROVISION BREACHED:

- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5.1 and 3.5.2 of the Implementing Procedures (IPs).

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURES:

Customer Risk Assessment (CRA) – Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5.1 and 3.5.2 of the IPs

i. The Company's CRA does not adequately consider all necessary risk categories

The Committee noted that the Company's CRA model does not consider all the risk factors it is exposed to. The Company's CRA did not take the product risk into consideration. The Committee considered the fact that the Company's Customer Due Diligence (CDD) and CRA procedures were due to be updated in July 2019 and that the updates did not take place as the Company had come to the decision to wind down its operations and surrender its licence. The Committee pointed out that ultimately, the product that the Company was providing was of advisory services. The Committee considered the fact that this product was the same for all the customers and therefore, the product risk the Company was exposed to, was to a large extent, the same for all the relationships it had with its clients. However, the Committee also stressed that even though this product risk was the same

for all the client relationships, it was still important to take it into consideration and to include it in the CRA.

ii. Customer Risk Assessment not carried out or carried out late

From the compliance examination it was noted that the CRA was incomplete for all files reviewed, with some of the CRAs not having a date. The Committee also noted that in a number of files, no CRA was found. The Committee reiterated that the obligation to carry out a CRA had been in place since 2011 and this obligation clearly arose from the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR). Moreover, the previous Implementing Procedures (IPs) also corroborated the PMLFTR and provided further guidance to subject persons in relation to this obligation. The Committee pointed out that it is only through the CRA that the Company could have truly understood the risk inherent to a particular business relationship or an occasional transaction. Once the Company has carried out a CRA, it would then be able to apply the proper level of CDD in a manner that addresses the identified risks effectively. Therefore, the Committee noted that the Company was legally obliged to carry out the CRA at the commencement of the respective business relationships.

iii. Ongoing Monitoring – Review of CRA not conducted

The Committee noted that in all client files, the CRA was never reviewed during the ongoing monitoring of the customers. In addition, no periodic review was found on file for any of the customer files, even though the sample included relationships that had been ongoing for up to three years. The Committee deliberated and clarified that the application of simplified due diligence (SDD) which was mentioned by the Company in its representations does not exonerate the Company from carrying out ongoing monitoring of the business relationship. On the contrary, it is very important that in such circumstances, a subject person is to monitor the business relationship to ensure that there are no changes that might ultimately lead one to reconsider the application of SDD. The Committee noted that since there was no CRA or the ones found were inadequate, the Company did not know the risk it was exposed to. Consequently, it was not in a position to understand how often it needed to carry out periodic reviews on its customers in line with the risk-based approach. From the above, the Committee further confirmed the lack of consideration the Company had in relation to its risk management procedures and reiterated that in view of these failures, the Company could have potentially been exposed to a higher ML/FT risk without its knowledge. Furthermore, the Committee highlighted that it is through ongoing monitoring that subject persons can ensure that information and documentation is current and valid to identify any unusual transactions which may involve ML/FT or the proceeds of crime.

iv. Customer Due Diligence – Verification Documents obtained late

Officials noted that in some customer files, the verification documents were obtained late. The Committee pointed out that SDD could be applied, if a company is a regulated entity. However, it also reiterated that the 2017 IPs make it very clear that all risks should be considered prior to determining if SDD should be applied or otherwise. The Committee also remarked that the failures identified in relation to the CRAs, made it impossible to determine the level of due diligence required.

v. Customer Due Diligence – Source of Wealth not obtained

The Officials noted that the Company did not ask for information relating to its clients' source of wealth, nor did it obtain any information in relation to the BO's source of wealth. The Committee pointed out that since the Company was an investment company, it was even more important for it to determine its clients' source of wealth. In so doing, the Company would have been better able to assess and understand the actual ML/FT risk that it was exposed to. The Committee, in its deliberations, stated that whilst it is true that the 2017 IPs gave the subject person the option to undertake SDD, they were very clear and emphasized that it was still of great importance to carry out CRA and assess the risks that the Company is exposed to. It is only then that the Company is allowed to apply SDD to its customers. Furthermore, the Committee also argued that the amendment of the PMLFTR in January 2018, no longer set out specific circumstances that allow the application of SDD, placing more emphasis on the need to understand the risks prior to determining the application of SDD.

Following the above considerations, the Committee concluded that the shortcomings identified during the compliance review were highly dependent on the Company's failures to have in place effective CRA procedures. This being necessary to determine the ML/FT risk its relationships were exposing it to and to subsequently be able to determine the adequate controls needed to mitigate the risks identified. The Committee therefore determined that the findings constitute a breach of Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5.1 and 3.5.2 of the IPs.

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

After taking into consideration the abovementioned breaches by the Investment Services Company, the Committee decided to impose an administrative penalty of forty-two thousand, nine hundred and ninety-two euro (€42,992) with regards to the breaches identified in relation to:

- Regulation 5(5)(a)(ii) of the PMLFTR and Section 3.5.1 and 3.5.2 of the IPs

The Committee commented that had the Company remained in operation, apart from the administrative penalty indicated above, the Committee would have also imposed a Directive on the Company, directing it to carry out remedial actions in order to rectify the failures observed.

To decide the appropriate administrative measure to impose, the Committee considered the representations submitted by the Company. The nature and size of the Company's operations and the overall impact that the AML/CFT shortcomings caused or could have caused, both to its own operations as well as to the local jurisdiction were also considered. The seriousness of the breaches identified, together with their occurrence were considered by the Committee in determining the administrative measures imposed.

15 November 2021

APPEAL: On 6th December 2021, the FIAU was served with a copy of the appeal application filed by the Company before the Court of Appeal (Inferior Jurisdiction) from the decision of the FIAU. Through the said appeal, the Company is requesting the Court to revoke and annul the FIAU's decision as hereabove described, or alternatively to vary, modify and reform such decision.

Its grievances include the fact that, according to the Company:

i. It was not a subject person at the time of the FIAU's decision.

ii. Its right to a fair hearing was breached.

iii. The penalty imposed is arbitrary and excessive.

iv. The FAU's decision is incorrect as it is not based on the applicable law.

Thus, that the administrative penalty of forty-two thousand nine hundred and ninety-two Euro (Eur 42,992) has been appealed by the Company before the Court of Appeal (Inferior Jurisdiction), in line with what is provided for in terms of Article 13A of the Prevention of Money Laundering Act. Pending the outcome of the appeal, the decision of the FIAU is not to be considered final and the resulting administrative penalty cannot be considered as due, given that the Court may confirm, vary or reject, in whole or in part, the decision of the FIAU. As a result, the FIAU may not take any action to enforce the administrative penalty pending judgement by the Court.

This publication notice shall be updated once the appeal is decided by the Court, so as to reflect the outcome of the same.

9 December 2021