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.

The Notice provides select information from the FIAU's decision imposing the respective administrative measure and is not a reproduction of the actual decision.

DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:

16 March 2022

SUBJECT PERSON:

N Trust Limited

RELEVANT ACTIVITY CARRIED OUT:

Corporate Service Provider & Fiduciary Services Provider

SUPERVISORY ACTION:

Thematic Off-site compliance review carried out in 2021

DETAILS OF THE ADMINISTRATIVE MEASURE IMPOSED:

Administrative Penalty of €94,868 in terms of Regulation 21 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR).

LEGAL PROVISIONS BREACHED:

- Regulations 7(1)(c), 7(2)(a), 11(9), 15(3) of the PMLFTR and Sections 4.4.2, 4.4.3, 4.5.2.1, 4.9.2.3 and 5.5 of the Implementing Procedures

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

Purpose and Intended Nature of the Business Relationship, Ongoing Monitoring, Enhanced Due Diligence and Reporting Obligations - Regulations 7(1)(c), 7(2)(a), 11(9), 15(3) of the PMLFTR and Sections 4.4.2, 4.4.3, 4.5.2.1, 4.9.2.3 and 5.5 of the Implementing Procedures

During the examination of a selection of client files, FIAU Officials took note of seven customer files for which N Trust provided company incorporation, directorship services, company secretarial and registered office services. All these corporate customers had the same ultimate beneficial owners (BO), with each BO holding 25% of the entity's shareholding, following a change of ownership effective in 2019. Prior to this change of shareholding, the customer companies were each fully owned by one of three of the four individuals. The fourth additional beneficial owner had no direct involvement in the customer companies and did not financially contribute to the investments. Therefore, no economic

rationale for including the new BO could be established. Indeed, the introduction of the new BO meant that none of the beneficial owners held more than 25% ownership or voting rights required for registration on the beneficial ownership register.

A number of companies had initially been owned by three individual shareholders at the date of incorporation. The source of wealth for each individual company originated from long term investments which the shareholders had made and redeemed within approximately 1.5 years. In each case N Trust specified that the purpose of the companies was to receive the funds from these long-term investments as shareholders loans for subsequent reinvestment through the customer companies.

Each of the BOs held the abovementioned long-term investments with the invested amount reaching as much as € 2,500,000. The three BOs each earned a substantial return from surrendering the investments. These investments only lasted around 1.5 years even though it would be customary to hold these investments for a much longer duration, and early redemption is usually associated with ML risks. Some customers also had additional funding through the closure of other companies owned by the same BOs. However, N Trust did not carry out the necessary checks to build a comprehensive customer profile, to monitor those business relationships and to carry out enhanced due diligence to obtain sufficient documentary evidence to ensure a thorough and comprehensive understanding of the SOW of the BOs.

Furthermore, N Trust failed to provide proof that the funds were indeed remitted from the company that was investing these amounts. It only provided a copy of the bank statement showing the respective amounts that the customer company was receiving from the BO. No further evidence that the funds were indeed deriving from the company that was investing the money was provided.

The Committee also took note of an additional number of companies which were all within the same corporate structure and where one of the companies was acting as the trader (investing funds), while the other companies were layers through which dividend distributions would flow. The dividends distributed would be reinvested in the trading company through shareholders' loans, creating layers of loans through the same source of funding. It was also noted that the other companies were also investing and thus there was additional substantial funding, in excess of €500,000 from sources other than dividend distributions but which were not queried by the Company.

Moreover, it was also observed that the shareholders' loans were not constituted in writing, with each being simply a verbal agreement.

Ultimately, all the above-mentioned companies were liquidated and through various agreements, the funds were returned to the respective BOs, with funds exceeded €10 million.

The Committee identified the following red flags:

- various companies created with the same purpose, all owned by the same BOs.
- several inter-company transactions between the entities held by the BOs, and their subsequent closure all happening together.

- the redemption of the BO's investments that funded in part or in full some of the customer companies were not confirmed by the the investment company nor was there any evidence in the bank statements provided that the funds derived form said investment company.
- the other customer companies were layering the same funds through shareholder's loans and dividend distribution.
- the fact that the BOs engaged in complex corporate mechanisms which were funded through shareholders' loans and redeemed within 3 to 4 years and the transfer of investments in their own name which they could have done immediately.
- there was no true valid rationale for the inclusion of the fourth beneficial owner, one does see a serious risk of the true BOs (i.e. the three Italian individuals) wanting to circumvent beneficial ownership registry requirements by including another individual so that no one could qualify as a beneficial owner.

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

After taking into consideration the abovementioned breaches committed by the Subject Person, the Committee decided to impose an administrative penalty of ninety-four thousand eight hundred and sixty-eight Euro (€94,868) with regards to the breaches identified in relation to the obligations emanating from Regulations 7(1)(c), 7(2)(a), 11(9), 15(3) of the PMLFTR and Sections 4.4.2, 4.4.3, 4.5.2.1, 4.9.2.3 and 5.5 of the Implementing Procedures

When reaching its decision, the Committee also took into consideration the level of cooperation exhibited by the Company during the compliance review. The Committee also based its decision on the following considerations:

- The overall lack of regard portrayed by the Company in abiding with its AML/CFT obligations, which obligations are very onerous and important.
- The lack of appreciation of the ML risks it was exposed to by the red flags presented (as previously listed) through the established relationships, risk which could have also exposed the local jurisdiction.
- The fact that the customer companies were all liquidated together, a few weeks prior to the compliance review.
- The good level of cooperation exhibited by the Company throughout the review process as well as its size.

21 March 2022

APPEAL - On the 6 April 2022, 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 as detailed above. The grievances brought forward by the Company include *inter alia*, a wrong interpretation and application by the FIAU of the applicable Regulations and the relative sections of the IPs, together with a wrong evaluation of the facts at hand. After considering factors such as the nature and gravity of the contraventions described in the FIAU's decision, and the size of the Company's operations, the Company also submits that the administrative penalty is disproportionate.

It thus requests the Court to cancel, revoke and/or review the FIAU's decision and the administrative penalty imposed therein.

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.

8 April 2022