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Central Bank of Ireland

Eurosystem

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Re: Compliance by entities which are required to registered under Section 108A of the Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010 (CJA 2010) with their obligations under CJA 2010.

Dear CEO,

The Central Bank of Ireland (the Central Bank) is the competent authority charged with effectively monitoring the compliance of credit and financial institutions with Part 4 of the CJA 2010, and with taking measures that are reasonably necessary to secure such compliance. The definition of “financial institutions” in the CJA 2010 includes entities that carry out one or more of the activities specified in Schedule 2 of the CJA 2010¹, hereto referred to as Schedule 2 Firms. Firms engaged in such activities are required to register with the Central Bank pursuant to section 108A of the CJA 2010.

To monitor the compliance of Schedule 2 Firms with Part 4 of the CJA 2010, the Central Bank conducts supervisory engagements on an ongoing basis. These supervisory engagements include issuing Risk Evaluation Questionnaires (REQs), holding AML/CFT & FS² review meetings, conducting inspections and holding ad hoc meetings with firms where required. This letter serves two purposes; firstly, it provides an overview of findings identified by the Central Bank in the course of supervisory engagements with registered Schedule 2 Firms since January 2020, and secondly, to set out the expectations of the Central Bank in relation to Schedule 2 Firms.

¹ Subject to limited exceptions as set out in the definition of “financial institution” in s24, and in s25(4) of the CJA2010.

² AML/CFT and FS refers to Anti Money Laundering / Counter Financing of Terrorism and Financial Sanctions

The Central Bank reminds Schedule 2 Firms that they should keep their registration information up to date. Schedule 2 Firms should contact the Central Bank should any changes arise in relation to; services offered, activities conducted, ownership changes, change to legal name, change of address or principal contacts as well as any other material changes. The firm should notify the Central Bank by emailing schedule2@centralbank.ie.

There are a number of sources of information available to Schedule 2 Firms in complying with their AML/CFT compliance obligations, including, but not limited to, the Central Bank Guidelines on Anti Money Laundering and Countering the Financing of Terrorism issued in September 2019³, guidance published by the European Supervisory Authorities (ESAs) and the Financial Action Task Force (FATF). Firms should ensure that they are familiar with, and have regard to, all relevant guidance published by these bodies.

You, your Board and all relevant committees play a critical role in, and are responsible for, ensuring your firm's compliance with its obligations contained in the CJA 2010. Therefore, as CEO of a Schedule 2 Firm, the Central Bank expects you to carefully consider the contents of this letter and to bring it to the attention of your firm's Board and/or relevant committees in order to ensure that any issues relevant to your firm are addressed.

Critically, the firm's Board must receive and challenge regular reporting in order to have robust oversight of all ML/TF⁴ risks facing the firm and to ensure that all requirements are met in a timely manner. Firms are also reminded that where AML/CFT activities are outsourced, these arrangements must be formally documented and subject to strong ongoing oversight by the firm. AML/CFT processes and procedures must also be sufficiently detailed and tailored to the individual profile of the firm.

Appendix A outlines the key findings identified by the Central Bank in the course of supervisory engagements with certain Schedule 2 Firms in 2020 and outlines the Central Bank's expectations in relation to those findings for all Schedule 2 Firms.

³ <https://www.centralbank.ie/regulation/anti-money-laundering-and-countering-the-financing-of-terrorism/guidance-on-risk>

⁴ ML/TF refers to Money Laundering/Terrorist Financing



While the Central Bank expects you to assess your firm against all of the areas outlined in Appendix A, it recommends that you prioritise assessment of the areas of Governance, Risk Assessment and Customer Due Diligence in the first instance. The Central Bank considers that the findings identified in these areas are the most serious in nature and therefore should be considered and addressed immediately. The remaining findings should be considered and, where deficiencies/weaknesses are identified, an action plan should be put in place to fully address these in a timely manner. Any remedial action required as a result of assessing your firm against Appendix A should be brought to the attention of the Board.

In addition to the issues raised in Appendix A, Schedule 2 Firms are particularly reminded of the key obligations to establish and maintain robust AML/CFT frameworks tailored to mitigate ML/TF risks inherent in their specific business activities and to ensure that they can demonstrate to the Central Bank that they are in compliance with their obligations under the CJA 2010.

The Central Bank will continue to conduct supervisory engagements with Schedule 2 Firms throughout 2021 and expects that firms will have reviewed the content of this letter and Appendix A and retain evidence of any assessment conducted by the firm.

As a breach of the CJA 2010 may result in significant criminal or administrative sanctions, it is imperative that the implications of non-compliance are understood by the Board and Senior Management of Schedule 2 Firms and that all necessary steps to ensure ongoing compliance have been taken. The Central Bank is prepared to use the full range of its regulatory tools where firms do not comply with their CJA 2010 obligations. This includes, where necessary, the pursuit of enforcement action against firms.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Tommy Hannafin'.

Tommy Hannafin

Head of the Anti-Money Laundering Division

Appendix A – details of Central Bank findings arising from supervisory engagements of Schedule 2 Firms in 2020

Board oversight and Governance - *Findings*

1. Firms could not demonstrate that AML/CFT & FS was a regular agenda item at board meetings. For the majority of firms subject to an engagement, AML/CFT & FS was only discussed at board meetings after the firm received notification of intended engagement from the Central Bank.
2. Firms failed to provide any detailed reporting to their Boards in order to allow robust challenge and discussion on AML/CFT & FS matters.
3. Firms failed to implement the requirements of the CJA 2010 in a timely manner. While the requirement for firms to register with the Central Bank came into force in November 2018, the requirements of the CJA 2010 applied to Schedule 2 Firms since 2010. Firms could not demonstrate compliance with CJA 2010 prior to registering with the Central Bank. Many firms were unaware that the CJA 2020 applied to the firm prior to 2018. This indicates weaknesses in the firms' AML/CFT & FS oversight in terms of ensuring that the firm is fully cognisant at all times of its obligations and of the effects of any changes in these obligations.
4. A large number of firms engaged with had outsourced the day-to-day AML/CFT & FS activities of the firm to third party service providers. Firms were unable to demonstrate appropriate oversight of AML/CFT & FS functions conducted by the third party service providers.
5. Where the day-to-day AML/CFT & FS activities of the firm were outsourced, firms failed to have the necessary processes in place to ensure outsourcing arrangements were appropriately documented, sufficiently detailed and/or kept up to date.
6. Firms had not always formally documented the responsible role or individual for AML/CFT & FS within the firm. In a number of instances, where firms had appointed Money Laundering Reporting Officers (MLRO), the MLRO, or the person with responsibility for AML/CFT & FS compliance, could not demonstrate sufficient knowledge of AML/CFT & FS, or the CJA 2010, leading to firms not meeting their obligations as set out in CJA 2010.

The Central Bank's expectations

1. Firms should be able to demonstrate that AML/CFT & FS is a regular agenda item at Board meetings.
2. Firms must have a framework in place for monitoring and identifying updates to legislation that are applicable to the firm and must have a process in place to ensure timely updates to their AML/CFT & FS framework to ensure compliance with these updates.
3. When outsourcing any AML/CFT & FS activities, the Central Bank expects:
 - a. Firms to have written contracts/service level agreements clearly setting out the obligations and responsibilities of the respective parties;
 - b. The Board to be able to demonstrate that it has full oversight of AML/CFT & FS outsourced activities through assurance testing; and
 - c. Firms to be in a position to evidence that they are actively monitoring the progress of any management action points resulting from reviews conducted.
4. The roles and responsibilities of a firm's Board, Senior Management/MLRO regarding key elements of the firm's AML/CFT & FS framework should be clearly defined and documented.
5. The MLRO must have a direct reporting line and access to the Board providing sufficiently detailed reports on a frequent basis.

Money Laundering and Terrorist Financing (ML/TF) Risk assessment – *Findings*

1. The majority of the firms inspected could not demonstrate that they had assessed and documented their ML/TF risks as they pertain to the firm's customers and business activities.
2. Some firms could not demonstrate that they had completed a holistic business wide ML/TF risk assessment tailored to the risks associated with the customers and business activities of the firm.
3. Reliance was often placed on the risk assessment of the outsourced service provider without the firm ensuring that the risk assessment was reflective of the risks to which the firm is exposed.
4. Some firms relied on a risk assessment completed at parent entity level rather than a risk assessment of the firm itself. As a result, the firm had not considered the risks associated with the customers and business activities relevant to the firm.
5. In some instances, a third party provided the firm with an overall residual risk rating pertaining to the business wide risks of the firm, however, the firm could not explain how

the rating had been reached and therefore could not confirm that it accurately reflected the risk for the firm. Additionally, the firm relied on this rating to determine the level of due diligence required it was required to undertake.

The Central Bank's expectations

1. Firms must determine the ML/TF risks facing their business as a whole. Where a firm relies on a third party or parent entity to conduct a risk assessment on its behalf, it must relate to the risk and controls associated with the firm and not solely those associated with the third party or parent entity.
2. Firms must document their consideration of the ML/TF & FS risks pertaining to their particular services/products, customers, jurisdictions and distribution channels, mindful of the nature, scale and complexity of the firm's business model.
3. The business wide ML/TF risk assessment must be reviewed at least annually. The consideration and approval by the firm's Board of this ML/TF risk assessment must be formally evidenced.

AML/CFT Policies & Procedures – Findings

1. In a number of instances, firms did not have their own AML/CFT & FS policies and procedures; rather they relied on those of the third party service provider to which AML/CFT & FS activities were outsourced without assessing whether these policies and procedures were appropriate for the firm.
2. Where the firm did have their own AML/CFT & FS policies and procedures, it was noted in some instances that they were not adequately tailored to the firm's business model nor were they sufficiently detailed.
3. Some firms could not satisfactorily evidence consideration and approval of the AML/CFT & FS policies and procedures by their Boards and/or Senior Management.

The Central Bank's expectations

1. Firms, as a designated person in their own right, must ensure that the AML/CFT & FS policies and procedures in place are:
 - a. Appropriately tailored to and reflect the specific customers and business activities and the associated risks inherent to the firm; and
 - b. Consistent with Irish legislative requirements.
2. Firms must ensure that policies and procedures are subject to review on at least an annual basis and are updated and reviewed more frequently as and when required.
3. Consideration and approval of the AML/CFT & FS policies and procedures by the Board must be satisfactorily evidenced.

Customer Due Diligence - Findings

1. For a large proportion of firms engaged in Lending, where the entity is structured as Special Purpose Entity (SPE), firms were inconsistent in determining who the customer of the firm is in order to conduct Customer Due Diligence (CDD). Certain firms were concentrating CDD efforts on the borrower of the SPE but not on the loan noteholders funding the SPE to facilitate the loan to the borrower. In other instances, firms were conducting CDD on the loan noteholders and not the borrower.
2. Firms displayed varying levels of understanding in relation to CDD, there was a number of instances identified where firms had applied an exemption to CDD referencing section 34 of the CJA 2010, without ensuring the customer met the criteria of section 34, including determining the customer as low risk. In some instances, this exemption had been applied to customers deemed higher risk by the firm.

The Central Bank's expectations

1. In order to assess the ML/TF & FS risk associated with the business of the firm, firms must consider the ML/TF & FS risk arising from loan noteholders and borrowers and must conduct appropriate due diligence in accordance with the level of risk.
2. Firms should ensure CDD policies and procedures are appropriate, up to date and in-line with legislative obligations.

Politically Exposed Persons ('PEPs') and Financial Sanctions ('FS') - Findings

1. Policies and procedures concerning the identification of potential PEP and FS exposures were high level and lacked any clarity around what steps should be taken if an alert resulted in a positive hit.
2. In instances where screening tools were relied upon, there was no evidence of any assurance testing or monitoring being carried out on these to ensure on an ongoing basis that they were fit for purpose.

The Central Bank's expectations

1. Firms should ensure appropriate policies and procedures are in place to identify and escalate PEP and FS alerts. This should include the process and the appropriate reporting lines to be followed in the event of a FS or PEP being identified.
2. Where screening tools are relied upon, firms should ensure appropriate oversight and ongoing assurance testing and monitoring is in place to ensure they are fit for purpose.

Suspicious Transaction Reporting ('STR') - Findings

1. Policies and procedures relating to STR were high level and lacked clarity around the steps to be taken in the event of a suspicion arising.
2. In most instances, reliance was placed on the STR procedures of the entity, to which such activities were outsourced, with no oversight by the firm of these procedures.
3. The MLRO's, or equivalents, details were not contained in the procedures or training materials. Consequently, firms could not demonstrate to the Central Bank how employees of the firm were made aware of who to contact in the event of a suspicion arising.
4. As there was no board reporting relating to AML/CFT & FS pre 2019, there was no evidence of statistics relating to STRs being reported to the Board.
5. Firms were not aware of the GoAML system, which is required to report STRs to the Financial Intelligence Unit.

The Central Bank's expectations

1. Firms should have sufficiently detailed policies and procedures relating to STR to assist staff members in fulfilling their obligations and escalating suspicions, as an example, employees

should be made aware of the escalation process, including the personnel to whom suspicions should be raised/reported.

2. Where third parties are being relied upon to provide AML/CFT & FS services, the firm should ensure the third party is subject to the appropriate level of oversight.
3. The levels of STRs being made by the firm should be regularly reported to the board.
4. STRs submitted to FIU Ireland⁵ can only be submitted via the goAML application⁶. Firms should ensure that they are registered, and familiar with, the goAML system to ensure that STRs can be submitted in a timely manner. Similarly, the Revenue Commissioners (Revenue) require firms to submit STRs using Revenue's Online Service (ROS) only⁷.

Training - Findings

1. Training materials were not tailored to the activities of the firm. In most instances, training was outsourced to a third party provider and a generic training course was provided to staff. This did not include any reference to the risks associated with the firm itself or include any specifics relating to the firm, such as what might be considered a red flag in the context of customer transactions or what staff should do in the event of identifying a potentially suspicious transaction.
2. In some instances, directors, senior management and customer facing staff received the same general training as all staff without any additional or tailored training. These staff play a pivotal role in identifying ML/TF issues and/or suspicions and are not receiving the requisite level of training.
3. Training materials were not always up to date and reflective of current legislative requirements.

⁵ FIU Ireland is part of the Garda National Economic Crime Bureau

⁶ The goAML application is an electronic application which provides FIU Ireland with a central reception point for receiving, processing and analysing STRs - <https://fiu-ireland.ie/Account/LogOn>

⁷ For further information, please refer to the Revenue website. <https://www.revenue.ie/en/online-services/services/register-for-an-online-service/submit-suspicious-transaction-reports.aspx>



The Central Bank's expectations

1. Training materials should be tailored to the activities of the firm and should be reflective of the standards and practices that the firm should be exhibiting to meet their obligations.
2. Training processes should be reviewed to ensure that the appropriate level of training is being received by all staff, consideration is required as to the necessity for bespoke training for customer facing staff, directors and senior management of the firm given their important role in the management of ML/TF & FS risk.
3. Training materials should be kept up to date and in line with legislative requirements.