Administrative Measure Publication Notice

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DATE OF IMPOSITION OF THE ADMINISTRATIVE MEASURE:

5 April 2024

SUBJECT PERSON:

Centurion Global Fund SICAV plc

RELEVANT ACTIVITY CARRIED OUT:

Collective Investment Scheme

SUPERVISORY ACTION:

Off-site compliance examination carried out in October 2020

DETAILS OF THE ADMINISTRATIVE MEASURES IMPOSED:

Administrative Penalty of €68,899 and a Remediation Directive

LEGAL PROVISIONS BREACHED:

- Regulations 7(1)(d) and 7(2)(a) of the PMLFTR and Section 4.5.1 of the IPs
- Regulation 15(1)(a) of the PMLFTR and Section 5.1.2(b) of the IPs

REASONS LEADING TO THE IMPOSITION OF THE ADMINISTRATIVE MEASURE:

<u>Transaction Monitoring – Breach of Regulations 7(1)(d) and 7(2)(a) of the PMLFTR and Section 4.5.1 of the IPs</u>

The compliance examination report revealed instances where the Company failed to obtain the necessary supporting documentation for the transactions executed by customers, particularly concerning their source of wealth (SOW) and source of funds (SOF). Examples highlighting these shortcomings have been included below:

- Customer file A – This customer, assigned a medium rating throughout the business relationship by the Company, comprised of a securitisation vehicle which generates its assets through the receipt of funds following a bond issue. In this case, bonds were subscribed to by various investors,

and the funds acquired were subsequently invested into one of the sub-funds of the Company. In terms of transactional activity, it was noted that there were two initial subscriptions made by this customer, amounting to a total of more than €3.5 million. As supporting documentation, the Company provided the Subscription Agreement between itself and the customer, as well as other documents and declarations signed by the customer.

In its representations, the Company explained that apart from collecting the aforementioned documents, it also gathered a register which contains information regarding the bond-holders which are investing money (indirectly through the securitisation vehicle) within the sub-fund. Moreover, despite awarding the customer a medium risk rating, the Company still deemed the application of SDD to be justified, primarily citing the fact that the bond-holders were regulated entities established in reputable jurisdictions.

During its deliberations, the Committee emphasised that the implementation of SDD measures is exclusively permissible for those business relationships or occasional transactions considered to present a low risk of ML/FT. Therefore, while the business relationship in question may have exhibited certain elements of lower risk, the Company was still prohibited from employing SDD. With specific reference to the bond-holder register, the Committee positively acknowledged that the Company obtained a copy of this document; however, it stressed that in light of the high value of the subscriptions involved, the inherent complexity of the customer entity's set-up and operations (due to the intricate nature of its securitisation activities), as well as the involvement of a bond-holder registered in a country which poses a relatively higher level of jurisdictional risk, the Company was expected to collect additional information and documentation to corroborate the transactions involved. For instance, the Company could have sought to acquire documentation which verifies that the funds invested were generated from the bond issue, including the financial statements or management accounts of the customer entity. Alternatively, the Company could have procured bank statements which illustrate the flow of funds from the bond-holders to the designated bank account(s) of the customer entity.

- Customer file B – As outlined in the compliance examination report, this customer consisted of a nominee entity investing on behalf of one or more underlying investor(s). Although the customer was assigned a low risk rating at the onboarding stage, following a significant trigger event which took place, namely, the emergence of adverse media on the customer, this risk rating was increased to medium and eventually high risk. In relation to supporting documentation, it was noted that the Company made available the Subscription Agreements in place and various other due diligence documents pertaining to the nominee entity.

  Prior to the adverse media surfacing, the Company opted to apply SDD due to the customer being designated as low risk. While the Committee did not dispute the initial low risk rating assigned to this customer at the onset, it held that throughout the business relationship leading up to the trigger event, the Company should have monitored and re-assessed this rating to determine whether it was still justified in view of the customer's activities. In this instance, it was observed that the aggregate subscriptions made by the customer during the period it was classified as low risk exceeded €60 million. Considering the heightened risk associated with the tens of millions processed by the Company within a period of approximately 18 months, the Committee concluded that the Company should have have re-evaluated the customer's circumstances and risk profile,

and on the basis of the information at its disposal, ultimately determined that SDD measures could no longer be adopted.

As the value and volume of the subscriptions gradually increased, the Company's approach should have evolved accordingly. Initially, the Company should have enquired into the number of underlying investors behind the nominee entity, which would have revealed that there is only one investor involved. Subsequently, as the investment amounts grew further, the identification and verification of this investor, along with the collection of the requisite SOW/SOF information and/or supporting documentation, became imperative.

Notwithstanding the deficiencies identified above, the Committee positively recognised the proactive actions taken by the Company upon becoming aware of the previously mentioned adverse media, specifically commending the fact that the Company promptly suspended the customer's account once the first adverse media findings were reported, as well as initiated several requests for information to acquire a confirmation regarding the identity of the underlying investor from both internal and external sources. Consequently, what concerns the Committee is not the actions taken post-adverse media, but rather, the Company's failure, in view of the considerable value of the investments undertaken, to query about the underlying investor(s) and obtain the necessary information/documentation related to the same, including their SOW/SOF, before such adverse media came to light. This concern is exacerbated by the fact that the Company's exposure to customer file B was substantial when compared to the rest of its customer base, and the transactions carried out by this customer far exceeded what is customary for the Company to process vis-à-vis its other customers.

<u>The Money Laundering Reporting Officer (MLRO) – Breach of Regulation 15(1)(a) of the PMLFTR and Section 5.1.2(b) of the IPs</u>

The Committee was informed that during the course of the compliance examination, particularly based on the interviews carried out, it was observed that the MLRO does not have full oversight over the Company, this since the Company's AML/CFT function (including customer onboarding and ongoing monitoring) is delegated to the Fund Administrator. During the interviews held, the MLRO was unable to explain the ongoing monitoring process adopted by the Fund Administrator, and also mentioned that he/she is only involved when the Fund Administrator raises concerns or suspicions, which is indicative of insufficient oversight and autonomy. It further transpired that the MLRO of the Company currently has a considerable number of involvements with other subject persons.

In discussing the finding at hand, the Committee highlighted that the MLRO appeared to lack to necessary oversight to assess whether: (a.) the due diligence and other functions delegated to the Fund Administrator were being effectively carried out in practice; and (b.) the policies and procedures adopted by the Fund Administrator were adequate in mitigating the ML/FT risks involved and detecting any unusual or suspicious transactions and activities warranting the MLRO's attention. Furthermore, although the Committee acknowledged that the Company receives regular reports from the Fund Administrator and conducts annual reviews to verify the adequacy of the Fund Administrator's controls, it asserted that relying solely on these measures was not sufficient. This is because in this particular instance, the effectiveness of the said reports and reviews was considerable reduced due to the MLRO lacking a sound understanding of the Fund Administrator's ongoing monitoring policies and procedures, which crucially encompass the scrutiny of transactions.

While reiterating that the limitations stemming from the MLRO's apparent lack of full oversight and autonomy over the Company still constitutes as a shortcoming, the Committee commended the action taken by both the Company and its MLRO vis-à-vis customer file B, as already detailed above. Specifically, the Committee acknowledged that once the adverse media came to light, the MLRO acted in a timely manner to mitigate the identified risks.

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

After taking into consideration the above-mentioned findings, the Committee decided to impose an administrative penalty of €68,899 for the breaches identified in relation to:

- Regulations 7(1)(d) and 7(2)(a) of the PMLFTR and Section 4.5.1 of the IPs

In arriving at the final amount of the administrative penalty to impose, the Committee took into consideration the importance of the AML/CFT obligations that the Company has breached, together with the seriousness of the findings identified and their material impact. The Committee also considered that the Company was not implementing robust and timely controls over the investments undertaken by its customers, especially when nominee entities were investing for and on behalf of end customers. In this context, it was noted that the Company was overly reliant on the application of SDD for nominees, demonstrating that it was not cognisant of the fact that SDD measures should only be employed in low risk scenarios. The processing of millions of euro without adequate checks in place was identified as an unmanaged risk that could have led to the unintentional facilitation of ML/FT. Moreover, 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, or rather, the lack thereof, may have impacted the local jurisdiction as a whole. Further to this, 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, praising the prompt action taken by the Company concerning customer file B upon the emergence of the adverse media. Additionally, the Committee took note of the Company's commitment towards updating and enhancing specific AML/CFT processes, as well as any remedial actions that the Company claimed to have implemented or will be implementing. Lastly, 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 an administrative penalty, the Committee served the Company with a Remediation Directive in terms of the FIAU's 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 compliance with its AML/CFT legal obligations emanating from the PMLFTR and the IPs issued thereunder. By virtue of this Directive, the Company is being directed to remediate the identified breaches through the following remedial actions:

- Providing a copy of the Company's latest transaction monitoring procedures document, which should contain guidance on the types of information and/or supporting documentation to be obtained by the Company to substantiate customer transactions based on the risks involved.
- Ensuring that the MLRO exercises full oversight over the Company and is thoroughly acquainted with the policies and procedures adopted by the Fund Administrator, including the ongoing monitoring process applied. Moreover, the Company is required to perform an assessment to re-confirm that the MLRO has sufficient time to dedicate to his/her role, this in view of the various involvements he/she holds with other subject persons.

The ultimate aim of this Remediation Directive is to ascertain that the Company is achieving tangible progress in the AML/CFT controls it has implemented, and that this is sustainable to ensure future compliance with the legislative provisions. In the eventuality that the Company fails to undertake the requisite remedial actions, furnish the requested information and documentation within the stipulated deadline, or otherwise breaches its obligations in terms of this Directive, this default will be communicated to the Committee, prompting further potential 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

- As stipulated in Regulation 10 of the PMLFTR and Section 4.8 of the IPs, the application of SDD is only permitted for those business relationships which present a low level of ML/FT risk. Thus, this means that SDD measures cannot be implemented for customers assigned a higher risk rating than this threshold. If the subject person is of the view that employing SDD is merited for a specific business relationship not classified as low risk due to certain risk characteristics and elements associated with such relationship, the customer's risk score and corresponding risk rating would need to be adjusted accordingly, with the rationale for carrying out SDD being clearly documented on file.

- The risk rating awarded to the customer at the onset of the business relationship needs to be continuously monitored and re-assessed to determine whether it is still justified in light of the risks posed by the customer and its activities. One factor which may necessitate a revision in the customer's risk rating is when, over the course of the business relationship, the majority of the transactions involved are of a substantial amount. Another trigger for re-evaluation could be an increase in the value and volume of the transactions being executed by the customers. Indeed, if the customer begins engaging in high value transactions, either suddenly or gradually, the subject person is expected to scrutinise these transactions to ensure that they are in line with the customer's profile and make economic sense. Additionally, the subject person may need to obtain the necessary information and supporting documentation to corroborate such transactions, this to ascertain the legitimate origin of the funds used.

- In the context of the investments industry, if the customer comprises of a nominee entity investing on behalf of one or more underlying investor(s), Section 4.8.1 of the IPs outlines that in such cases, the nominee entity would be considered as the subject person's customer, allowing for the adoption of SDD, whereby they would be no need to identify and verify the identity of the underlying investors. Nevertheless, if there are certain higher risk factors present (such as high value transactions being affected, as explained above), it becomes crucial for the subject person to evaluate whether the business relationship in question still merits a low risk rating, and hence, whether SDD can continue to be employed. Should this not be the case, the subject person must gather information regarding the underlying investors involved, which may also include SOW/SOF information/documentation.

- When the customer engages in securitisation activities, such as through a securitisation vehicle, it is vital that the subject person acquires evidence confirming that the funds received by the said customer originate from the proceeds generated by the issuance of notes/units to investors. By way of example, the subject person could consider gathering a copy of the financial documents of the customer entity and/or bank statements which clearly indicate the flow of funds.

- It is of utmost importance that the MLRO of a subject person has full oversight and autonomy over the entity in question. The officer appointed to this position also has to be of sufficient seniority and command. If the implementation of any AML/CFT obligations are outsourced and delegated to a third party, the MLRO must ascertain that he/she remains well-informed about the day-to-day operations being undertaken by the third party, possesses a good understanding of the policies and procedures adopted by the third party, and takes prompt action in any situations that may warrant the potential filing of a Suspicious Transaction Report (STR) or other report with the FIAU. Adding to this, the subject person must ascertain that the MLRO's involvements, whether within the same entity or with other subject persons (if any), do not hinder his/her ability to satisfactorily satisfy all the obligations related to the onerous role of the MLRO.

5 April 2024