FSCA

Financial Sector
Conduct Authority

FSCA Press Release **28 February 2024**

FSCA imposes R16 million administrative sanction on Ashburton Fund Managers (Pty) Ltd (FSP 40169)

The Financial Sector Conduct Authority (FSCA) has imposed an administrative sanction of R16 million on Ashburton Fund Managers (Pty) Ltd (AFM) for failing to comply with certain provisions of the Financial Intelligence Centre Act, No. 38 of 2001 (FIC Act).

AFM, a wholly owned subsidiary of FirstRand Limited, is a licensed Financial Services Provider (FSP) under the Financial Advisory and Intermediary Services Act, No. 37 of 2002 (FAIS Act) and an accountable institution under the FIC Act. The FSCA is responsible for supervising and enforcing compliance of FSPs with the FIC Act. The objective of the FIC Act is, among other things, to help combat money laundering, the financing of terrorism and other related criminal activities. All accountable institutions designated under the FIC Act must comply fully with its requirements.

Between 17 October and 15 November 2022, the FSCA, as part of its ongoing supervisory activities, conducted an inspection on AFM in terms of section 45B of the FIC Act. The inspection revealed AFM to be in breach of the following provisions of the FIC Act:

- Sections 42(1) and (2): Accountable institutions must develop, document, maintain and implement a risk management and compliance programme (RMCP) for anti-money laundering and counter-terrorist financing. The RMCP must set out the manner and processes by which the institution will mitigate its money laundering and terrorism-financing risks as well as comply with the provisions of the FIC Act. Although AFM did develop an RMCP, the RMCP was found to be defective as it failed to set out the manner in which it would comply with the FIC Act as it relates to, among others:

- examining complex or unusually large transactions and unusual patterns of transactions (sub-section 42(2)(h));
- performing customer due diligence in accordance with sections 21, 21A, 21B and 21C when, during the course of a business relationship AFM suspects that a transaction of activity is suspicious or unusual as contemplated in section 29 (sub-section 42(2)(j));
- terminating existing business relationships as contemplated in section 21E (sub-section 42(2)(k));
- enabling AFM to determine when a transaction or activity is reportable to the FIC (sub-section 42(2)(o)); and
- the implementation of its RMCP (sub-section 42(2)(r)).

- Sections 21 and 21B: When an accountable institution engages with a prospective client to enter into a single transaction or to establish a business relationship, the institution must, in the course of concluding the single transaction or establishing the business relationship and in accordance with its RMCP, identify and verify the identity of the client, the person acting on behalf of the client and the client acting on behalf of another person. In addition, if a client contemplated in section 21 is a legal person or a natural person acting on behalf of a partnership, trust or similar arrangement between natural persons, an accountable institution must, in addition to the steps required under sections 21 and 21A and in accordance with its RMCP, establish the nature of the client's business, the ownership and control structure of the client and establish the identity of the beneficial owner of the client. At the time of the inspection, AFM failed to identify and verify the identity of some clients including beneficial owners of clients.

- Section 28A read with sections 26A – 26C: Accountable institutions are required to scrutinise client information to determine whether such clients are listed in terms of section 25 of the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, No. 33 of 2004 (POCDATARA) and the Targeted Financial Sanctions Lists (TFSL) issued by the United Nations Security Council. If an accountable institution finds that a client is on the TFSL, it must, as soon as possible, report that fact to the Financial Intelligence Centre and take steps to freeze the assets of the clients. At the time of the inspection, AFM failed to screen its clients, including beneficial owners against the TFSL.

The FSCA views the above as serious violations of the FIC Act, particularly in light of the nature, size, complexity and potential risk exposure of AFM's business. The requirement to understand and mitigate money laundering and terrorist financing risks through the implementation of an RMCP is vital not only because it assists accountable institutions to protect and maintain the integrity of their own businesses but also because it helps contribute to the integrity of the South African financial system as a whole.

Proper customer due diligence and screening of clients is also crucial to help identify and mitigate against suspicious and criminal elements from infiltrating the financial system. This makes it especially important for institutions that operate as part of large financial services groups to demonstrate an elevated level of vigilance when managing their financial crime risks.

In recognition of remedial action already taken to date by AFM, the FSCA has agreed to suspend R6 million of the total imposed penalty for a period of three years, on condition that AFM fully complies with a directive to remediate the remaining deficiencies and remains fully compliant with sections 42(1) and (2), sections 21(1) and 21B, and sections 28A read with sections 26A to 26C of the FIC Act during this period. AFM has been directed to pay R10 million of the total imposed penalty on or before 28 February 2024.

The sanction imposed by the FSCA serves as a strong reminder that non-compliance with the FIC Act will not be tolerated. All accountable institutions are urged to continue reviewing and strengthening their anti-money laundering and terrorist financing risk and control environments. Failure to do so will result in firm regulatory action.

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