

10 October 2019

To: Circle Markets Limited (CML, FSP460986), 8 Falls Street, Warkworth, Auckland 0910

Formal warning for purposes of section 80 of Anti-Money Laundering and Countering Financing of Terrorism Act 2009

We have reasonable grounds to believe that you have engaged in conduct that constitutes a civil liability act under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the Act). You are required to comply with your obligations under the Act at all times.

Details of the conduct are as follows:

Failure to comply with section 16: Reporting entities are required under section 16 of the Act to take reasonable steps to verify (as part of standard customer due diligence) the identity and proof of address of a customer.

The Financial Markets Authority (FMA) onsite monitoring review on 4 March 2019 identified that CML failed to comply with the identity verification requirements (as part of standard customer due diligence (CDD)) for two customers out of a sample of four customer files that were reviewed by the FMA. The failure relates to identity information not being certified in accordance with the Act.

Failure to comply with sections 23 and 24: Reporting entities are required under section 23 and section 24 of the Act to obtain additional identity requirements and verification of identity requirements for enhanced customer due diligence such as source of the funds or the wealth of the customer.

The FMA onsite monitoring review on 4 March 2019 identified that CML had failed to carry out ECDD as part of its on-boarding process for one customer residing in a country identified as medium to high risk in relation to money laundering. During our visit, CML's compliance officer advised that this customer was flagged as requiring ECDD.

Failure to comply with section 26: Reporting entities are required under section 26 of the Act, as soon as practicable after establishing a business relationship, to take reasonable steps to determine whether a customer or any beneficial owner, is a Politically Exposed Person (PEP).

The FMA onsite monitoring review on 4 March 2019 identified that CML were unable to provide any evidence to confirm that PEP checks were carried out, documented or recorded on any of the sample of customer files reviewed.

Failure to comply with section 31: Reporting entities are required under section 31 of the Act to conduct ongoing CDD for all customers and undertake account monitoring, in order to ensure that the business relationship and transactions relating to that business relationship are consistent with the reporting entity's knowledge about the customer, the customer's business and risk profile (including identifying a suspicious activity).

The FMA onsite monitoring review on 4 March 2019 identified that CML have not conducted ongoing CDD for approximately half of their client files and therefore do not meet AML/CFT identification requirements. In addition, CML do not regularly review any customer information and have not performed periodic checks of their existing customer base.

The following action(s) are required to ensure compliance with the Act:

- Section 16: CML must follow the standards set out in the Amended Verification Code of Practice 2013 to ensure CDD verification of identity requirements are met.
- Sections 23 and 24: CML must review all existing customers and identify those customers that should have been triggered for ECDD and obtain the relevant additional information required to continue its business relationship with those customers.
- Section 26: CML must ensure that adequate PEP checks are carried out on all existing clients; and for new clients as soon as practicable after establishing a business relationship. All PEP check notes must be documented with the outcome of the review.
- Section 31: CML must review the adequacy of information held on existing customers and ensure they perform adequate ongoing CDD and account monitoring on all customers.

CML must engage an independent AML/CFT auditor to complete an audit of their AML/CFT practice and issue the final report to CML by 27 February 2020. The audit must also include a review of the required actions mentioned above and a review of the actions in the action plan CML provided the FMA on 21 June 2019 to ensure the actions required by CML have been carried out. CML must provide the FMA with a copy of the auditor's review by **5 March 2020**.

If you continue to engage in conduct that constitutes a civil liability act, or you do not take the actions required, civil or criminal enforcement action may be taken under the Act. This may result in (but is not limited to) the imposition of—

- civil penalties of up to \$200,000, in the case of an individual, and \$2 million, in the case of a body corporate; and
- criminal penalties of imprisonment for up to two years or a fine of up to \$300,000, in the case of an individual, and \$5 million, in the case of a body corporate.

Please note that issuing this formal warning to you does not affect the FMA's ability to consider or impose other appropriate sanctions under the Act.

If you believe the facts as stated in this notice are incorrect or incomplete, please contact us by 17 October 2019.

A handwritten signature in blue ink, appearing to read 'Liam', followed by a horizontal line.

Liam Mason, Director of Regulation
Financial Markets Authority