

Chair of the Treasury Select Committee
Rt Hon Mel Stride MP

By email

9 October 2020

Dear Mr Stride

RE: 'FinCen Papers'

Thank you for your letter of 22 September 2020 to Christopher Woolard. I am replying as I assumed the role of Chief Executive of the Financial Conduct Authority (FCA) on 1 October 2020.

Financial crime is a high priority for the FCA. The FCA is one of the three statutory anti-money laundering (AML) supervisors in the UK under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the MLRs). We regulate 19,620 firms which are subject to these Regulations. We also have powers under the Financial Services and Markets Act 2000 (FSMA) to help ensure that all firms within our remit, approximately 59,000, have appropriate systems and controls, including in relation to financial crime. The FCA does not receive suspicious activity reports (SARs) directly, but our assessment of systems and controls will consider whether they can effectively lead to the identification of suspicious activity, which a firm is required to report to the National Crime Agency (NCA) via a SAR.

Combatting money laundering requires a multi-agency approach and we ensure our work contributes to the UK's overall effort to counter economic crime. We work closely with the NCA and the police to ensure that the UK is a hostile environment for those seeking to abuse the financial system. Given the global nature of money laundering, we also work extensively with law enforcers around the world, including those in the United States.

What action is the FCA taking in the face of the information in the FinCen files, including potential enforcement action?

We are working with other government departments and law enforcement agencies including HM Treasury and the NCA.

The information and allegations made in the recently televised BBC One Panorama programme, and the information that continues to come to light, are being considered and taken seriously. We have written to all FCA authorised firms identified in the recent coverage which have a presence in the UK to request further information. The FCA is considering whether any immediate supervisory mitigation steps are required (such as requiring firms to rectify any on-going AML failures which are identified) and, in the event of any serious suspected misconduct being uncovered, whether to open enforcement investigations. As some of the allegations are historic,

any decision to take action will take into account when the alleged misconduct took place and the extent to which the identified issues with firms' systems and controls have been successfully addressed through remedial work that the firm has since carried out. As the Committee will be aware, the FCA does not comment on whether or not an investigation has been opened or on the progress of any cases.

Where we find significant failings, we use a range of regulatory tools to ensure these are rectified. For example, we have the power to obtain a view from a third party (a 'skilled person') about aspects of a regulated firm's AML controls if we are concerned or want further analysis. In 2019/20, skilled person reviews of financial crime systems and controls were required for 16 firms. Where we consider that there is ongoing harm, we may put in place business restrictions until we are satisfied that the firm is managing its financial crime risks effectively.

The FCA has imposed significant penalties for financial crime control failures including on some of the firms identified by Panorama. A full list of FCA enforcement action is included within the Annex to this letter. This includes recent enforcement for AML breaches such as:

- Commerzbank being fined £37,805,400 in 2020;
- Standard Chartered Bank being fined £102,163,200 in 2019; and
- Deutsche Bank being fined £163,076,224 in 2017.

We also have ongoing investigations into suspected civil and criminal breaches, which are progressing well.

What needs to be done to further secure the financial system from Economic Crime, given the information in the FinCen files?

The Government published its Economic Crime Plan in July 2019, which included a series of actions that will contribute to further strengthening the UK regime. This includes the way in which the FCA approaches supervision to deal with existing firms, making greater use of data to identify firms or areas that are potentially vulnerable to money launderers and the extension of our remit to deal with new risks posed by cryptoassets, the latter being implemented by the Money Laundering and Terrorist Financing (Amendment) Regulations 2019.

Emerging technologies such as artificial intelligence and machine learning have the potential to help firms monitor and identify suspicious transactions more effectively and efficiently. Increased information sharing between banks and public agencies can help the detection and prevention of crime. This is why the Economic Crime plan contains specific actions in relation to improving information sharing. The FCA is participating in the workstreams that will deliver these actions.

In addition, the FCA hosted a Global AML and Financial Crime TechSprint in July 2019 to assess whether privacy enhancing technologies (PETs) can be used to share data and knowledge across institutional and jurisdictional boundaries without compromising privacy laws.

As highlighted by the leaked documents, the challenge of effectively policing AML requirements and tackling financial crime is global. The FCA plays a full role in developing and promoting

international standards on AML, counter-terrorist financing and counter-proliferation financing at the Financial Action Task Force (FATF) and other international bodies.

It is reported that a leaked US Treasury paper argued the UK was a “higher-risk” jurisdiction. Have you had similar comments from US authorities, and would such an identification concern you?

This has not been raised in our extensive engagement with US agencies. The Financial Action Task Force’s review of the UK regime in October 2018 found that the UK has a well-developed and robust regime to effectively combat money laundering and terrorist financing.

Whether OPBAS is confident that the Professional Body Anti-Money Laundering supervisors are now an effective deterrent to economic crime in their respective areas?

OPBAS was established in January 2018 and has two key objectives to reduce the harm of money laundering and terrorist financing by:

- ensuring a robust and consistently high standard of supervision by the professional body anti-money laundering supervisors (PBSs) overseeing the legal and accountancy sectors; and
- facilitating collaboration and information and intelligence sharing between PBSs, statutory supervisors and law enforcement agencies.

In March 2019, we published our findings from our first year of supervisory work¹. This was the first time we independently assessed how PBSs carry out their AML/CTF supervisory responsibilities. We found a variable quality of AML/CTF supervision. As part of this work, we ensured that all PBSs had robust AML strategies in place, including sector risk assessments.

To promote effective information and intelligence sharing, in late 2018, OPBAS, in conjunction with the National Economic Crime Centre (NECC), piloted sectoral intelligence sharing expert working groups (ISEWGs). These brought together the PBSs, the FCA, HM Revenue and Customs and law enforcement agencies to discuss and share strategic and tactical intelligence relating to the accountancy and legal sectors. Significant progress in the ISEWGs was made during 2019/20 with all PBSs now having appropriate security clearance, intelligence storage and communications systems in place. There is also evidence of relevant information and intelligence flowing between members. The Chair of these meetings is now held by Law Society Scotland for the Legal Sector and the Association of Certified Chartered Accountants for the Accountancy Sector.

In March 2020, we published a report on progress and themes from our supervisory work in 2019². Among the key findings were that the accountancy and legal professions had made strong

¹ <https://www.fca.org.uk/publication/opbas/themes-2018-opbas-anti-money-laundering-supervisory-assessments.pdf>

² <https://www.fca.org.uk/publication/opbas/supervisory-report-progress-themes-2019.pdf>

improvements in their supervision of AML work although some PBSs still lagged behind their peers.

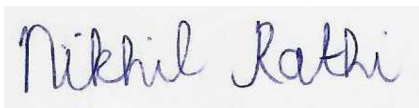
In May 2020, we launched further work, which is still underway, to test the effectiveness of the PBSs' AML supervisory strategies. We regularly review the outcomes of our supervisory work and plan to publish a further assessment of progress in Q3 2021.

Whether the release of this information may have an impact on any ongoing investigations or work, or may impede the future operation of the SARs system (regulatory requirements aside)?

The confidentiality of SARs is a cornerstone of the global AML regime. It allows firms to make reports with the expectation that SARs are handled appropriately and the UK courts have protected the confidential nature of SARs. A firm's legal duty to report remains and failing to do so would take away the legal defence from a charge of money laundering. We hope this won't impact on SARs reporting but understand firms could be concerned if further such disclosures happen in the future. Given the allegations made, we are examining the potential impact on ongoing investigations and will continue to do so as further material comes to light.

I hope that you find this response helpful and I look forward to working closely with the Committee on this and other issues.

Yours sincerely

A handwritten signature in blue ink that reads "Nikhil Rathi". The signature is written in a cursive style and is contained within a light grey rectangular box.

Nikhil Rathi
Chief Executive

Annex - FCA Enforcement Action for AML

Firm (date, link to press release)	Breaches	Outcome
<p>Guaranty Trust Bank (UK) Limited</p> <p>8 August 2013</p> <p>https://www.fca.org.uk/news/press-releases/fca-fines-guaranty-trust-bank-uk-ltd-%C2%A3525000-failures-its-anti-money-laundering</p>	<p>Breach of Principle 3 for failing to establish and maintain effective AML systems and controls in relation to high risk customers including those customers deemed to be PEPs.</p>	<p>Financial penalty of £525,000</p> <p>(reduced by 30% for stage 1 settlement; without the discount the fine would have been £750,000)</p>
<p>Standard Bank PLC</p> <p>22 January 2014</p> <p>https://www.fca.org.uk/news/press-releases/standard-bank-plc-fined-%C2%A376m-failures-its-anti-money-laundering-controls</p>	<p>Failing to comply with <i>Regulation 20(1) of the MLRs</i> and other relevant <i>MLR</i> requirements, particularly anti-money laundering controls over its commercial banking activities, including in connection with PEPs.</p>	<p>Civil penalty of £7,640,400</p> <p>(reduced by 30% for stage 1 settlement; without the discount the fine would have been £10,914,900).</p>
<p>Bank of Beirut (UK) Ltd</p> <p>04 March 2015</p> <p>https://www.fca.org.uk/news/press-releases/financial-conduct-authority-imposes-%C2%A321m-fine-and-places-restriction-bank-beirut</p>	<p>Breaches of Principle 11 because it failed to deal with the FCA in an open and cooperative way and to disclose to the Authority information of which it would reasonably expect notice. The Firm misled the FCA in relation to addressing concerns about its financial crime systems and controls relating to acquiring customers from high-risk jurisdictions.</p>	<p>(1) Financial Penalty of £2,100,000 (reduced by 30% for stage 1 settlement; without the discount the fine would have been £3,000,000).</p> <p>(2) A restriction for a period of 126 days from 4 March 2015 in respect of its regulated activities only (that Bank of Beirut may not acquire new customers that are resident or incorporated in high risk jurisdictions). The restriction was also reduced by 30% for early settlement, and would otherwise have applied for 180 days.</p>
<p>Barclays Bank Plc.</p> <p>25 November 2015</p> <p>https://www.fca.org.uk/news/press-releases/fca-fines-barclays</p>	<p>Breach of Principle 2 for failing to conduct its business with due skill, care and diligence - failure to apply appropriate level of due diligence when receiving funds from ultra-high net worth clients who were PEPs. The failings relate to a particular £1.88bn pound transaction (the Transaction) executed in 2011-12 for a number of</p>	<p>Financial penalty of £72,069,400 (reduced by 30% for stage 1 settlement, without the discount the fine would have been £80,542,000).</p> <p>The fine comprised disgorgement of £52,300,000 in revenue generated</p>

<p>%C2%A372-million-poor-handling-financial-crime-risks.</p>	<p>ultra-high net worth clients who were PEPs.</p>	<p>from the Transaction (the 30% discount did not apply to this).</p>
<p>Sonali Bank (UK) Ltd</p> <p>12 October 2016</p> <p>https://www.fca.org.uk/news/press-releases/fca-imposes-penalties-sonali-bank-uk-limited-money-laundering.</p>	<p>Breach of Principle 3 for failing to have appropriate AML procedures and governance. Also breach of Principle 11 for failing to notify the FCA of an allegation of significant fraud.</p>	<p>(1) Financial penalty of £3,250,600 (reduced by 30% for stage 1 settlement; without the discount the fine would have been £4,643,800), and</p> <p>(2) Restriction imposed preventing the firm from accepting deposits from new customers for 168 days (also reduced by 30%, otherwise it would have been for 240 days).</p>
<p>Deutsche Bank AG</p> <p>31 January 2017</p> <p>https://www.fca.org.uk/news/press-releases/fca-fines-deutsche-bank-163-million-anti-money-laundering-controls-failure.</p>	<p>Breach of Principle 3 in relation to failing to have adequate AML systems and controls in place in relation to the formation of new customer relationships and the booking of global business in the UK. Also breaches of SYSC 6.1.1R and 6.3.1R.</p> <p>These failings allowed the front office of Deutsche Bank's Russia-based subsidiary to execute more than 2,400 pairs of mirror trades for a 2 year period from April 2012 to October 2014.</p> <p>The purpose of the mirror trades was the conversion of roubles into US dollars, and the covert transfer of those funds out of Russia.</p>	<p>Financial penalty of £163,076,224 (reduced by 30% for stage 1 settlement, without the discount the fine would have been £229,076,224)</p> <p>The fine included an element of disgorgement of £9,100,000 in commission that the firm generated from the suspicious trading (the 30% discount did not apply to this).</p>
<p>Canara Bank</p> <p>April 2018</p> <p>https://www.fca.org.uk/news/press-releases/fca-fines-and-imposes-restriction-canara-bank-anti-money-laundering-systems-failings</p>	<p>Breach of Principle 3 in relation failures to maintain adequate AML systems and failed to take sufficient steps to remedy identified weaknesses, despite having been notified of shortcomings in its AML systems and controls, previously.</p> <p>The Final Notice highlights the importance of branches of overseas banks and their senior management having sufficient understanding of their regulatory responsibilities and ensuring those obligations are met with appropriate resources.</p>	<p>Financial penalty of £896,100 (reduced by 30% for stage 1 settlement, without discount the fine would have been £ 1, 280, 175)</p> <p>A restriction in place for 147 days where Canara Bank were not allowed to accept deposits from customers who do not already hold a deposit account with Canara)</p>

	<p>Specifically, the FCA found that Canara failed to maintain adequate systems and controls to manage the risk of money laundering. These failures were systemic and affected almost all levels of its business and governance structure including: (1) Senior Management; (2) Governance / Oversight; (3) three Lines of Defence; (4) Money laundering reporting function; and (5) AML systems and controls.</p>	
<p>Standard Chartered Bank</p> <p>April 2019</p> <p>https://www.fca.org.uk/news/press-releases/fca-fines-standard-chartered-bank-102-2-million-poor-aml-controls</p>	<p>FCA took action under the Money Laundering Regulations (MLRs) 2007 where the FCA found serious and sustained shortcomings in SCB's AML controls relating to CDD and ongoing monitoring. SCB failed to establish and maintain risk sensitive policies and procedures, and failed to ensure its UAE branches applied UK equivalent AML and CFT controls.</p> <p>The FCA found significant shortcomings in Standard Chartered's own internal assessments of the adequacy of its AML controls, its approach towards identifying and mitigating material money laundering risks and its escalation of money laundering risks. These failings exposed Standard Chartered to the risk of breaching sanctions and increased the risk of Standard Chartered receiving and/or laundering the proceeds of crime.</p>	<p>Financial penalty of £102,163,200 (reduced by 30% for stage 1 settlement, without discount the fine would have been £145,947,500)</p>
<p>Commerzbank</p> <p>June 2020</p> <p>https://www.fca.org.uk/news/press-releases/fca-fines-commerzbank-london</p>	<p>FCA found Commerzbank to have breached Principle 3 of our Principles for Businesses which requires firms to have adequate risk management systems in place. The FCA's investigation identified failings in a number of areas such as failure to conduct timely periodic due diligence on its clients, failure to address long</p>	<p>Financial penalty of £37, 805, 400 (reduced by 30% for state 1 settlement, without discount the fine would have amounted to £54, 007, 800)</p>

<u>37805400-over-anti-money-laundering-failures</u>	standing weaknesses in its automated tool for monitoring money laundering risk and failure to have adequate policies and procedures in place when undertaking client due diligence.	
---	---	--