



SECURITIES COMMISSION OF THE BAHAMAS SUPERVISORY AND REGULATORY GUIDELINES

INTERIM GUIDELINES FOR ANTI-MONEYLAUNDERING AND KNOW YOUR CUSTOMER PROCEDURES FOR LICENCEES AND REGISTRANTS

1. INTRODUCTION

The Securities Commission of The Bahamas (“The Commission”) is mandated inter alia to formulate principles to regulate and govern investment funds, securities and capital markets, as well as to maintain surveillance over investment funds, securities and capital markets to ensure orderly, fair and equitable dealings.

The Commission in collaboration with industry participants seeks to promote and encourage the maintenance of high standards of conduct and management in the provision of services in the investment funds, securities and capital markets. To this end the Commission issues these guidelines pursuant to its authority in Section 94 of the Securities Industry Act, 1999 and Section 47 & 48 of the Investment Funds Act, 2003.

These guidelines are provided on an interim basis and are intended to provide licencees and registrants of the Commission with direction as to the standards required for compliance with the provisions of the Financial Transaction Reporting (Amendment) Act, 2003 (“the Amending Act”) and the Financial Transaction Reporting (Amendment) Regulations, 2003 (“ the Amending Regulations”). Licencees and registrants are advised that these guidelines are prepared for general guidance and do not have force of law. Further these guidelines should not be relied upon in respect of points of law. They may however, be considered by a Court of Law in determining whether a licencee or registrant has complied with the Financial Transactions Reporting Legislation.

ALL LICENCEES AND REGISTRANTS ARE EXPECTED TO CONDUCT THEIR BUSINESS AFFAIRS IN COMPLIANCE WITH ALL LEGAL REQUIREMENTS.

2. PURPOSE

By virtue of Section 2 of The Securities Industry (Amendment) Act, 2001 the Commission is mandated to satisfy itself that the provisions of the Financial Transaction Reporting Act, 2000 are being complied with. Section 48 of the Investment Funds Act, 2003 endows the Commission with the same responsibility as



regards licencees and registrants under that Act. The Commission must ensure through its inspection procedures that its licencees and registrants have Know-Your – Customer (KYC) procedures in place, which promote high ethical and professional standards, thus preventing the use of its operations for criminal purposes.

The Commission will issue guidelines for Anti-Money Laundering and Know-Your-Customer Procedures for its licencees and registrants in the near future. These guidelines will only replace the existing Guidelines on Anti-Money Laundering issued by the Financial Intelligence Unit in 2001, with regard to Anti-Money-laundering and Know-Your-Customer procedures, thus licencees and registrants of the Commission should continue to apply the guidelines issued by the Financial Intelligence Unit on suspicious transactions reporting.

These guidelines are issued to provide general guidance to licencees and registrants on standards required for compliance with the Financial Transaction Reporting (Amendment) Act, 2003 and the Financial Transaction Reporting (Amendment) Regulations, 2003. In particular, the following matters are addressed:

- (i) Interpretation of key provisions in the amending Act and Regulations;
- (ii) Licencees and registrants obligation to implement a risk based approach to KYC procedures; and
- (iii) Licencees and registrants obligation to verify accounts and their obligation to report unverified accounts to the Commission.

Licencees and registrants are required to adopt a risk based approach to customer due diligence if they are to comply with the Amending Regulations. These interim guidelines provide general guidance as to the minimum criteria for developing a risk-based approach to verifying customer identity.

3. APPLICABILITY

Be advised that for the convenience of licencees and registrants of the Commission that are also licencees of the Central Bank, and in pursuance of the Memorandum of Understanding agreed between the group of regulators, the Commission and the Central Bank have agreed that, where applicable, the Interim Guidelines issued by the Central Bank will be adopted by the Commission. Thus the relevant guidelines applicable to the licencees and registrants of the Commission are as follows:

- (i) **Licencees or registrants of the Commission under the Securities Industry Act, 1999 that are also licencees of the Central Bank;**

The Interim Guidelines for Anti-Money Laundering and Know Your Customer Procedures issued by the Central Bank of the Bahamas should be adopted in



respect of all 'securities account' customers of the licensee or registrant.

(ii) Licensees or registrants of the Commission under the Securities Industry Act, 1999 that are not licensees of the Central Bank

The Interim Guidelines for Anti-Money Laundering and Know Your Customer Procedures issued by the Central Bank of the Bahamas should be adopted in respect of all 'securities account' customers of the licensee or registrant.

(iii) Licensees and registrants of the Commission under the Investment Funds Act, 2003

Guidelines applicable to Investment Fund Administrators are set out hereunder at paragraph 7 below.

4. APPLICABLE LEGISLATION

- Securities Industry Act, 1999 (Chapter 363, Statute Laws of The Bahamas, 2000);
- Investment Funds Act, 2003 (Act No. 20 of 2003);
- Financial Transaction Reporting Act, 2000 (Chapter 368 of The Statute Laws of The Bahamas, 2000);
- Financial transaction Reporting Regulation, 2000 (Chapter 368 of Statute Laws of The Bahamas);
- Financial Transaction Reporting (Amendment) Act, 2003 (Act No. 23 of 2003);
- Financial Transaction Reporting (Amendment) Regulations, 2003 (S.I. No. 103 of 2003).

5. ADOPTION OF INTERIM GUIDELINES ISSUED BY THE CENTRAL BANK

Those licensees and registrants of the Commission in respect of whom the Central Bank's guidelines have been adopted are advised that they should consult the information contained in the Interim Guidelines issued by the Central Bank regarding the following matters:

- (i) Financial Transaction Reporting (Amendment) Act, 2003
- (ii) Financial Transaction Reporting (Amendment) Regulations, 2003
- (iii) Risk rating customers
- (iv) Verification requirements



6. COMMISSION NOTES

- **References in the Interim Guidelines published by The Central Bank:**

- i. References to the Central Bank should be read as The Securities Commission;
- ii. References to Licencees should be read as licencees or registrants of the Securities Commission under the Securities Industry Act, 1999;

- **International Standards**

Information regarding the application of the Basle Committee standards and papers has no relevance to licencees and registrants of the Commission in so far as they relate to securities account customers of the licencee or registrant.

Please note that in this regard, the appropriate standards are those promulgated by the International Organization of Securities Commissions (IOSCO). See articles: Resolution on Money laundering, October 1992 and The Joint Forum, June 2001 @ www.iosco.org.

- **Current documents**

The interim guidelines of Central Bank note that in a case where re-verification of a customer's identity is required the licencee should ensure that the documentation on file for the customer is 'current'. The Commission advises that information less than one (1) year old will be considered current.

7. INVESTMENT FUND ADMINISTRATION GUIDELINES

Introduction

The Commission notes that Investment Fund Administrators are exempt from the customer verification provisions of the FTRR in respect of Investments Funds licensed pursuant to the Mutual Funds Act, 1995. The Commission advises, exemption applies in respect of funds licensed or registered under the Investment Funds Act, 2003 by virtue of Section 23 of The Statutory Interpretation and General Clauses Act, Chapter 2 of the Statute Laws of The Bahamas, 2000.



NOTE: *The guidelines set out below are based on submissions made by industry. In their present form these guidelines are quite substantive and appear to adequately address customer due diligence practice issues on both an interim and permanent basis. The Commission however has determined to issue them on an interim basis to afford further opportunity for industry consultation and comment.*

The guidelines set out below are provided as best practice guidance for administrators and operators of investment funds.

The Role of the Fund Administrator

In spite of the fact that the FTRR exempts licensed funds from complying with the verification procedures of the FTRA, the Commission is of the view that certain matters should be considered before administrators determine that AML due diligence will not be carried out by them.

The FTRA requires that all financial institutions know their customers; the FTRR exempts the administrator from the prescriptive nature of the FTRR. Additionally a Fund must have regard to the provisions of the Proceeds of Crime Act, 2000 (PCA) and most specifically the anti money laundering procedures. Although the PCA does not expressly set out required verification procedures to be used by a Fund, most administrators have instituted procedures in this regard, which can be considered as the basis for 'Best Practices' in regard to the types of verification documentation procured.

This Due Diligence Best Practice would entail obtaining the following documentation when verifying investors:-

(i) Payment via QFI Bank

If payment is made by an Investor, whether by cheque or electronically, from an account held in the Investor's name at a European Union (EU) credit institution or credit institution in one of the Qualified Financial Institutions (QFI) prescribed countries, the only additional verification procedure required is to ensure that the Investor's address agrees with that supplied. In these circumstances, a record should be retained of the Investor's bank, branch, sorting code number (if applicable) and an account number (such as swift message or bank draft). FTRA makes provision for this practice, which is commonly referred to as the Travel Rules as established by the US Bank Secrecy Act.



Where payment is made from a joint account any one of the names is considered acceptable for this purpose. Payments by bank or building society draft or from a general account are not considered acceptable for this purpose unless certified by the bank or building society concerned as coming from an account held with it in the name of the Investor.

(ii) Where the investor is a Qualified Financial Institution as per FTRA

a. QFI is investing for it's own account

Written confirmation on the letterhead of the Financial Institution that the investment is being made for its own account; or

b. QFI is investing on behalf a client

Written confirmation on the letterhead of the Financial Institution that the financial institution will verify the identity of each customer on whose behalf an investment is made, in accordance with the due diligence requirements to which the Financial Institution is subject.

(iii) Where the investor is an Individual

- Full and correct name of the person;
- Copy of the relevant pages of passport, driver's license, voter's card, national identity card or such other identification document bearing a photographic likeness of the person as is reasonably capable of establishing the identity of the person;
- Permanent address;
- Telephone and fax number (if any); and
- Date and place of birth.

(iv) Where the investor is a Personal Holding Company

- Certificate of Good Standing;
- Registered office and registered agent address;
- Names and addresses of all officers, directors and beneficial owners; and;
- A copy of the relevant pages of passport, driver's license, voter's card, national identity card or such other identification document bearing a photographic likeness of the person as is reasonably capable of establishing the identity of each officer, director and beneficial owner.



**(v) Where the investor is a Non Financial Institution (as per FTRA) Trustee
(where investment made in the name of the Trustee)**

- Verification of all trustees and vested beneficiaries as per the relevant requirements of these guidelines relating to individuals or corporate entities (as applicable); and
- Certification by the trustee that a valid trust exists and declaring the identity of the vested beneficiaries of the trust.

(vi) Where the investor is a Partnership or other unincorporated association

- Verification of all beneficial owners as per the relevant requirements of these guidelines relating to individual or corporate entities (as applicable); and
- Certification by the General Partner that a valid partnership exists and declaring the identity of the limited partners of the partnership.

If the Financial Institution is not known to the Administrator, the Administrator should satisfy themselves as to the standing of the Financial Institution by reference to international directories or the relevant supervisory authority.

**Acting Executive Director,
Securities Commission of The Bahamas**
