

The Securities Commission of The Bahamas



GUIDANCE NOTES FOR ASSESSING THE FITNESS AND PROPRIETY OF MONEY LAUNDERING REPORTING OFFICERS (MLROs) IN THE BAHAMAS

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**GUIDANCE NOTES FOR ASSESSING THE
FITNESS AND PROPRIETY OF
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I. 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 securities, investment funds and capital markets to ensure orderly, fair and equitable dealings.

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.

Additionally, the Commission has the duty, in collaboration with financial institutions, to promote and maintain high standards of conduct and management in the provision of securities and investment fund services. The Commission must ensure through its inspection procedures that its licencees and registrants are adhering to required regulatory reporting requirements. Licensees and registrants are also expected to conduct their affairs in conformity with all other Bahamian legal requirements.

II. PURPOSE

In carrying out their duties of promoting and maintaining high standards, the domestic financial sector regulators (the Regulators)¹ are charged with the responsibility of assessing the fitness and propriety of individuals nominated as the MLROs in financial institutions operating within and from within The Bahamas.

These Guidance Notes outline and describe the criteria that the Regulators will consider in assessing the fitness and propriety of the MLRO within *prudentially regulated financial institutions (financial institutions)* in The Bahamas. Where a financial institution is jointly regulated by two or more Regulators, the primary Regulator of the entity will be responsible for assessing the fitness and propriety of the candidate.

¹For the purposes of these guidance notes, the Regulators include the Securities Commission of The Bahamas, the Central Bank of The Bahamas, the Insurance Commission and the Director of Cooperative Development.

For the purposes of these Guidance Notes, *prudentially regulated institutions* are those financial institutions as set out in Section (3) of the Financial Transactions Reporting Act, 2000 that are subject to regulation by the Regulators. In the case of cooperative societies, this would apply only to such entities that are credit unions.

In the absence of internationally agreed qualifications, the Regulators have adopted an approach whereby a set of core competencies are employed to assess whether an individual is qualified, competent, and capable to carry out the functions of the MLRO. However, each Regulator reserves the right to add additional requirements as deemed appropriate.

III. APPLICABILITY

These Guidance Notes will be applicable to all applications for recognition of MLROs after the effective date of these Guidance Notes. However, financial institutions are encouraged to self-assess existing MLROs against the criteria outlined in these Guidance Notes. Financial institutions should ensure that any identified deficiencies are rectified within one (1) year from the effective date of these Guidance Notes.²

IV. Assessing Fitness and Propriety

The Regulator will consider the following core competencies and how these are demonstrated.

Role	Core Competencies	Evidence Demonstrating Core Competence
Money Laundering Reporting Officer (MLRO)	The MLRO should: <ul style="list-style-type: none"> • have sufficient level of authority and independence within a financial institution (as defined in section I above) to enable him/her to carry out his / her function; 	The MLRO should report directly to the Board of Directors or management, for example, via the audit committee or other suitable committee of the Board of Directors.
	<ul style="list-style-type: none"> • have a sound understanding of the money laundering and terrorist financing risks of a financial institution and how the Anti-Money Laundering and prevention of Terrorist Financing 	The MLRO must be able to demonstrate that he/she: <ul style="list-style-type: none"> a) holds a relevant professional qualification (e.g. ICA Diploma, a legal or accounting designation) or

² Regulators will review, in the course of on-site examinations, the self-assessment conducted to determine if identified deficiencies have been corrected. Where deficiencies have not been corrected, the Regulator may require the replacement of the MLRO with a suitable candidate.

	<p>framework of The Bahamas applies to the business of the financial institution; and</p>	<p>attended courses relevant to this function; AND</p> <p>b) Has extensive practical experience in the financial services (this includes, banking/co-operatives, securities and insurance sectors) industry, and accounting or legal profession.</p> <p>The MLRO should undergo, at least annually, further training in areas related to AML/CFT matters.</p>
	<ul style="list-style-type: none"> • Be able to meet the test of fitness and propriety as determined by the primary regulator of the financial institution or, in the case of an accountant or lawyer, the professional/licensing authority. 	<p>The MLRO of a financial institution will need to provide documentation and comply with fitness and propriety requirements of the primary regulator. Where the MLRO is an accountant or lawyer, the primary regulatory may consider whether he or she is a member in good standing with the relevant professional organisation.</p>

V. Submissions in Support of a Nominated Person for the MLRO Function

The following documents should be submitted to the respective Regulator in support of the nominee:-

1. A Curriculum Vitae, including a comprehensive description of the background of the nominee sufficient to allow a determination that the individual satisfies the qualifications to carry out the responsibilities, as indicated above. Such information should relate to previous experience in the range of activities that may be conducted by the licensee; other management/administrative experience; knowledge of pertinent Bahamian laws and supervisory and regulatory requirements; and, other relevant skills and experience;
2. Certified copies of relevant diploma(s) in support of qualifications;
3. Two Character Reference Letters, which meet the following minimum criteria:
 - (a) The referee should have known the applicant for a period of not less than five (5) years and the nature of the relationship should be disclosed;
 - (b) The referee must be independent, without an interest in the acceptability of the reference and should not have a familial relationship to the applicant;

- (c) References must be dated within three (3) months of receipt of the request for recognition of a candidate as the MLRO;
 - (d) References should address the applicant's honesty, integrity and reputation as well as the competence and capability of the applicant for the proposed role;
 - (e) References must be provided in original form, and in the case of institutions must be provided on official company letterhead with the name and title of the signatory clearly presented;
 - (f) Where a character reference is provided by an individual, that individual's identity should be verifiable by the Regulator; and
 - (g) References from individuals must be signed and give the signatory's name, title, address (including mailing and street addresses) and telephone and facsimile number(s).
4. Copy of passport or other official identification document;
 5. A police certificate issued within the last six (6) months;
 6. Copy of the appropriate Board Resolution approving appointment of the MLRO;
 7. Organisational Chart showing the reporting relationships; and
 8. Any other document(s) that the Regulator deems necessary.

VI. Approval of MLRO

A Regulator will grant approval for an individual to perform *the MLRO function*, only if the candidate satisfies fit and proper criteria.³

Should the nominee meet the fit and proper criteria set out in these Guidance Notes, the primary Regulator will issue a letter to the financial institution indicating its decision and submit a copy of the letter to the Financial Intelligence Unit (FIU) and any other joint Regulator, if applicable. However, it will remain the responsibility of the financial institution to ensure that the MLRO is registered with the FIU. The FIU will inform the primary Regulator once the MLRO has been registered.

Pursuant to its governing legislation, a Regulator may require the substitution of a MLRO if, inter alia, the MLRO is considered not to be fit and proper to continue to perform the function.

*****End*****

³ Each Regulator will be guided by its fit and proper criteria