

The Securities Commission of The Bahamas



GUIDELINES FOR LICENSEES/REGISTRANTS ON THE PREVENTION OF MONEY LAUNDERING & COUNTERING THE FINANCING OF TERRORISM

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1. SCOPE

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.

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. To this end the Commission issues these guidelines pursuant to its authority in Section 94 of the Securities Industry Act, 1999 as amended by the Securities Industry (Amendment) Act, 2008¹ and Section 47 & 48 of the Investment Funds Act, 2003.

These Guidelines incorporate both the mandatory minimum requirements of the Financial Transaction Reporting (Amendment) Act, 2003, the Financial Transaction Reporting (Amendment) Regulations, 2003 and industry best practices. As these Guidelines are enforceable, it is therefore expected that all Licensees/Registrants of the Securities Commission adhere to these Guidelines in developing responsible procedures suitable to their business to prevent money laundering and terrorist financing. If a Licensee/Registrant appears not to be doing so the Securities Commission will seek an explanation and may conclude that the Licensee/Registrant is carrying on business in a manner that may give rise to sanctions under the applicable legislation.

It is important that the management of every Licensee/Registrant view money laundering prevention and countering the financing of terrorism as part of their risk management strategies and not simply as a stand-alone requirement that is being imposed by the legislation. Money laundering prevention and countering the financing of terrorism should not be viewed in isolation from a Licensee/Registrant’s other business systems and needs.

However, where a Licensee/Registrant is a part of an international group, it is recommended that a group policy be followed to the extent that all overseas branches, subsidiaries and associates where control can be exercised, ensure that verification of identity and record keeping practices are undertaken at least to the standards required under Bahamian law or, if standards in the host country are considered or deemed more rigorous, to those higher standards. Reporting procedures for suspicious transaction reports (“STR’s”) and the offences to which the anti-

¹ Section 2 of Securities Industry (Amendment) Act, 2008, provides that “Section 94 of the Securities Industry Act is amended by the deletion of the final comma and the words “provided however that such guidelines shall not betaken as having the force of law”.”

money laundering and anti-terrorism legislation in The Bahamas relates must be adhered to in accordance with Bahamian laws and practices.

These Guidelines replace the existing Guidelines on anti-money laundering and Suspicious Transactions Reporting for Banks and Trust Companies issued by the Financial Intelligence Unit (“FIU”) in 2001, but only in relation to procedures for the prevention of money laundering and verifying customer identity. Licensees/Registrants should continue to adhere to the FIU’s Guidelines insofar as they relate to suspicious transactions reporting.

There is a risk that efforts to detect money laundering or to counter the financing of terrorism and to trace the assets will be impeded by the use of alternative undetected channels for the flow of illegal funds consequent on an automatic cessation of business (because a suspected that funds stemmed from illegal activity). To avoid that risk, Licensees/Registrants should report their suspicions to the FIU and obtain their own independent legal advice as to whether or not they should continue the business relationship or transaction. In carrying out transactions where a Licensee/Registrant is considering making a STR, the Licensee/Registrant should consider duties owed to third parties such as in the case of a constructive trustee. In such cases, it is recommended that independent legal advice is sought.

Consistent with the requirements of the law these Guidelines cover:-

- Internal controls, policies and procedures (Section II)
- Risk Rating Customers (Section III);
- Verification of Customer Identity (Section IV);
- Record Keeping (Section V);
- The role of the Money Laundering Reporting Officer (“MLRO”) (Section VI); and
- Education and training of employees in recognising and reporting suspicious transactions (Section VII).

2. 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 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 Guidelines for the Prevention of Moneylaundering and Countering the Financing of Terrorism 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 Guidelines for the Prevention of Moneylaundering and Countering the Financing of Terrorism 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 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 Guidelines issued by the Central Bank regarding the following matters:

- (i) Risk Rating Customers
- (ii) Verification Requirements
- (iii) Record Keeping
- (iv) Role of the Money Laundering Reporting Officer
- (v) Education and Training

6. COMMISSION NOTES

- **References in the Guidelines published by The Central Bank:**
 - i. References to the Central Bank should be read as The Securities Commission;

- ii. References to Licences should be read as licences 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 licences and registrants of the Commission in so far as they relate to securities account customers of the licensee or registrant.

Please note that in this regard, the appropriate standards are those promulgated by the International Organization of Securities Commissions (IOSCO). It is noted that IOSCO has also endorsed the risk based approach to customer due diligence.

- **Current documents**

The guidelines of Central Bank note that in a case where re-verification of a customer's identity is required the licensee 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 that this exemption also 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.

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

The Role of the Fund Administrator

Irrespective of the exemption provided licensed funds from complying with the verification procedures of the FTRA, pursuant to Section 10A of the FTRA, the identity of customers must be verified in all cases where money laundering or terrorist financing is known or suspected. If money laundering is known or suspected then a report must be made to the FIU. Knowledge or suspicion of terrorist financing should be reported to the Commissioner of Police. In both cases verification procedures must be undertaken if this has not already been done.

Additionally a Fund must have regard to the provisions of the Proceeds of Crime Act, 2000 (POCA) and most specifically the anti money laundering procedures. Although the POCA 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 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;
- A copy of the relevant pages of passport, driver's license, voters 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 having controlling interest in the corporate entity; and
- Source of funds

(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);
- Certification of the trustee that a valid trust exists and declaring the identity 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 of 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.
