

The Securities Commission of The Bahamas



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

The Securities Commission of The Bahamas
3rd Floor, Charlotte House
Shirley & Charlotte Streets
Nassau, Bahamas

Telephone: 242-356-6291
Facsimile: 242-356-7530
Website: www.scb.gov.bs

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NOTICE is hereby given of the release of the Securities Commission of The Bahamas amended Guidelines for Licensees and Registrants on the Prevention of Money Laundering and Countering the Financing of Terrorism (“AML/CFT Guidelines”). The updated AML/CFT Guidelines were approved by the Board on June 30, 2011 and brought into effect on August 11, 2011.

The AML/CFT Guidelines have been amended to:

- i. Clarify the customer due diligence (CDD) know your customer (KYC) verification procedures for investment funds licenced or registered pursuant to the Investment Funds Act, 2003 (“IFA”) specifically as it relates to the application of simplified or reduced due diligence in respect of investment funds pursuant to regulation 5A(e) of the Financial Transactions Reporting Regulation (Chapter 368);
- ii. Reflect an amendment made to the IFA. Pursuant to section 7 of the Investment Funds (Amendment) Act, 2010, the IFA was amended to include section 62A. Section 62A of the IFA, allows the Commission to publish guidelines of any provision, regulation or rule made under the IFA. Following the amendment to section 94 of the SIA which essentially provides for the enforceability of any guideline issued by the Commission under the SIA, it was essential that this authority was also clearly prescribed under the provisions of the IFA; and
- iii. Address any inconsistencies that may arise between the Securities Industry legislation and the said AML/CFT Guidelines. Where there is a conflict between the adopted provisions of the Central Bank’s Guidelines for Licensees and Registrants on the Prevention of Money Laundering and Countering the Financing of Terrorism and the legislative provisions of the Securities Commission, the Securities Commission’s legislation should be followed in all circumstances.

The Securities Commission of The Bahamas amended 'Guidelines for Licensees and Registrants on the Prevention of Money Laundering and Countering the Financing of Terrorism' have been posted on the Securities Commission’s website for your viewing at www.scb.gov.bs.

Any questions regarding these Guidelines should be directed to:

The Secretary of the Commission
Securities Commission of The Bahamas
3rd Floor, Charlotte House Shirley & Charlotte Streets
P.O. Box N-8347
Nassau, Bahamas
Tel: (242) 397-4100 Fax: (242) 356-7330
Email: info@scb.gov.bs
Website: www.scb.gov.bs

1. SCOPE

1.1 The Securities Commission of The Bahamas (“the Securities 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.

1.2 By virtue of section 2 of the Securities Industry (Amendment) Act, 2001 the Securities Commission is mandated to satisfy itself that the provisions of the Financial Transaction Reporting Act, 2000 and the Regulations made thereunder are being complied with. Section 48 of the Investment Funds Act, 2003 endows the Securities Commission with the same responsibility as regards licensees and registrants under that Act. The Securities Commission must ensure through its inspection procedures that its licensees and/or registrants (“Licensees/Registrants”) have identification, often referred to as 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 Securities 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, section 47 & 48 of the Investment Funds Act, 2003 and section 62A of the Investment Funds Act, 2003 as amended by the Investment Funds (Amendment) Act, 2010².

1.3 These Guidelines incorporate both the mandatory minimum requirements of the anti-money laundering countering the financing of terrorism (“AML/CFT”) laws of The Bahamas and industry best practices. As these Guidelines are enforceable, it is expected that all Licensees/Registrants of the Securities Commission will 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.

1.4 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.

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 be taken as having the force of law”.

² Section 62A of the Investment Funds Act, 2003, allows the Commission to publish guidelines of any provision, regulation or rule made under the Investment Funds Act, 2003.

1.5 Where a Licensee/Registrant is a part of an international group, it is recommended that a group policy on anti-money laundering and combating terrorism financing be implemented for all members of the group, including all overseas branches, subsidiaries and associates over which the Licensee/Registrant exercises control. The group policy must 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 of a group member 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-money laundering and anti-terrorism legislation in The Bahamas relates must be adhered to in accordance with Bahamian laws and practices.

1.6 These Guidelines replace the 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 and detection of money laundering, recordkeeping and verifying customer identity. Licensees/Registrants should continue to adhere to the FIU’s Guidelines insofar as they relate to suspicious transactions reporting.

1.7 There is a risk that attempts may be made to use non-bank financial services to introduce illicit funds into the financial system in order to impede the detection of money laundering, counter terrorism financing efforts, and tracing of related assets. To avoid this 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 a business relationship or transaction in the particular circumstance. In carrying out transactions where a Licensee/Registrant is considering making a STR, the Licensee/Registrant should also 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.

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

- Overview of Bahamian Anti-Money Laundering and Anti-Terrorism Legislative Framework,
- Internal Controls, Policies and Procedures;
- Risk Rating Customers;
- Verification Requirements;
- Record Keeping;
- The role of the Money Laundering Reporting Officer (“MLRO”); and
- Education and Training of employee in recognizing and reporting suspicious transactions.

2. **APPLICABILITY**

2.1 For the convenience of Licensees/Registrants of the Securities Commission, and in accordance with the Memorandum of Understanding agreed between the Group of Financial Services Regulators, the Securities Commission and the Central Bank of The Bahamas (“the Central Bank”), have agreed that the Guidelines issued by the Central Bank will be adopted and used by the Securities Commission and its Licensees/Registrants.

2.2 Guidance for Licensees/Registrants on the implementation of the Central Bank Guidelines

2.2.1 Licensees/Registrants of the Securities Commission should consult the information contained in the Guidelines issued by the Central Bank regarding the following matters:

- Background – (Overview of the Bahamian Anti-Money Laundering and Anti-Terrorism Legislative Framework) (Section I),
- Internal Controls, Policies and Procedures (Section II)
- Risk Rating Customers (Section III);
- Verification of Customer Identity (Section IV);
- Record Keeping (Section VII);
- The role of the Money Laundering Reporting Officer (“MLRO”) (Section VIII); and
- Education and training of employees in recognising and reporting suspicious transactions (Section IX).

2.3 Adaptation and clarification of certain references in the Central Bank Guidelines to activities licensed/registered under the Securities Industry Act and the Investment Funds Act:-

2.3.1 References to the Central Bank should be read as the Securities Commission.

2.3.2 References to Licensees should be read as Licensees/Registrants of the Securities Commission under the Securities Industry Act or the Investment Funds Act, as the context requires.

2.3.3 Should a conflict arise between the provisions of the Central Bank’s Guidelines and the legislative provisions of the Securities Commission, the legislative provisions of the Securities Commission should be followed in all circumstances.

2.3.4 References to the standards issued by the Basle Committee should be read as the standards 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.

2.3.5 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 Securities Commission advises that information less than one (1) year old will be considered current.

2.3 Applicable legislation

- The Securities Industry Act (Chapter 363);
- The Investment Funds Act;
- The Financial Transactions Reporting Act (Chapter 368);
- The Financial Transactions Reporting Regulation (Chapter 368);
- The Anti-Terrorism Act;
- The Proceeds of Crime Act (Chapter 93);
- The Financial Transactions Reporting (Wire Transfers) Regulations;
- The Financial Intelligence Unit Act (Chapter 367); and
- The Financial Intelligence (Transactions Reporting) Regulations (Chapter 367).

3. SIMPLIFIED OR REDUCED DUE DILIGENCE IN THE CASE OF INVESTMENT FUNDS – REGULATION 5A(e) OF THE FTRR

3.1 While the Guidelines provide practical guidance in relation to identification procedures for investment funds, Licensees/Registrants should note that regulation 5A(e) of the Financial Transactions Reporting Regulation (Chapter 368) ("FTRR"), allows for reduced or simplified due diligence in respect of investment funds. This simplified or reduced due diligence permits a waiver of any requirement for documentary evidence that is otherwise stipulated in the identification procedures in regulations 3, 4 and 5 of the FTRR. A Licensee/Registrant should identify clearly in its internal policies and procedures those circumstances in which the requirement for documentary evidence has been waived, and the basis for the waiver within the context of its risk management procedures.

4. MANDATORY STATUTORY OBLIGATION TO PERFORM FULL DUE DILIGENCE IN ANY WHERE MONEY LAUNDERING OR TERRORIST FINANCING KNOWN OR SUSPECTED.

4.1 In all cases where money laundering or terrorist financing is known or suspected, section 10A of the Financial Transactions Reporting Act (Chapter 368) (“FTRA”) requires that all financial institutions (as defined by section 3 of the FTRA), **must** verify the identity of any person that conducts a transaction through a financial institution. This obligation overrides regulation 5A(e) of the FTRR and is applicable notwithstanding the possibility to apply reduced or simplified due diligence .

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.
