



INDUSTRY BRIEFING

SECURITIES & INVESTMENT FUNDS INDUSTRIES

Thursday 27 September 2018
Baha Mar Convention Center



Property of the Securities Commission of The Bahamas



DISCLAIMER

This document is the property of the Securities Commission of The Bahamas and is for information purposes only. No material contained herein supersedes or overrides any obligations or conditions as presented in duly promulgated securities laws.

The views expressed in this presentation are those of the presenter(s), and do not necessarily represent the views of the Board or Management of the Commission. Promulgated securities laws may be found on the Commission's website (www.scb.gov.bs).



OPENING REMARKS

THE HON. K. PETER TURNQUEST, M. P.

DEPUTY PRIME MINISTER & MINISTER OF FINANCE



Property of the Securities Commission of The Bahamas



ORGANISATIONAL DEVELOPMENTS

CHRISTINA R. ROLLE
EXECUTIVE DIRECTOR
SECURITIES COMMISSION OF THE BAHAMAS



Property of the Securities Commission of The Bahamas



PRESENTATION OUTLINE

❖ Policy & Legislative Developments

- Status of Investment Funds Bill
- Amendments to Securities Industry Legislation
- Other Legislative Developments
- Development of Crypto Asset Framework

❖ International Developments

- IOSCO's Enhanced Multilateral Memorandum of Understanding (EMMOU)
- Upcoming Financial Sector Assessment Program (FSAP)

❖ Implementation of Risk Based Supervision



STATUS OF INVESTMENT FUNDS BILL

- ❖ Consultants engaged and Project Team assembled
- ❖ Consultation process
 - Bill (27 Nov. 2017 – 28 Feb. 2018)
 - Regulations (13 Apr. 2018 – 15 Jun. 2018)
- ❖ Comments reviewed and amendments made
- ❖ Will create a notably different regulatory regime for investment funds



OTHER SECURITIES LEGISLATIVE DEVELOPMENTS

- ❖ Business Capital Rules
- ❖ Compliance Officer Rules (Draft)
- ❖ Takeover Code (Draft)
- ❖ Corporate Governance Rules (Draft)



DEVELOPMENT OF CRYPTO ASSET FRAMEWORK

- ❖ Consultant engaged to assist with development of regulatory framework
- ❖ Provide clarity to market
- ❖ 3 Phase Project
 - Review & comparison of crypto policies across leading jurisdictions
 - Draft crypto policy highlights to point out key areas to be discussed with stakeholders
 - Drafting of detailed crypto policy to be issued to the market
- ❖ Project to conclude in 9 weeks (November 2018)



EMMoU

- ❖ Commission an 'A' Signatory to the prevailing **Multilateral Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information (MMoU)**
- ❖ International benchmark for cross-border cooperation to combat securities fraud and market misconduct
- ❖ Changing environment/advancements in technology are driving the need for a further standard
- ❖ Commission submitted application and has been recommended for approval as A1 signatory to the EMMoU
- ❖ Will be in first 10 jurisdictions to be signatories to the EMMoU



EMMoU

❖ Key new EMMoU “ACFIT” powers:

- To obtain and share **A**udit papers
- To **C**ompel attendance for testimony
- To assist and provide information to another regulator on how to **F**reeze assets
- To obtain and share existing **I**nternet Service Provider records
- To obtain and share existing **T**elephone records

❖ ACFIT powers to enable securities regulators to respond to risks/challenges posed by globalization and advances in technology

❖ EMMoU to co-exist with MMoU



FINANCIAL SECTOR ASSESSMENT PROGRAM (FSAP)

- ❖ Comprehensive assessment of a countries' financial sector
- ❖ Assessments carried out by the IMF for advanced economies and by both the IMF and the World Bank for developing economies.

Areas of Analysis

- Resilience of Sector
- Quality of Regulatory Framework
- Capacity to Manage and Resolve Financial Crises

Stability Assessment Areas

- Probability & Potential Impact of mains risks
- Financial Stability Policies and Framework
- AML/CFT Assessment

Standards Tested

- Basel Core Principles
- IOSCO Objectives & Principles
- International Association of Insurance Supervisors' Core Principles



FSAP COUNTRY ASSESSMENT: THE BAHAMAS

The Bahamas

- ❖ Last assessment July 2012
- ❖ Report Issued April 2013
- ❖ Key areas of concern:
 - Credit Risk
 - National crisis management
 - Securities legislation gaps
 - Fiscal Responsibility legislation
 - Risk Based Approach among financial regulators



DEVELOPMENT AND IMPLEMENTATION OF RISK BASED SUPERVISION

- ❖ Global move by regulators toward forward looking risk-based approaches to supervision
- ❖ Traditional compliance based approaches have demonstrated severe limitations and weaknesses
- ❖ Risk based approach shown to provide effective and efficient monitoring and evaluation of licensees
- ❖ Primary goal is to identify firms where problems might arise, focus scarce resources on those firms, engage with them to recognise those risks and take mitigating action



RISK BASED SUPERVISION – CONT'D

- ❖ Engagement of consultant to assist with development of framework
- ❖ Development and issuance of risk assessment questionnaire
- ❖ Commission restructuring
- ❖ Framework of continuous AML/CFT Risk Identification and Monitoring/Financial Soundness
- ❖ Development of risk parameters and rating tool



LEGAL UPDATES

- Anti-Money Laundering Regime Updates
 - CFATF Deficiencies
 - Financial Transactions Reporting Act, 2018
 - Securities Industry AML Typologies
- Upcoming Work



Presenter: Ms. Mechelle Martinborough
Senior Legal Counsel



ANTI MONEY LAUNDERING REGIME UPDATES



ANTI MONEY LAUNDERING REGIME UPDATES

CFATF Mutual Evaluation

- Mutual Evaluation Report Published December 2017
- Bahamas referred to ICRG
- Ratings
 - Technical: 10 C, 12 LC, 22 PC, 2 NC
 - Effectiveness: 5 Mod and 6 Low
- Face-to-Face September 2018

Deficiencies

- Risk Based Supervision
- AML/CFT Legislative Framework
- Improving Communication and Training

Action Plan

- Risk Based Supervision – Developed and Implementation ongoing
- Legislative Framework In Progress
- GFSR Communication Initiatives



ANTI MONEY LAUNDERING REGIME UPDATES

- ❖ Enforcement and Sanctions
- ❖ Specific to AML
 - Current – Section 57, FTRA 2018
 - Administrative Regime
 - GFSR Working Group



ANTI MONEY LAUNDERING REGIME UPDATES

❖ AML/CFT Legislative Framework Updates

- Redress of deficiencies in FTRA, 2018 and SIA Rules
 - PEPs – Section 14 FTRA, 2018
 - New Technologies – Sections 5(2) (a) and (b) FTRA, 2018
 - Third Party CDD – Section 9(4) FTRA, 2018
 - Internal Controls – Section 19 – 23 FTRA, 2018
 - Foreign Branches and Subsidiaries - Section XX FTRA, 2018
 - Administrative Penalties – Section 57, 2018



ANTI MONEY LAUNDERING REGIME UPDATES

❖ Improving Communication

▪ GFSR

• Joint Endeavors

- Annual Flagship Conference
- Annual Publication
- AML/CFT Website
- AML/CFT Penalty & Sanctioning Framework

• Joint Guidance

- Proliferation Financing
- Sound Management of Financial Crimes



FINANCIAL TRANSACTIONS REPORTING ACT, 2018



FINANCIAL TRANSACTIONS REPORTING ACT, 2018

❖ Changes in s3. Definitions

- Licensees under SIA and IFA
- Persons “ONLY” providing investment advice remain exempt

❖ S4. – Designated non Financial business and profession

- DFNBPs previously defined in s3 moved to s4.
- Dealers in second hand Precious Metals and Stones
- Pay day advance providers
- A trust and Company Service Provider

❖ General Definition Changes

- Casinos versus Holder of Gaming License
- Long Term Insurance Business



FINANCIAL TRANSACTIONS REPORTING ACT, 2018

❖ New s2. Definitions to Note

- Beneficial Owner
- Cash/Virtual Currency
- Customer Due Diligence
- Identified Risk/Framework
- PEP
- Senior Management



FINANCIAL TRANSACTIONS REPORTING ACT, 2018

❖ Key Provisions and Changes

- Risk Assessment – s.5
 - Identify, assess and understand risks
 - Comprehensive Risk management System
 - Manage and mitigate against those risks
 - Prior to new product, business practice, technologies, major event or development



FINANCIAL TRANSACTIONS REPORTING ACT, 2018

❖ Key Provisions and Changes cont'd

■ Customer Due Diligence – s6.

- Clear obligation to seek 'beneficial owner'
- Express Prohibition against anonymous or fictitious accounts

■ Due Diligence Measures – s7.

- Use of reliable, independent source documents, data or information
- Account to be taken of risk assessment



FINANCIAL TRANSACTIONS REPORTING ACT, 2018

❖ Key Provisions and Changes cont'd

■ Identification and Verification – s8.

- Supervisor 'may' prescribe circumstances when verification can be delayed to after opening an account
- Express Prohibition against anonymous or fictitious accounts

■ Due Diligence Measures – s7.

- Use of reliable, independent source documents, data or information
- Account to be taken of risk assessment



FINANCIAL TRANSACTIONS REPORTING ACT, 2018

❖ Key Provisions and Changes cont'd

■ Correspondent Relationship – s10.

- Additional measures provided
 - identify, nature of business activities, evaluate reputation etc.

■ Inability re identification obligations – s11.

- Requirement is not to enter or to terminate the relationship as is appropriate
- STR
- Offences – ‘intentionally’ open, carry out transactions, fail to terminate relationship



FINANCIAL TRANSACTIONS REPORTING ACT, 2018

❖ Key Provisions and Changes cont'd

- Risk assessment PEPS – s14.
 - System to determine whether facility holder or beneficial owner if PEP
 - Express Source of wealth and enhanced monitoring obligations
- Record Keeping – s15.
 - Mandatory to destroy “as soon as practicable” after required period to maintain
 - Except where lawfully required to maintain
 - 15 (3) establishes lawful reasons including- to carry on business, comply with laws, investigation of offence



FINANCIAL TRANSACTIONS REPORTING ACT, 2018

- ❖ Key Provisions and Changes cont'd
 - Internal Controls – s19.
 - Develop Procedures
 - Approved by Senior Management, risk appropriate, proportionate to nature and size of business
 - Designate Compliance Officer
 - Senior Officer is required
 - Outsourcing ability proposed for sector specific legislation
 - Prohibition of Shell Banks



FINANCIAL TRANSACTIONS REPORTING ACT, 2018

❖ Key Provisions and Changes cont'd

- STRs
- Compliance Commission – Part III
- Investigations and Powers of Search – Part IV
- Offences – Part V
- Miscellaneous – Part VI
 - Section 54 – Vicarious and Agent Liability
 - Express, Implied or Apparent Authority
 - Section 57 – Administrative Penalties



AML/CFT TYPOLOGIES



AML/CFT TYPOLOGIES



Placement

Large Deposits but Inactive trading;
Cash Payments;
Non-resident accounts from high risk jurisdictions/persons;
Mismatch of Customer profile with Trading Pattern



Layering

Trading Activities without Commercial Rationale;
Transactions funded by remittances from high risk jurisdiction;
Non-resident accounts from high risk persons or jurisdictions;
Mismatch of Customer profile with Trading Pattern

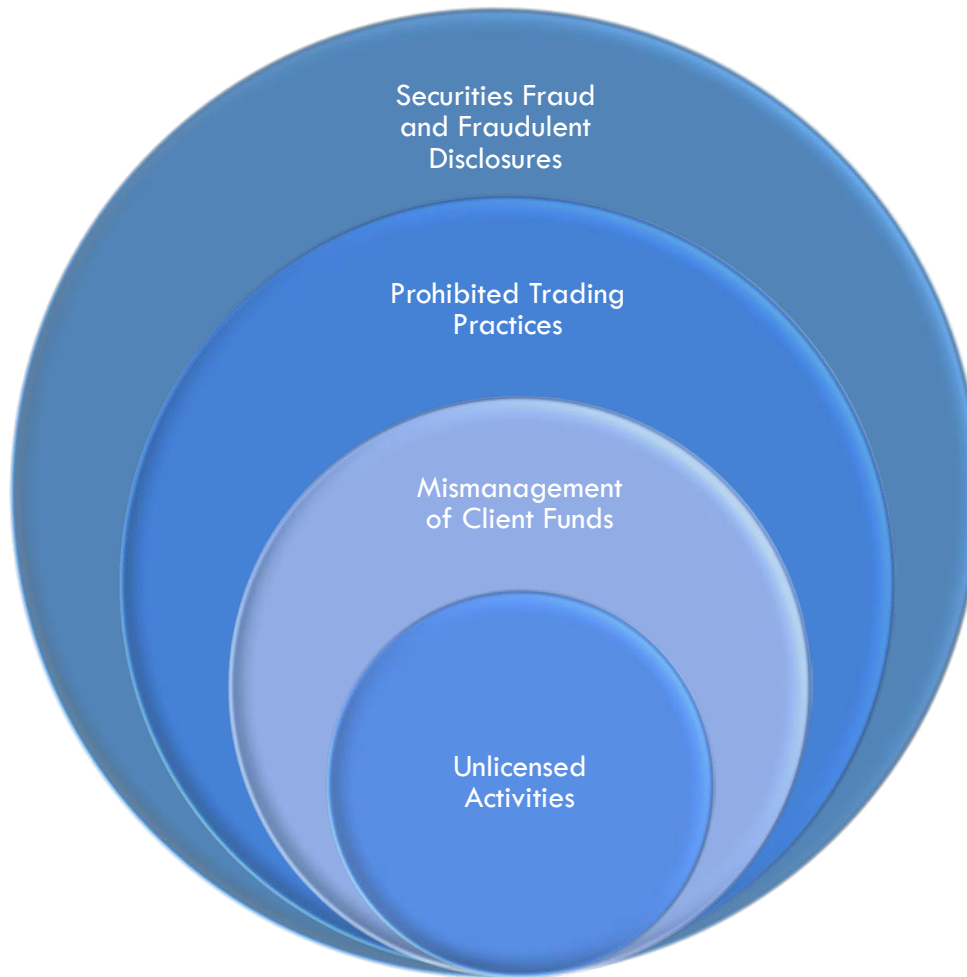


Integration

Trading Activities without Commercial Rationale;
Transactions funded by remittances from high risk jurisdiction;
Non-resident accounts from high risk persons or jurisdictions;
Mismatch of Customer profile with Trading Pattern



AML/CFT TYPOLOGIES



Investor side typologies and countermeasures

Third party subscription



Proposed countermeasure :

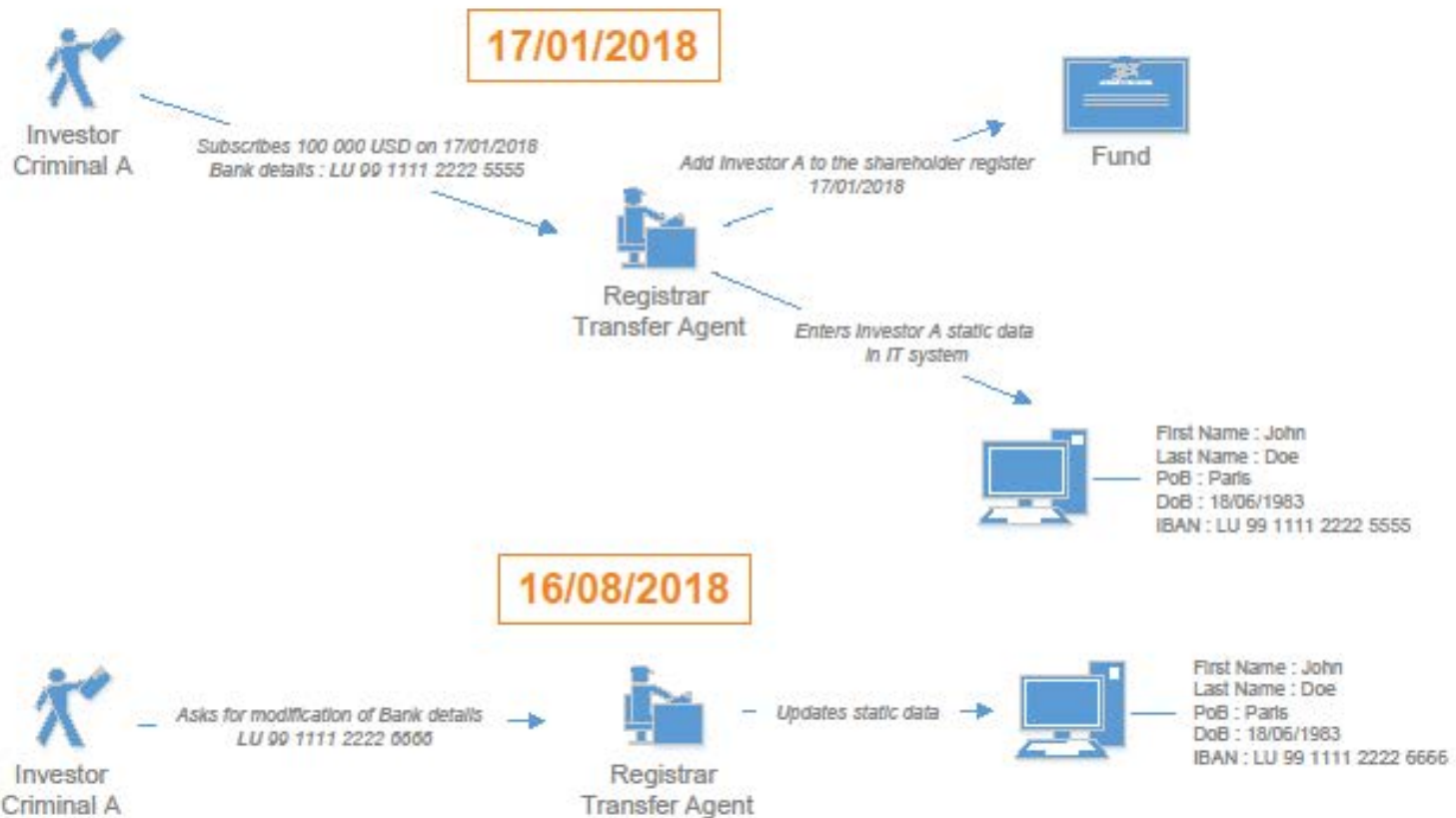
- Reconciliation between the incoming SWIFT messages (Custodian bank) and the bank details on the application form (RTA).
- Typology which is likely in retail funds but not in PERE funds.

Confidential – The views expressed in this document belong solely to the speaker

© Guilhem Ros - CSSF – 2018 - 4

Investor side typologies and countermeasures

Third party redemption

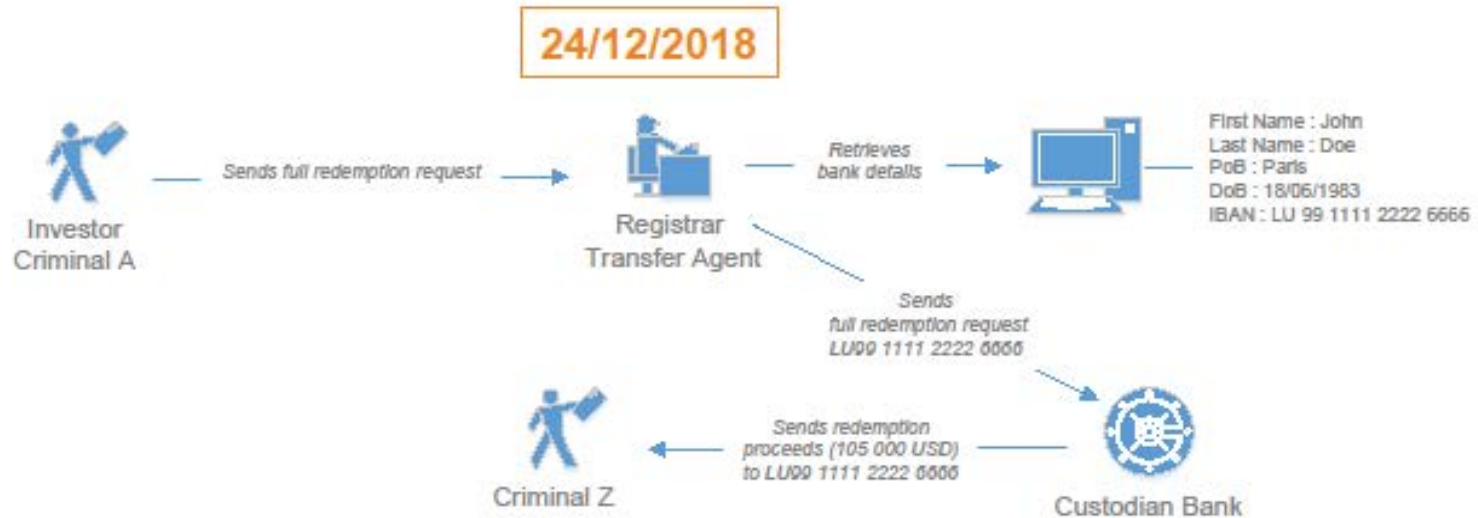


Confidential – The views expressed in this document belong solely to the speaker

© Guilhem Ros - CSSF – 2018 - 5

Investor side typologies and countermeasures

Third party redemption



Proposed countermeasure :

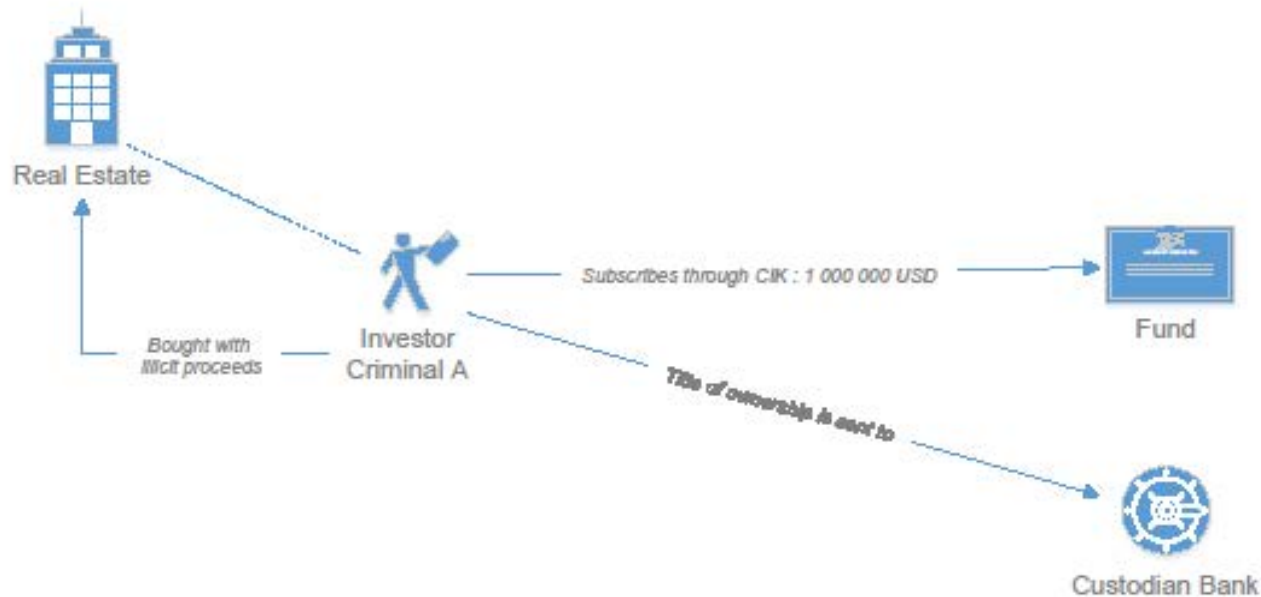
- Request for information in case of change of banking details AND evidence showing that the new bank account belongs to the investor.
- Typology which is likely to work during holiday season when attention to details is low.

Confidential – The views expressed in this document belong solely to the speaker

© Guilhem Ros – CSSF – 2018 - 6

Investor side typologies and countermeasures

Contribution In Kind



Proposed countermeasure :

- Independent External Auditor report on the CIK. Information on the origin of funds used to buy the contributed asset.
- Typology which is more common in alternative investment funds. Valuation issues may be added (fraud).

Confidential – The views expressed in this document belong solely to the speaker

© Guilhem Ros - CSSF – 2018 - 7

Investment side typologies and countermeasures

Crypto assets



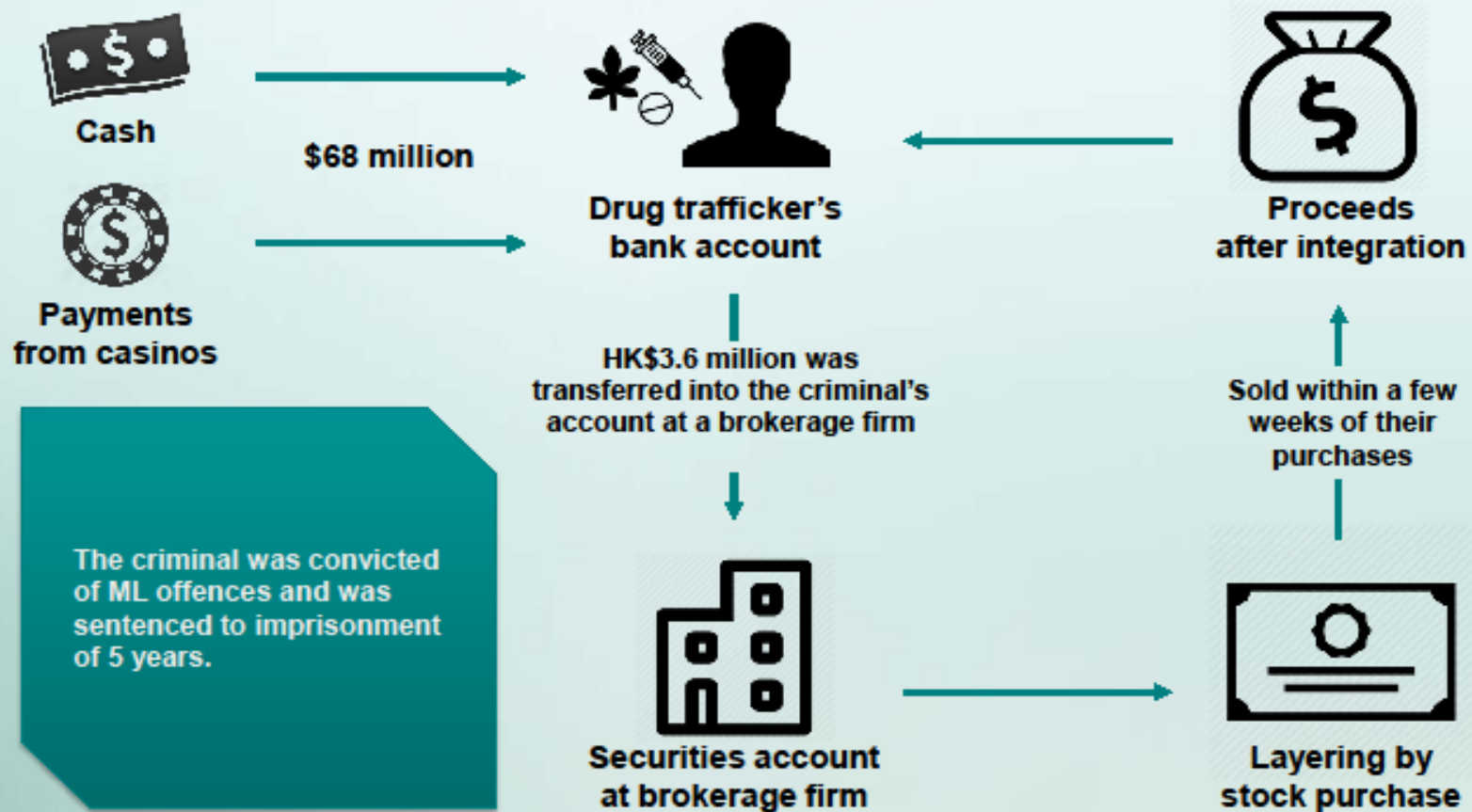
- Issues regarding the origin of funds (mining botnet, wallet mixers)
- Issues regarding the custody of such assets
- Potential financing of terrorism (ICOs / ITOs)

Confidential – The views expressed in this document belong solely to the speaker

© Guilhem Ros - CSSGF – 2018 - 9

Case study 5

– Using securities transactions to layer and integrate proceeds of crime

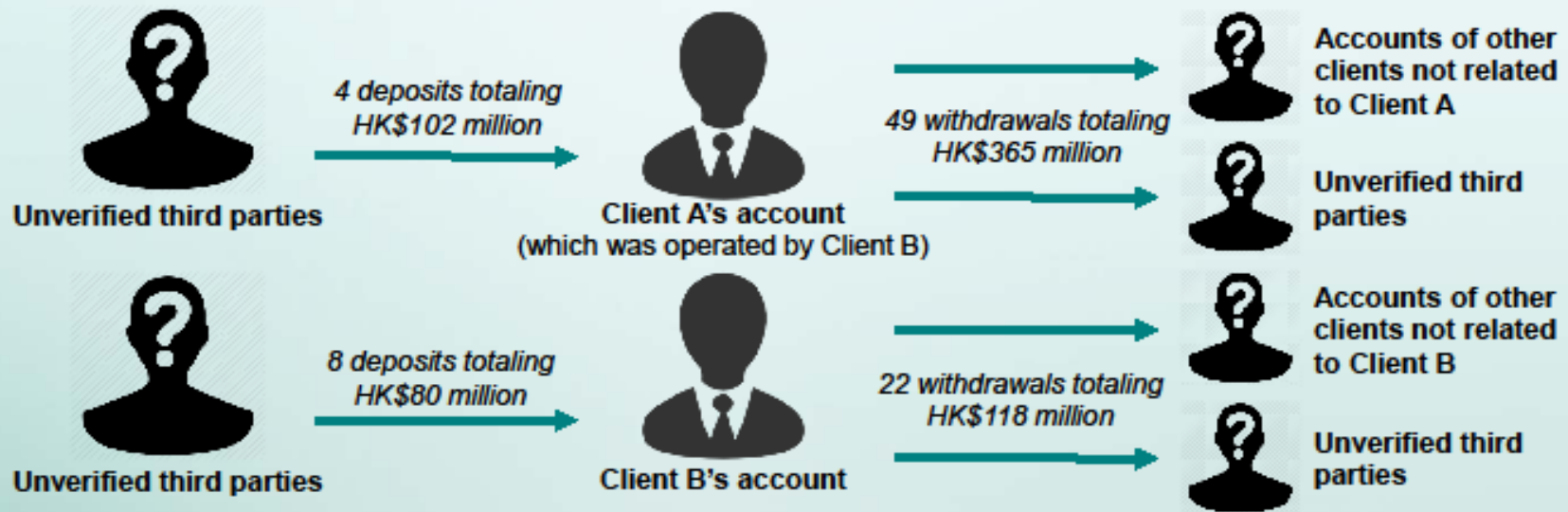


Source: *HKSAR v Tam Lap Shek aka Robert Tan and Lesa Tan & Yuen Kwok Ying* [CACC199/2012]

10

Case study 6

– Using securities accounts as temporary repositories for funds

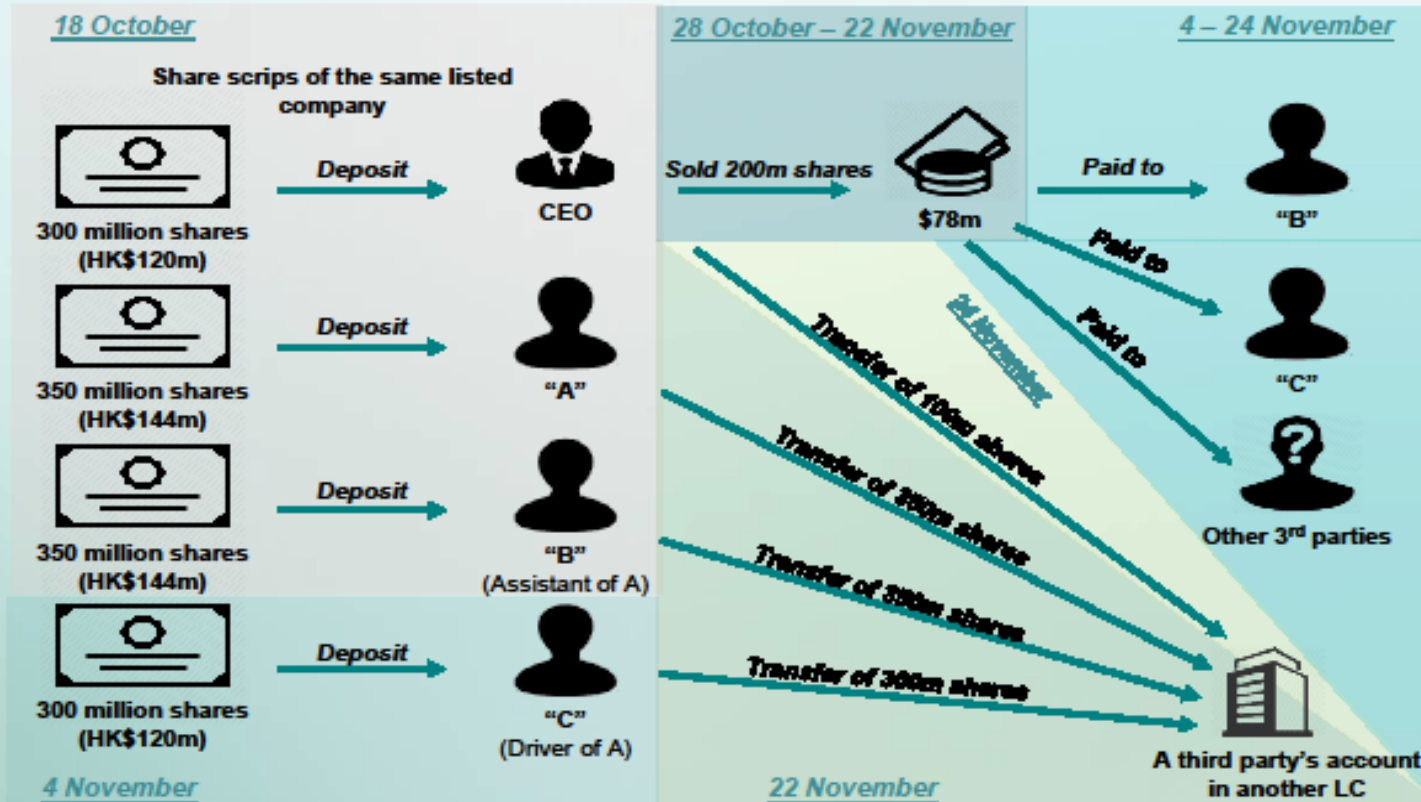


The SFC reprimanded the licensed firm and fined it HK\$4.5 million for its failure to conduct proper enquiries and scrutiny to mitigate the risks of money laundering and terrorist financing when processing third party fund transfers for clients.



Case study 7

– Using securities accounts as conduits of share or money transfers



The SFC reprimanded the licensed firm and fined it HK\$6 million over serious AML internal control deficiencies and other compliance failures. The SFC also banned the CEO of the licensed firm for 12 months and revoked the responsible officer status of the person responsible for overseeing the compliance function.



AML/CFT TYPOLOGIES

Red Flag Indicators

The Source of Funds is not consistent with the customers' profile

Using Business relationship for a single transaction or for only a very short period without a reasonable explanation

Unnecessary routing of funds or other assets from or to third parties through the accounts of other clients

Transfer of positions, funds or other property between customer accounts that do not appear to be commonly controlled or have an apparent relationship

Using the account only as a temporary repository for fund or a conduit for share or money transfers

Transaction, instruction or activity that involve apparently unnecessary complexity

Tactically structured transactions (e.g. execute transactions consistently below licensed firm's internal monitoring threshold) for circumventing screening

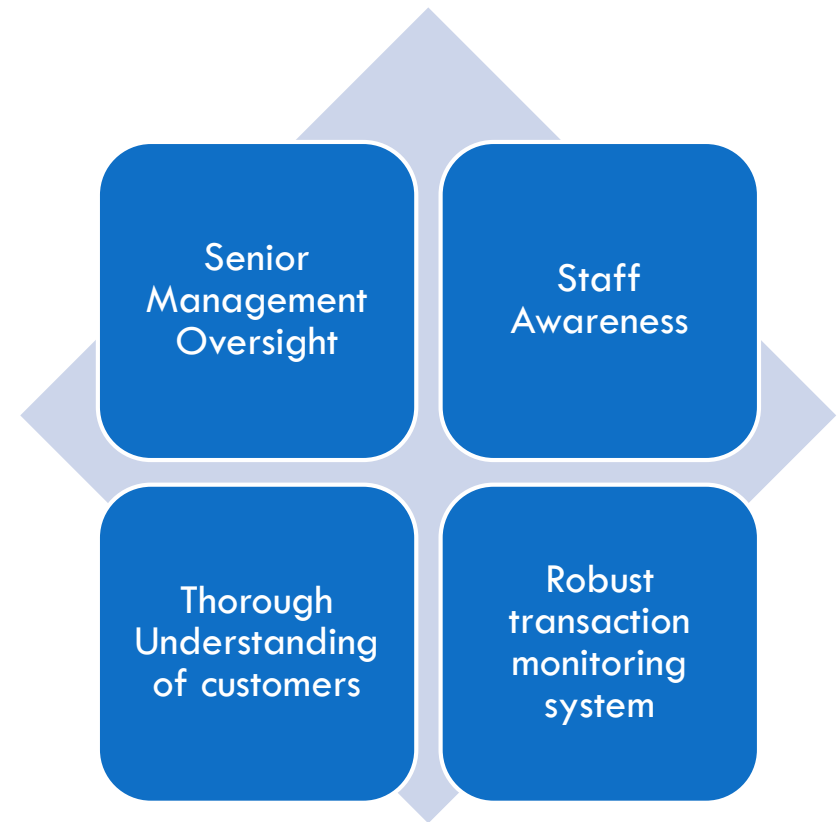
Off- Exchange share transactions not on competitive terms

Conducting extensive trading of a single stock in several accounts all of which are beneficially owned by the same person



AML/CFT TYPOLOGIES

Supplement the red flag indicators in AML
Guideline by advisory circulars and conducting outreach programs to raise industry awareness of current alerts/typologies





AML/CFT TYPOLOGIES

To maintain a clean, fair and credible capital market all stakeholders must be jointly responsible and accept that each one has a role to play in defending the market against those to seek to abuse it at the expense of other who make a honest living from it.





SUPERVISORY UPDATES

- Due Diligence Refresher Policy: Implications & Impact for Licensees
- Common Application Deficiencies
- Common Non-Compliant Areas & Remedies



Presenter: Ms. Sandra Duncombe
Manager, Supervision



SUPERVISORY UPDATES

DUE DILIGENCE REFRESHER POLICY

- ❖ Applicable to **ALL** Licensees and Registrants
 - Purpose of Policy
 - Policy Process
 - Requirements:
 - Updated passport, if expired
 - Proof of address
 - Personal Questionnaire with Attestation



SUPERVISORY UPDATES

DUE DILIGENCE REFRESHER POLICY

- ❖ Implications and impact for licensees/registrants
 - The implications are that licenses and registrants must:
 - Be diligent in ensuring that its employees documentation are up to date;
 - Ensure that registrant/licensee and its employees are compliant with the relevant laws.
 - Impact is expected to be minimal.



COMMON APPLICATION DEFICIENCIES

- ❖ **Common Deficiencies under the SIA:**
 - Individuals functioning in positions prior to registration
 - Individuals not meeting the educational qualifications and experience for position of registration

- ❖ **Common Deficiencies under the IFA:**
 - Incomplete submission of filings for investment funds licensed by the UIFIA - incomplete due diligence information on parties related
 - Custodian not appointed for an investment fund
 - Not providing information on the relevant service providers.



COMMON NON-COMPLIANT AREAS AND REMEDIES: SIA

Filing Obligations	Requirements
Submission of the: 1) Annual fees; 2) Annual Declarations; and 3) Annual Information Update Form	Annual renewals: 31 January 2018
Interim Financial Statements (Form 13)	30th day after the end of the first, second, third and fourth quarter of its financial year <ul style="list-style-type: none">- Request an extension- An extension request must be made within 7 days of the due date to avoid penalties.
Annual audited financial statements	120 days after end of financial year <ul style="list-style-type: none">- Request an extension or a waiver;- An extension request must be made within 7 days of the due date to avoid penalties.



COMMON NON-COMPLIANT AREAS AND REMEDIES: SIA

Notification Obligations	Requirements
Notify the Commission – employment of a representative	Regulation 47 – Form 11
Notify the Commission when a registrant has resigned	Regulation 48 – Form 12
Joint Licensees with CBoB	Regulation 46 - Security holders and transfers of securities Regulation 53 - Notice of change in information-after registration.



COMMON NON-COMPLIANT AREAS AND REMEDIES: IFA

Filing Obligations	Requirements
Submission of the: 1) Annual fees; 2) Annual Declarations; and 3) Annual Information Update Form	Annual Renewals: 31 January of each year
Submission of audited financials statements	<ul style="list-style-type: none">- 120 days after end of financial year- 180 days after end of financial year- Request an extension or a waiver An extension request must be made within 7 days of the due date to avoid penalties.
Submission of the Performance reports by SMART Funds (those whose holders of equity interest have unanimously waived their audits)	Relevant SMART fund Rule <ul style="list-style-type: none">- Every 6 months
E-Filing of Statistical Investment Fund Information	Section 51 <ul style="list-style-type: none">- 30 June- 31 December



COMMON NON-COMPLIANT AREAS AND REMEDIES: IFA

Notification Obligations	Requirements
Notification to the Commission prior to surrendering an investment fund license	Section 18 (1) Requirement of fund to notify the Commission in writing of its intent to surrender its license 14 days prior to surrendering
Notification to the Commission prior to terminating an Administration agreement	Section 21(1) Requirement of IFA to inform the Commission 30 days prior to termination of administration agreement
Appointment of a new Administrator after termination of agreement and notification to the Commission	Section 21 (2) Requirement to appoint a new administrator 7 days prior to termination and notify the Commission



RISK ANALYTICS & EXAMINATIONS UPDATES

- Risk Based Supervision
 - Impact on Licensees
 - Licensee Obligations

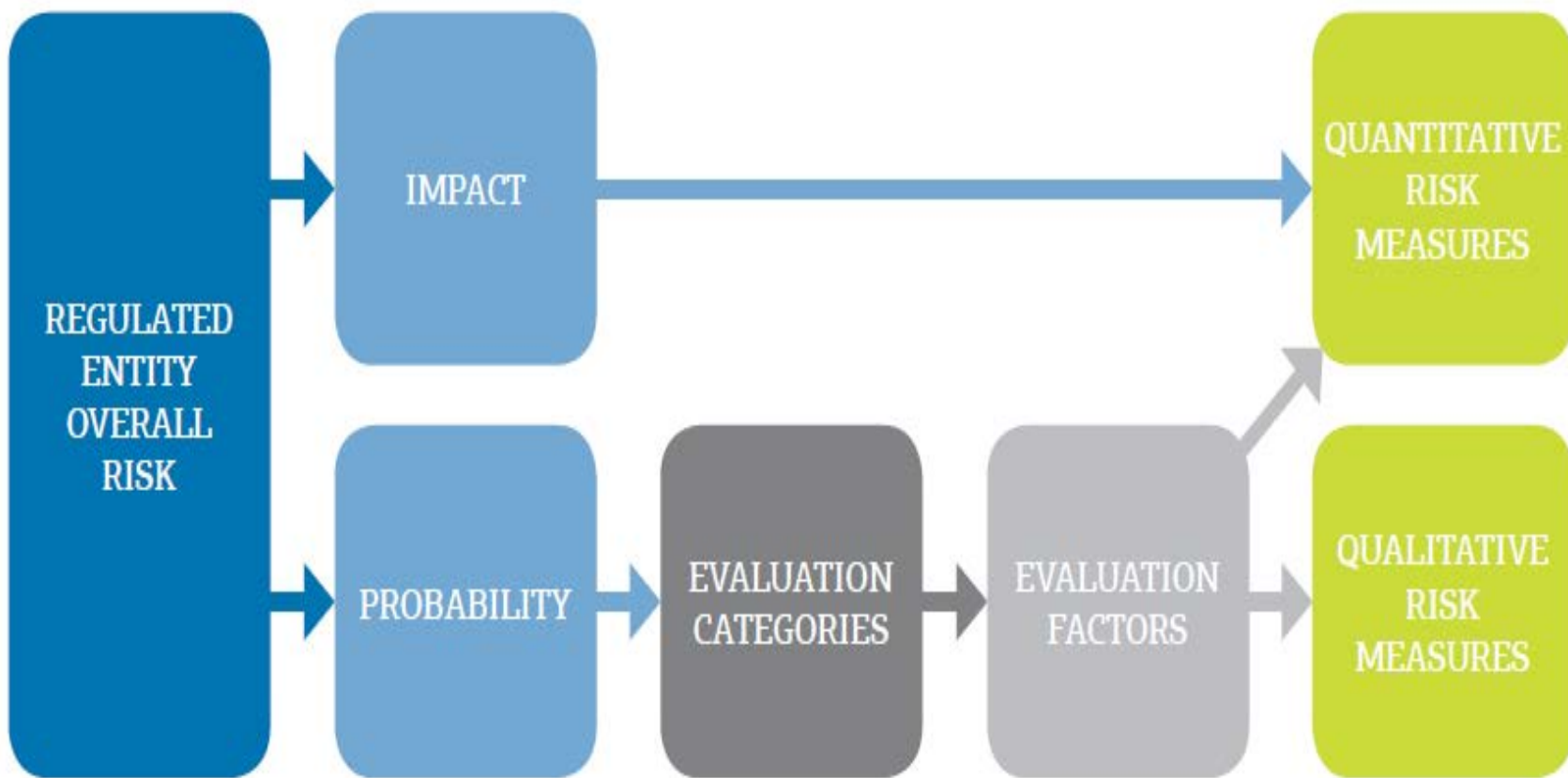


Presenter: Ms. Lesley Pearson
Senior Manager, Risk Analytics & Examinations



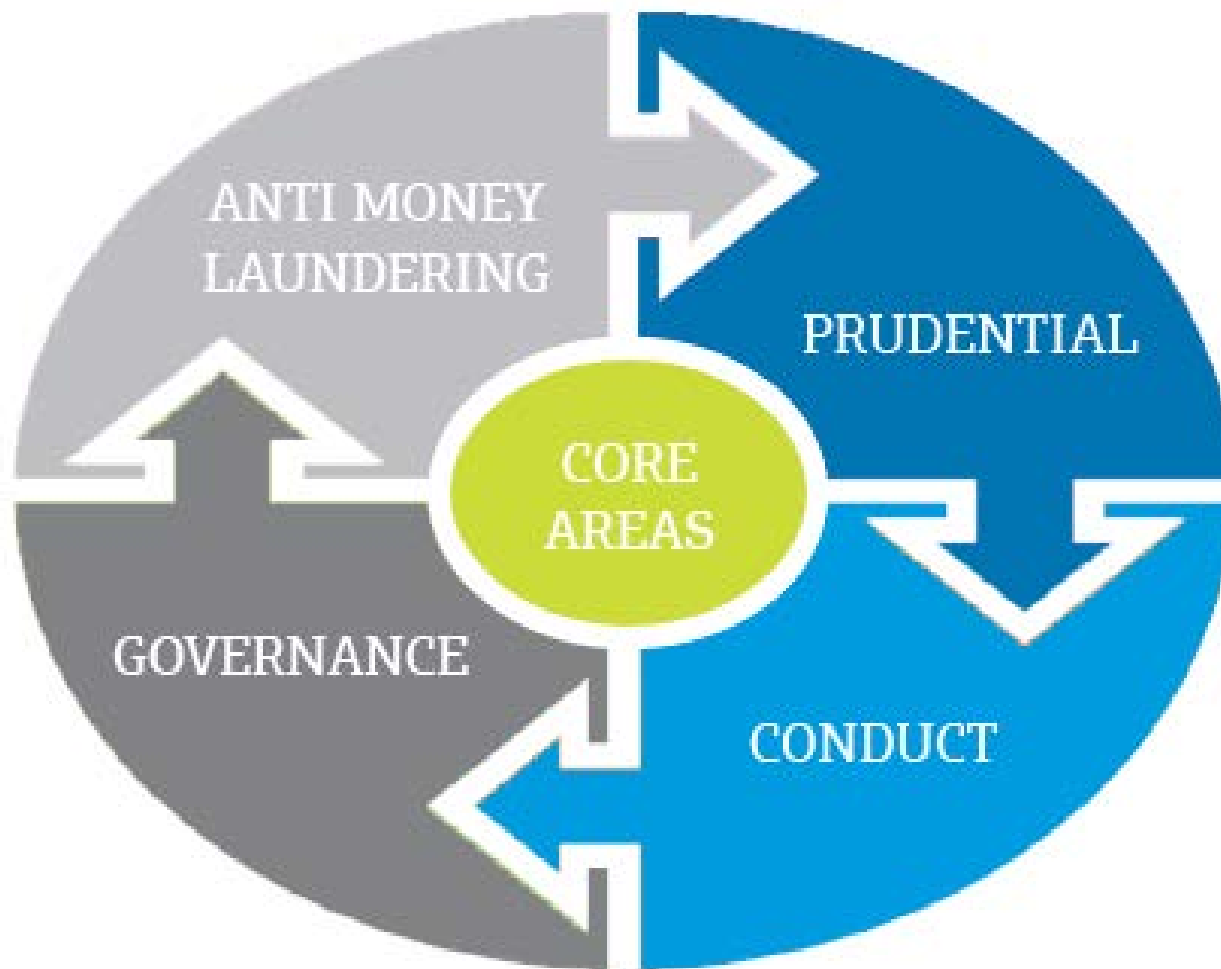
FUTURE OUTLOOK ON LICENSEES

- ❖ What is Risk Based Supervision?
- ❖ SCB Risk Based Framework
 - *Quantitative Risk Measures*
 - *Qualitative Risk Measures*



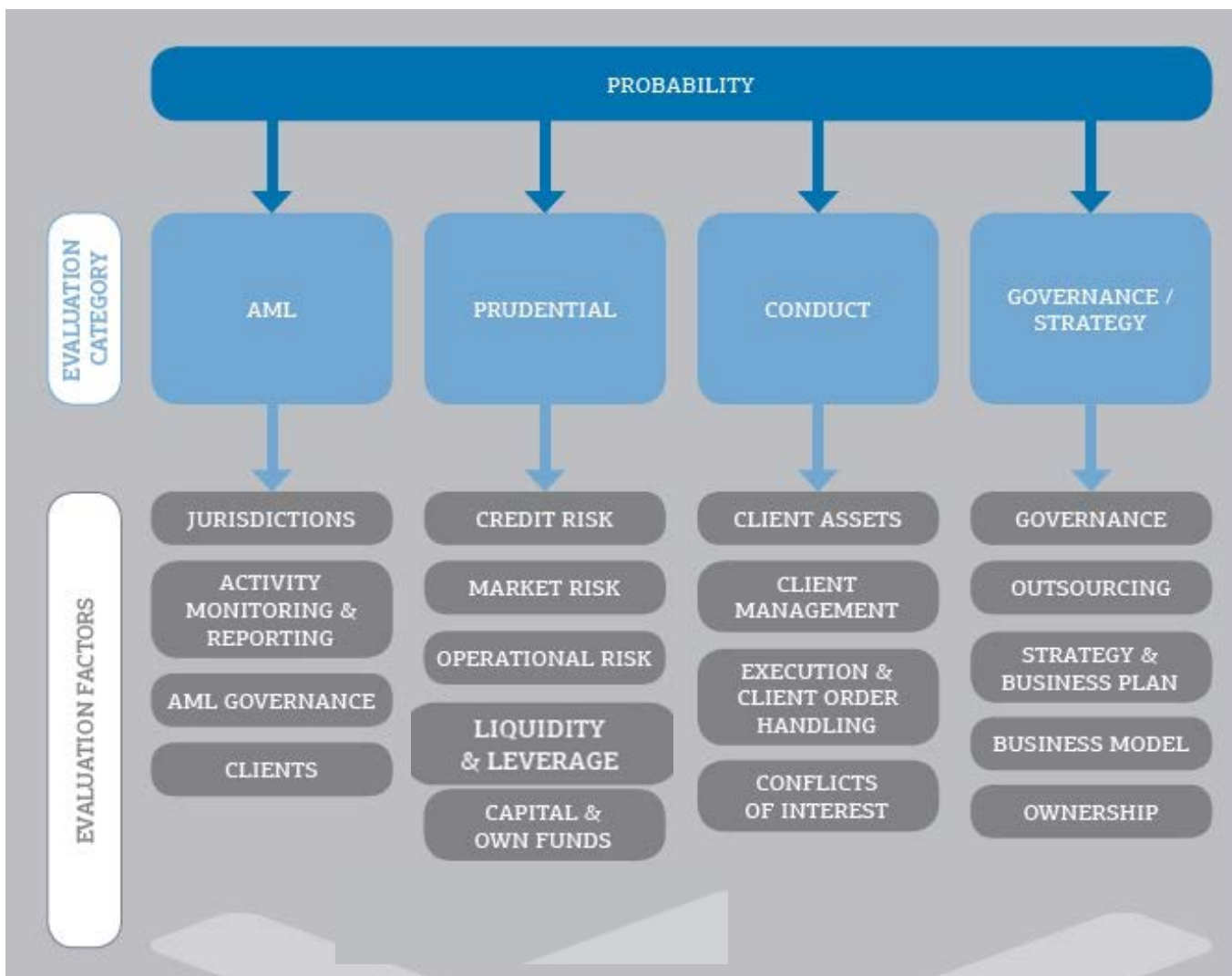


EVALUATION CATEGORIES FOR PROBABILITY





EVALUATION FACTORS





RBS IN PRACTICE





LICENSEE SELF RISK RATING

- ❖ *Overview of Section 5 of the FTRA, 2018*
- ❖ *Change in definition of “cash” transaction*



5. Conduct of risk assessment.

- (1) Every financial institution shall—
 - (a) take appropriate measures to identify, assess and understand its identified risks in relation to—
 - (i) its facility holders and the countries or jurisdictions of their origin;
 - (ii) the countries or jurisdictions of its operations; and
 - (iii) its products, services, transactions and delivery channels;
 - (b) develop and implement a comprehensive risk management system approved by the financial institution's senior management and commensurate with the scope of its activities, incorporating continuous identification, measurement, monitoring and controlling of identified risks;
 - (c) take appropriate measures to manage and mitigate those risks referred to in subsection (1)(a);
 - (d) take account of any risk assessment carried out at a national level and any regulatory guidance issued by its Supervisory Authority; and
 - (e) upon request, provide the Supervisory Authority with a copy of its risk assessment.



- (2) Every financial institution shall carry out a risk assessment —
- (a) prior to the launch of a new product or business practice;
 - (b) prior to the use of new or developing technologies;
 - (c) when there is a major event or development in the management and operation of the group,

to identify and assess the identified risks that may arise in relation to such products, business practices or technology for both new and pre-existing products and such assessment shall take into account —

- (i) the facility holder's geographic area, product, service, transaction and means of delivery risk factors, which shall be proportionate to the nature and size of the financial institution's business; and
- (ii) the outcome of any risk assessment carried out at a national level, and any regulatory guidance issued.



- (3) Every financial institution shall document in writing the outcome of a risk assessment and shall keep the same up to date and make it available to relevant competent authorities and regulatory bodies upon request.



“transaction” means —

- (a) a purchase, sale, loan, pledge, gift, transfer, delivery or other disposition, or the arrangement thereof, and includes but is not limited to —
- (b) any deposit, withdrawal, exchange or transfer of cash, whether in currency or by cheque, payment order, settlement or set off between clearing institutions or branch offices or other instrument or by electronic or other non-physical means;
- (c) the use of a safety deposit box or any other form of safe deposit;
- (d) entering into any fiduciary relationship;
- (e) any payment made or received in satisfaction, in whole or in part, of any contractual or other legal obligation;
- (f) any payment made in respect of a lottery, bet or other game of chance;
- (g) establishing or creating a legal person or legal arrangement; and
- (h) such other transaction as may be prescribed by the Minister by regulation;



ENFORCEMENT UPDATES

- Hearing Panel & New Process for Disciplinary Matters



Presenter: Mr. Gawaine Ward
Manager, Enforcement Department



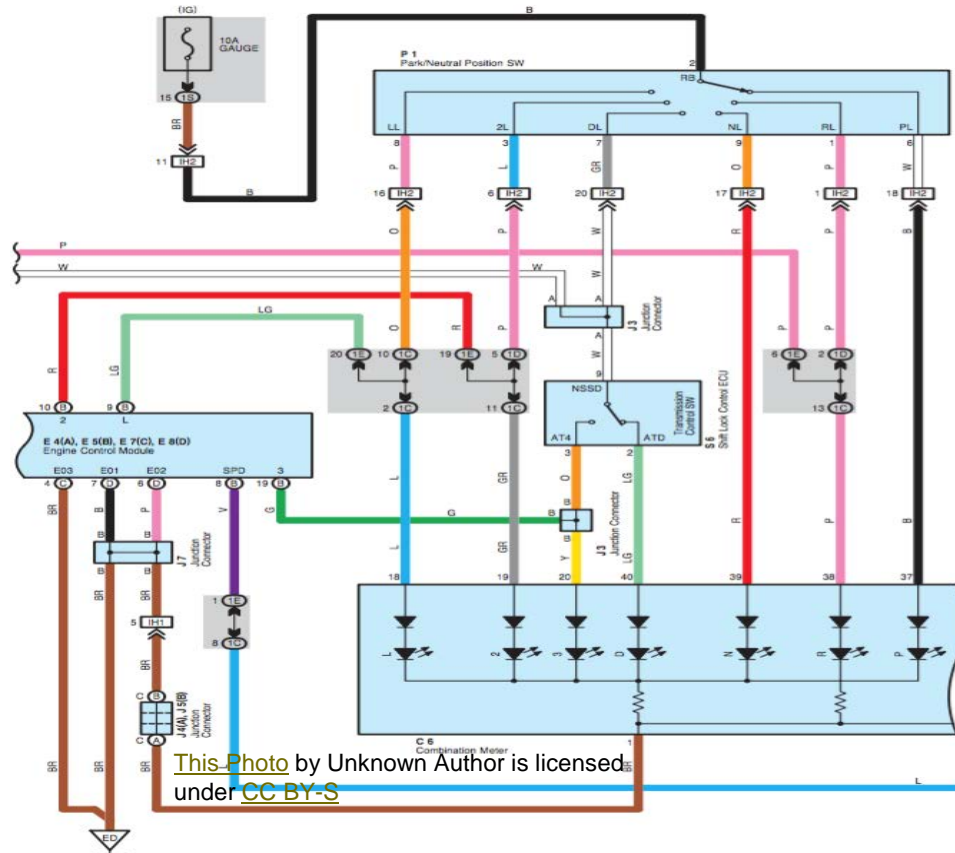
ENFORCEMENT PROCESS

❖ CURRENT DISCIPLINARY PROCESS:

- AUTOMATIC PENALTIES – Securities Industry Act 2011
 - HEARINGS
 - SETTLEMENT
- } Securities Industry (Disciplinary Proceedings) (Hearings & Settlements) Rules, 2017

AUTOMATIC PENALTIES

ECT and A/T Indicator





SECURITIES INDUSTRY ACT 2011

135. Administrative penalty.

- (2) Any person in breach of any provision of a securities law solely by reason of failing to file with or deliver to the Commission a document within the required time period shall be subject to an **automatic penalty** of up to \$1,000, or as prescribed, for every day from the day the document was required to be filed or delivered to the day the document was filed or delivered.



AUTOMATIC PENALTY PROCESS

Automatic
Penalty
imposed

IF:
Failure to
pay when
notified

THEN:
Conditions
imposed on
registration
sec. 132 SIA
(Compliance
order)
• penalty **must**
be paid by
given date.

Failure
to pay =
failure
to meet
condition

WHEN:
Registration
becomes
ineffective -
sec. 69(10) &
69(11)(c) SIA

THEN:
Registrant's
continued
operation =
unlicensed
operation -
sec. 74 SIA
(Crim. Off.)



HEARINGS

YouWait.com



[This Photo](#) by Unknown Author is licensed under [CC BY-NC-ND](#)



AUTHORITY – SI (AMENDMENT) 2016

133A. Administrative Action.

- The Commission may, where it appears that a person has breached a provision of a securities law or failed to comply with a requirement, directive or order given by the Commission -
 - (a) conduct investigations and regulatory hearings;
 - and
 - (b) impose one or more of the sanctions, remedies or other relief as may be prescribed in securities laws.



IMPOSE ORDERS - SIA 2011

133.

Orders in the
public interest.

- (1) If the Commission considers it in the public interest to do so, the Commission may, **upon a settlement with the person or after a hearing** –
- [*Make orders (a) – (s)...*]



IMPOSE PENALTIES - SIA 2011

135. Administrative penalty.

- (1) If the Commission considers it in the public interest to do so, the Commission may, **upon a settlement** or after a hearing, **order a person that has breached any provision of securities laws to pay the Commission an administrative penalty** of not more than \$300,000 for each contravention.



HEARINGS GENERALLY - SIA 2011

139. Hearings

- (1) Reasonable opportunity to be heard...
- (2) Subpoena powers...
- (3) Witness entitled to same privileges as if in court
- (4) committal for contempt if refusal to attend, give evidence or produce docs.
- (5) Public hearing
- (6) - (7) Counsel to represent & advise witness who may present evidence
- (8) Commission authority to admit any evidence considered relevant
- (9) Transcription of oral evidence
- (10) Final decision, written with facts & reasons to be published...



ENFORCEMENT PROCESS

Outline of S.I. (DPHS) Rules, 2017.

PART I – PRELIMINARY

PART II – PRELIMINARY COMPLAINTS AND INVESTIGATIVE PROCEDURES

PART III – HEARING PANEL

PART IV – FORMAL COMPLAINT AND ANSWER

PART V – PRE-HEARING CONFERENCES

PART VI – DISCLOSURE

PART VII – HEARINGS

DIVISION 1 – Oral Hearings

DIVISION 2 – Documentary Hearings

DIVISION 3 – General

PART VIII – SETTLEMENT PROCEDURES

PART IX – MISCELLANEOUS

SCHEDULE

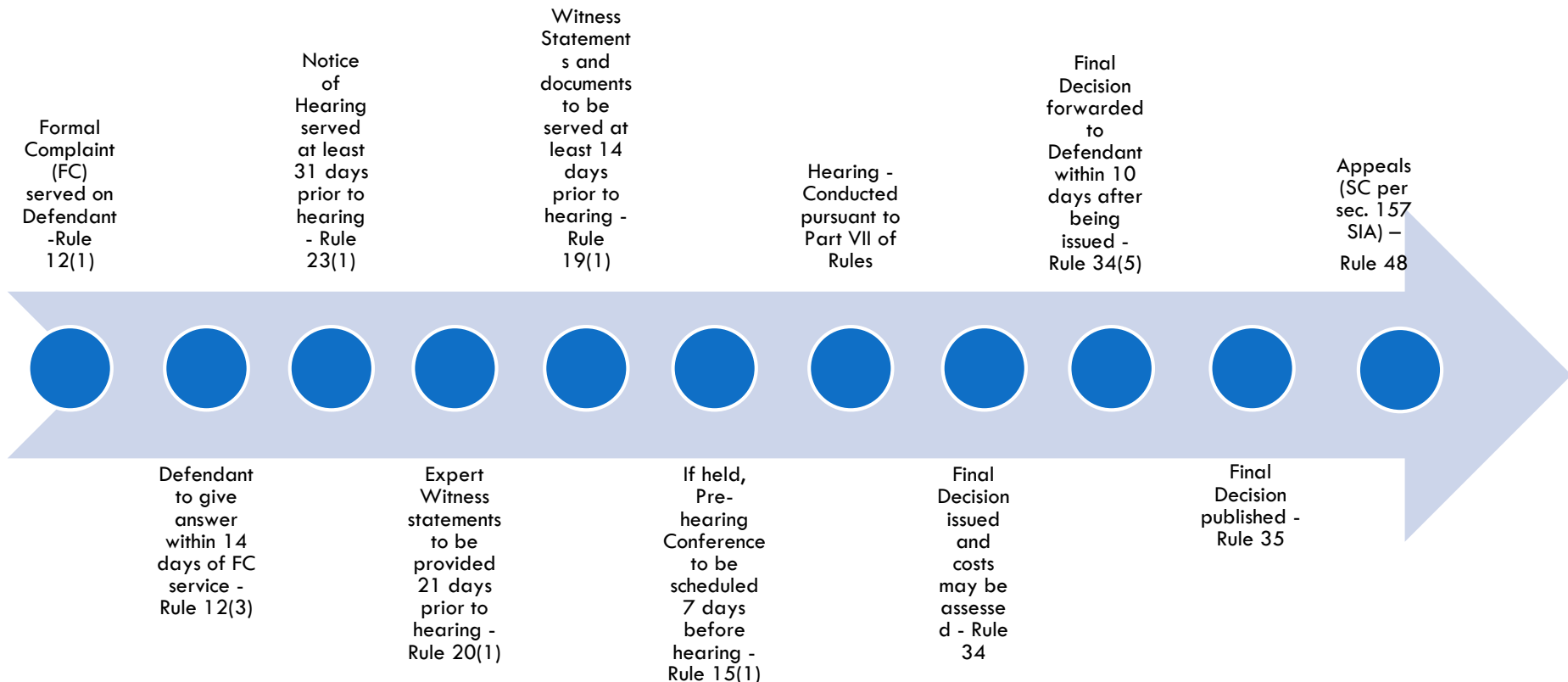
Form 1 – Formal Complaint (Rule 12)

Form 2 – Settlement Agreement (Rule 41)

Form 3 – Waiver (Rule 32)

ENFORCEMENT PROCESS

Hearing Process: Parts IV - VIII of S.I. (DPHS) Rules, 2017



SETTLEMENT





SETTLEMENT PROCESS GENERALLY

Part VIII of S.I. (DPHS) Rules, 2017

Any party may open talks to settle a matter (R. 41)

Settlement of a securities breach may be agreed at any time (R.41)

Settlement Committee approves settlements – final decisions (R. 42)

Talks are without prejudice – may not be used in a hearing, if talks fail (R. 43)

Always open discussions (timeline may be placed on period for discussions)

Settlement Agreement – incl. orders & penalties – formalised via document. (Form 2)



SETTLEMENT PROCESS GENERALLY

- ❖ Settlements **are** “cookie-cutter” documents in **form**, insofar as they must reflect certain matters, such as the facts which a Defendant must agree to;
- ❖ Settlements **are not** “cookie-cutter” documents in **substance**, insofar as each will reflect the circumstances peculiar to each case/matter.
- ❖ Settlements **are** final decisions and therefore must be published, meaning the Commission’s website.
- ❖ Settlements **are not** appealable (S.I. (Amendment) Act 2016, No. 34 of 2016)



RECENT SETTLEMENTS

❖ Montaque Capital Partners

- Principals agreed to settle and each penalised proportionately according to his role -
 - Director 1 – \$600,000.00
 - Director 2 – \$150,000.00

❖ Swiss America Securities

- Total penalty of \$120,000.00



ENFORCEMENT PROCESS GENERALLY

❖ ***Penalties and Appeals from Commission's final decisions:***

- **s. 133** – The Commission may impose orders and/or penalties after a settlement or a disciplinary hearing on persons found to have breached the Act – issue censure/reprimand, prohibiting person from acting and suspension or revocation and liquidation.
- **s. 135(1)** – Fine up to \$300,000 for each contravention of Act.
- **s. 137** – Person to pay costs of investigation, hearing & related costs.
- **s. 157(1)** – Persons directly affected by Commission's final decisions may appeal to the Supreme Court (***except for Settlements, per sec. 33(6) SIA, as amended by SI (Amendment) Act, 2016***).
- **s. 157(2)** – The decision appealed from takes immediate effect from the date of imposition, but the Commission or the court may grant a stay until the appeal is disposed of.



THANK YOU!





CONTACT INFORMATION

Securities Commission of The Bahamas

3rd Floor, Charlotte House
Shirley and Charlotte Streets
P.O. Box N-8347
Nassau, The Bahamas

Telephone	1-(242) 397-4100 (Nassau) 1-(242)-225-8171 (Family Island toll free) 1-(360)-450-0981 (International)
Fax	1-(242) 356-7530
Email	info@scb.gov.bs

