

Industry Seminar – 6 December 2013

FATF Standards and the Commission's Approach

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Introduction

In November 2012, the Commission launched a team known as the AML/CFT Unit, to whom responsibility for undertaking on-site visits was transferred from each of the supervisory and policy Divisions.

In July 2013, the unit's responsibilities were expanded to include the broader area of financial crime and related policy activities formerly undertaken by the Policy and International Affairs Division. This team is now responsible for the issuance of Guidance, Notes, Instructions and the management of the two AML/CFT Handbooks.

This same month, the AML/CFT Unit was merged with the Authorisations Unit, which was also launched in November 2012, to form the Financial Crime & Authorisations Division, also referred to as the FC&A Division. The financial crime team, formerly the AML/CFT unit, is currently led by David McCloskey. The authorisations Team is led by Manus Carvill.

Key International Developments

The Financial Action Task Force (FATF) is an independent intergovernmental body that develops and promotes policies to protect the global financial system against money laundering and terrorist financing.

The Bailiwick's current AML/CFT regulations, along with the Commission's Handbooks, are constructed to reflect the 40 Recommendations plus 9 Special Recommendations that were first issued by the FATF in 2003. And it was against these Recommendations that the Bailiwick was assessed in 2010 by the International Monetary Fund.

The FATF has introduced a new set of recommendations which supersede the 40+9 recommendations. Interpretive notes to accompany the recommendations have also been published.

The European Commission has released a draft of the proposed 4th European Union Directive, otherwise known as the 4th EU Directive. The proposed 4th EU Directive covers a number of measures relating to AML/CFT. Although the Bailiwick is not a member of the EU, there is value in examining the measures proposed by this Directive in order to better understand whether its AML/CFT requirements may impact upon cross border business activities.

Add to this the meeting of the G8 earlier this year and its call for greater transparency around beneficial ownership, and it's fair to say that global activity around financial crime regulation has been relatively high.

Review of 2012 FATF Recommendations

Our review of these developments, and in particular the 2012 FATF recommendations, thus far suggests that there are main 7 areas of interest:

1. NATIONAL RISK ASSESSMENT

The first 2012 FATF recommendation is that all countries should identify, assess, and understand the money laundering and terrorist financing risks for their jurisdiction. That assessment should then allow countries to identify in a more systematic manner, the financial crime risks specific to their jurisdiction. Measures and resources can then be more proportionately and effectively allocated and tailored to mitigate those risks.

The Bailiwick is currently taking steps to consider how it will go about planning and undertaking this assessment. It is currently anticipated that this work will commence sometime in early 2014 and will involve various agencies. The Commission will play a significant role in the assessment exercise, both in relation to the collation and assessment of relevant data concerning financial crime risks and in the identification of mitigation measures, which will likely include revisions of the Handbooks.

2. EFFECTIVENESS

The second area is in relation to the FATF's approach towards assessing compliance with its 2012 Recommendations. Countries will not only be assessed on the tools they have in place to mitigate financial crime risks, but also on whether those tools are actually implemented and work. In other words, the focus is on effectiveness.

This is not a novel concept for the entities we supervise here in the Bailiwick, when you consider that since 2007, Regulation 15 of the Criminal Justice Regulations has required that any controls, policies and procedures adopted to mitigate AML/CFT risks are regularly reviewed to ensure that they are, and remain, appropriate and effective.

3. BENEFICIAL OWNERSHIP

The third area is the level of transparency and information held concerning beneficial ownership. The definition of a beneficial owner remains unchanged, in relation to corporate entities, covering those who own or control 25% or more of a business. Revised clarification, however, has been provided as to how such persons should be identified.

The FATF Interpretive Notes explain what it will consider to constitute sufficient basic beneficial ownership information about legal persons, for the purpose of determining the parties who are the beneficial owners. Requirements concerning cooperation with authorities by corporate entities are also highlighted. One suggestion is that one or more

natural persons in a company be authorised and accountable to the authorities for providing all basic information concerning its beneficial ownership. This would also apply to registered and prescribed businesses.

In relation to trusts, the FATF Interpretive Notes suggest that countries should require trustees to obtain and hold adequate, accurate and current beneficial ownership information regarding a trust. This should include information on the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust.

Lastly in relation to beneficial ownership, the FATF Interpretive Notes recommend that countries should also require trustees to hold basic information on other regulated agents of, and service providers to, a trust structure. This would include investment advisors, managers, accountants, and tax advisors.

4. POLITICALLY EXPOSED PERSONS (PEPS)

The fourth area concerns the customer due diligence and monitoring requirements in relation to politically exposed persons, or PEPs. FATF Recommendation 12 suggests that financial institutions should be required to take reasonable measures to determine whether a customer or beneficial owner is a domestic PEP or a person who is or has been entrusted with a prominent function by an international organisation. In cases of a higher risk business relationship with such persons, the FATF recommends that financial institutions should apply enhanced due diligence measures as currently described in regulation 5 of the Criminal Justice Regulations.

5. EQUIVALENCY LISTS

The fifth area concerns the Appendix C lists in the Handbooks. The current draft version of the 4th EU Directive proposes the removal of the “white list” process (i.e. our Appendix C) on the basis that the customer due diligence regime is becoming more strongly risk-based and that the use of exemptions on the grounds of purely geographical factors is less relevant. This may prove an interesting proposal in terms of cross border business and the need for introducer arrangements. Significant debate is underway within the EU concerning this proposal and it is not as yet clear whether this proposal will remain in the final version of the Directive.

6. DATA PROTECTION

The sixth area concerns the interplay between data protection obligations in relation to record-keeping and the disclosure obligations in AML/CFT legislation. It has been suggested that clarification be given to financial institutions by regulators concerning the interaction between these requirements. The current version of the proposed 4th EU Directive, for example, suggests a specific requirement for personal data to be deleted after the mandatory 5 year period for which customer due diligence records are kept after the cessation of a relationship.

7. WIRE TRANSFERS

The seventh and final area concerns wire transfers. Recommendation 16 suggests that financial institutions include information about the identity of the originator and beneficiary on wire transfers and related messages and that this information remain with the wire transfer or related message throughout the payment chain.

Information on both the originator and beneficiary should be available immediately to both the ordering intermediary and benefitting financial institutions to facilitate the identification and reporting of suspicious transactions.

These recommendations also include a requirement to ensure that businesses have effective risk-based policies & procedures for determining when to execute, reject or suspend a wire transfer and appropriate follow-up action.

The draft 4th EU Directive also proposes that these recommendations should also apply to payment service providers so that they are required to verify the identities of beneficiaries for payments originating outside the EU for amounts over €1,000. Credit or debit cards, mobile phone originating payments along with other electronic devices will be covered by these requirements if they are used to transfer funds.

CURRENT STATE OF INTERNATIONAL DEVELOPMENTS

So, after all of that, what is the current state of play? Well, while the 2012 FATF recommendations have been published and are now in effect, a number of countries are proceeding with their review work in this area. It is anticipated that the 4th EU Directive may be introduced in 2015. A number of countries, including the UK, already anticipate working on a re-draft of their anti-money laundering legislation, later in 2014.

FUTURE DEVELOPMENTS & ACTIVITIES FOR 2014

Work has already been underway within the FC&A Division and has been for the last several months in reviewing the 2012 FATF recommendations. Analysis of the areas summarised above has been undertaken against our own current requirements in the Handbooks and Criminal Justice Regulations. An assessment of the Commission's historical approach towards the regulation of financial crime is also underway, with a view to making changes that will allow us to be a more effective regulator in the area of financial crime.

The FC&A Division has started to develop its program through which to deliver both policy and educational activities. This has included the expansion of the AML/CFT enquiries program so that periodic publication of frequently asked questions which would appear to be of use to a wider community of regulated entities, appear on our webpage.

A number of separate project streams are currently underway, designed to improve upon the information we provide and make available to industry. These work streams include the development of guidance concerning sanctions, the application of the Handbook requirements to both personal fiduciary licensees and the legal profession.

Industry-specific sessions on financial crime risks have been held. These sessions included a review of the trends, both positive and areas where improvements are required, as observed from on-site visits undertaken in the last 12 months. We are planning to hold further education and awareness sessions for the registered business sector.

In 2014, our on-site visit program will comprise of both assessments of the appropriateness and effectiveness of AML/CFT systems and controls and more thematic risk-based reviews.

We will be using our webpage and email correspondence in order to deliver notices, instructions and guidance. Licensees are encouraged to ensure that a review of our website is a part of their ongoing monitoring activities and that they have provided the Commission with an accurate and up to date email address to ensure that they receive alerts regarding new Notices, Guidance or Instructions.

Some of you will be aware that the Bailiwick is to be assessed by Moneyval in the autumn of 2014. Given the relatively new nature of the 2012 FATF recommendations, it has been agreed with Moneyval that this assessment will be based upon the Bailiwick's compliance with the 2003 FATF recommendations.

Finally, there is the Handbooks project, which will involve the review and revision of these tools with a view to making them more effective and web-friendly. This project will be undertaken by working in consultation with members of industry here in the Bailiwick and our colleagues in the Isle of Man and Jersey.