Nevis Financial Services
Regulation and Supervision Department

NEWSLETTER

Assessing Risk in Business Relationships

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Applying Risk in business relationships

Regulated entities should assess the risk of doing business both prior to and throughout the duration of every business relationship. Assessing risk should not be a 'one-size fit all' operation but each regulated entity should incorporate most of the following factors when assessing risk to their company. Some factors to be considered are:

* Geographical origin of verification subjects
* Nature of business
* Type of product IBC, LLC, Trust, Foundation
* Asset Protection services
* Customer type e.g. PEPs
* Whether there is a form of delegated authority in place (e.g. power of attorney)
* Whether the applicant's name is currently listed on the OFAC List or similar lists of that nature
* Suspicion or knowledge of money laundering or other crimes including financing of terrorist activities

This list is by no means exhaustive as each business relationship should be monitored regularly and efficiently for risk. Based on the assessment of the applicant and the required financial services, the regulated business must decide whether or not to accept the business relationship or to continue with it.

In reference to the Guidance Notes, a relevant person must be able to demonstrate that it has collected relevant relationship information in relation to:

Lower and standard risk - Taking reasonable measures to establish source of funds for each applicant and when third party funding is involved, making further enquiries as to the relationship between the person providing the funds and the applicant.

Higher risk - Taking reasonable measures to establish a customer's source of wealth. Considering whether it is appropriate to take measures to verify source of funds and wealth.

One effective way to shoulder risk is to practice enhanced customer due diligence.

The AMLR 2011 5(2) states that a relevant person shall apply the following measures on a risk-sensitive basis:

(a) enhanced customer due diligence procedures where regulation 4(1) (a) to (d) apply; and

(b) enhanced customer due diligence procedures in any other situation which by its nature can present a higher risk of money laundering.

Failure to apply risk in business relationships puts not only that regulated entity at risk but the jurisdiction as a whole. As a result the relevant person who acts in contravention of this sub-regulation commits an offence and is liable on conviction to a fine of One Hundred and Fifty Thousand Dollars.

Assessing Risk in business relations

When assessing risk, regulated entities should consider all the relevant risk factors before determining what is the level of overall risk and the appropriate level of mitigation to be applied. Regulated entities may differentiate the extent of measures, depending on the type and level of risk for the various risk factors (e.g. in a particular situation, an institution may apply normal CDD for customer acceptance measures, but enhanced CDD for ongoing monitoring, or vice versa).

Regulated entities should be required to take appropriate steps to identify and assess their money laundering and terrorist financing risks for customers, countries or geographic areas, products, services, transactions or delivery channels. They should document those assessments in order to be able to demonstrate their basis, keep these assessments up to date, and have appropriate mechanisms to provide risk assessment information to competent authorities and Self Regulated Bodies (SRBs).

Risk management and mitigation

Regulated entities should be required to have policies, controls and procedures that enable them to manage and mitigate effectively the risks that have been identified (either by the country or by the regulated entity). They should be required to monitor the implementation of those controls and to enhance them, if necessary. The policies, controls and procedures should be approved by senior management, and the measures taken to manage and mitigate the risks (whether higher or lower) should be consistent with national requirements and with guidance from competent authorities and SRBs.

Risk of Exploitation to Service Providers

Due to the fact that management and administration of investment products are not generally cash based, the sector is probably less at risk from placement of criminal proceeds than is much of the banking sector. Most payments are made by way of cheque or transfer from another institution and it can therefore be 'assumed' that in a case of laundering, placement has already been achieved. Nevertheless, the purchase of investments for cash is not unknown, and therefore the risk of investment business being used at the placement stage cannot be ignored. Payment in cash will therefore need further investigation, particularly where it cannot be supported by evidence of a legitimate cash-based business as the source of funds.

Investment businesses are likely to be at particular risk to the layering stage of laundering. The liquidity of investment products under management is attractive to launderers since it allows them quickly and easily to move the criminal proceeds from one product to another, mixing them with lawful proceeds and facilitating integration.

Investment business is also at risk to the integration stage in view of: (1) the easy opportunity to liquidate investment portfolios both lawful and criminal proceeds, while concealing the nature and origins of the latter (2) the wide variety of available investments (3) the ease of transfer between investment products.

Source

- Financial Services (Implementation of Industry Standards) Regulations 2011 (FSRIIS) (Pages 15, 16, 17, 40, 41)
- AMLR 2011 5 (2)
- FATF Recommendation 1

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