



# AML/CFT ON-SITE EXAMINATION PROGRAMME - PART II



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## In this Issue

### **AML/CFT On-site Examination Programme, Part II**

- ◆ Areas of Substandard Performance, continued
- ◆ FATCA Update
- ◆ International Banking update
- ◆ Upcoming Events

## **AREAS OF SUBSTANDARD PERFORMANCE (continued from last month's issue)**

### **TRAINING**

#### **Failure to maintain a training program**

Fifty-five percent (55%) of the regulated entities were found to be compliant in maintaining a training program to test the effectiveness of their employees' AML/CFT awareness and maintained a training register as evidence of that training. Pursuant to paragraph 133 of the FSISR—"Training Programmes", regulated entities should decide for itself how to meet and train members of its key staff in accordance with its particular commercial requirements and how such training is used effectively.

### **COMPLIANCE OFFICERS**

#### **Failure to comply with the appointment and approval of a Compliance Officer**

Fifty percent (50%) of regulated entities had their Compliance Officers approved as required under the Anti-Money Laundering Regulations. The importance of the appointment of competent senior officers as Compliance Officers cannot be overstated. Compliance Officers are the gate keepers of regulated entities and they are required to put in place systems and controls to ensure that the regulated entities' employees and agents comply with AML/CFT laws as well as their own internal policies. Compliance Officers that have been appointed by regulated entities must be first approved by the Financial Services Regulatory Commission. An application for approval must be submitted to the Nevis Branch with supporting documents as soon as it is reasonably practicable and no later than fourteen (14) days after the appointment.

### **CUSTOMER DUE DILIGENCE INFORMATION**

#### **Expired IDs and insufficient Due Diligence documents on files**

Although regulated entities complied in part with this requirement, examiners noted that in fifty five percent (55%) of the cases, identification documents were expired and were not notarized or certified. Additionally, regulated entities should also ensure that requisite documents such as Proof of Address, Professional and Bank References are present in

clients' files, which are outlined in paragraph 174 of the FSISR.

### **AML/CFT POLICIES AND PROCEDURES MANUAL**

#### **Lack of AML/CFT Compliance Manual/Manual to be amended**

As an essential part of training, key staff members should receive a copy of the regulated entities' current instruction manual relating to entry, verification and records based on the provisions contained in paragraphs 131 to 134 of the FSISR. Examiners found that sixty three percent (63%) of the regulated entities either did not have an AML/CFT Compliance Manual in place or that their manuals required amendments.

### **LACK OF PROFESSIONAL SERVICE CLIENTS (PSC) AGREEMENTS**

#### **Failure to execute a written agreement with PSCs/Intermediaries**

Pursuant to paragraph 173 of the FSISR, a fiduciary shall execute a written agreement with the PSC specifying the fiduciary's obligations under the Federation of St. Kitts and Nevis' Anti-Money Laundering Regulations 2011, Anti-Terrorism (Prevention of Terrorist Financing) Regulations 2011 and all other relevant legislation. Examiners revealed that fifty-five percent (55%) of the regulated entities did not conclude PSC agreements.

### **AUDITED FINANCIAL STATEMENTS**

#### **Lack of Submission of Audited Financial Statements and Certificates of Compliance**

Examiners found that only thirty-six percent (36%) of the regulated entities were compliant in submitting audited financial statements. It is recommended that the remaining entities seek to ensure adherence with their statutory obligations by filing audited financial statements on an annual basis within three months after its financial year ends. The FSRC is authorized to examine or cause an examination to be made of each regulated entity whenever in its judgment such examination is necessary or expedient in order to determine that the regulated entity is in a sound financial condition. Additionally, a Certificate of Compliance with anti-money laundering regulations should accompany the audited financial statements as per the FSISR.

### **INTERNAL AUDIT**

#### **Lack of An Internal Audit Function**

Eighty-one percent (81%) of the regulated entities were found lacking in the independent internal audit testing. After putting in place the required compliance program, it is essential to undergo the services of an independent body/individual to test the effectiveness of minimizing ML/TF risk to the regulated entity. This aids in the general improvement of operations.

### **⚡ RISK PROFILING OF CUSTOMERS**

#### **Failure to prepare and record customer risk assessments**

Examiners found that a minimal 7% of the regulated entities prepared and recorded customer risk assessments and documented the risk that the business relationships may pose, as stipulated by FSISR (paragraphs 34-37).

Prior to the establishment of a business relationship, a regulated entity shall assess the risk of the customer, the required financial services product and any other relevant factors to determine whether or not to accept that business. Decisions taken on establishing relationships with higher risk customers should be taken by senior management and/or the compliance officer and should be subject to enhanced monitoring. For more information on conducting risk assessments, kindly review previous newsletters on the topic namely:- April 2013, July 2013 and November 2014.



### **⚡ SUSPICIOUS TRANSACTION REPORTS AND ENQUIRIES**

#### **Failure to implement Suspicious Transaction Reports (STRs) and Registers of Enquiries**

Examiners found that sixty-four percent (64%) of the regulated entities were not compliant in either the implementation of a suspicious transaction report system or the establishment of a Register of Enquiries. Both Registers should outline the details of all suspicious activities noted by the regulated entity including the activities reported to the FIU as well as those that were not reported.

### **⚡ BENEFICIAL OWNERSHIP INFORMATION—TRUST FILES**

#### **Files lacked the required documentation of settlor, beneficiary, trustee, etc.**

Examiners found that only 18% of the regulated entities were compliant in providing sufficient documentation for trust files. Entities should ensure that the relevant identification, proof of address, and other supporting documents are placed on file for beneficiaries, settlors and trustees.

### **⚡ UNDERSTANDING COMPLIANCE FUNCTION**

#### **Lack of Understanding of Compliance Function & Entity's obligations under the various AML/CFT legislation**

Examiners found that 9% of the regulated entities lacked the understanding of the compliance function and obligations under the various AML/CFT legislation. Boards of Directors and Senior Management of registered entities are encouraged to familiarize themselves and their staff with the applicable AML/CFT legislation to strengthen their compliance function and awareness whilst in operation.

*Please be informed that a similar exercise will be conducted subsequent to the On-site Examinations performed during the period January - December 2015. In the interim, **ALL** regulated entities are encouraged to address the various issues outlined above in an effort to improve the AML/CFT regulatory framework within our jurisdiction.*

### **FATCA UPDATE**

On September 30, 2015, the Government of St. Kitts and Nevis issued a Press Release stating that Financial Institutions that are required to comply with the United States of America's (USA's) Foreign Account Tax Compliance Act (FATCA) are asked to note that the US Treasury Department has issued Notice 2015-66 which provides for some relief from the deadline of 30 September 2015 for exchange of information by Foreign Governments that have a signed Inter-Governmental Agreement (IGA) or have reached an agreement in substance with the USA. The date for transmitting the information has been extended to 30 September, 2016.

Financial institutions are also asked to note that the Foreign Account Tax Compliance (United States of America) (Implementation and Enforcement of Inter-Governmental Agreement) Act was passed by the National Assembly on 15 September, 2015 and is in the process of being gazetted. The enactment of this legislation will facilitate compliance by Financial Institutions with the reporting requirements of FATCA. Moreover, the legislation provides for the confidentiality of the information being transmitted and the restriction in the use of such information. Please contact the Office of the Competent Authority at (869) 465-8485 or [fatca@sknird.com](mailto:fatca@sknird.com) should you have any queries.

### **INTERNATIONAL BANKING UPDATE**

The Nevis International Banking Regulations 2015 were recently signed by the Minister of Finance, Nevis Island Administration and are in the process of being published in the *Official Gazette*. They will also be posted on [www.nevisfsr.com](http://www.nevisfsr.com) shortly.

### **UPCOMING EVENTS AND TRAINING**

- ◆ **Caribbean Regional Compliance Association Conference: November 5 - 6, 2015 - Nassau, Bahamas;**
- ◆ **4th Annual FATCA and Global Tax Compliance Forum: November 5-6, 2015 - New York City, USA;**
- ◆ **CFATF Working Groups & Plenary Meeting: November 23-27, 2015 - Port of Spain, Trinidad and Tobago.**

