

# Anti-Money Laundering

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# Overview

- Eight steps to compliance
- To include:
- People of Significant Control
- Risk Assessments
- The EU 4<sup>th</sup> Money Laundering Directive “4MLD”
- First UK National Risk Assessment for ML and TF



# EIGHT STEPS TO COMPLIANCE (1)

## Be Supervised

- (4MLD) European Supervisory Authorities to issue guidance by 26 June 2017
- Characteristics of a Risk Based Approach &
- Steps to be taken when supervising on a RBA
- Specific measures will be laid down



# EIGHT STEPS TO COMPLIANCE (1)

## Be Supervised – Supervisors' Sanctions (4MLD)

- Ensure firms (yes your firm) can be held liable for breaches of UK AML legislation
- Sanctions should be effective, proportionate and dissuasive
- Potential fine up to a maximum of €1,000,000
- For breaches that are serious, repeated, systematic or combination thereof



# EIGHT STEPS TO COMPLIANCE (1)

## Be Supervised

- Existing Supervisory Structure Is Being Questioned
- Can AML Supervision Be Effective by a Self-Regulating Body?
- National Risk Assessment (October 2015) Placed Accountancy Sector as the 2<sup>nd</sup> Highest Risk Sector in the UK
- There is a Responsibility on Members of the Sector to Demonstrate Both Compliance and That Self-Regulation Can Work



# EIGHT STEPS TO COMPLIANCE (1)

## Be Supervised – Enforcement Examples

- **Record Keeping** - Caesars Entertainment Ltd fined £845k by UK Gambling Commission
- **Appoint MLRO** – OFT fined three estate agents total of £246,665 for “significant and widespread” AML lapses
- **Compliance Manual** – EFG Private Bank Ltd fined £4.2m by FCA failure to establish and maintain effective AML controls
- **Training** – Habib Bank AG Zurich fined £525k by FSA as failed to arrange training to address AML shortcomings



# EIGHT STEPS TO COMPLIANCE (1)

## Be Supervised – Enforcement Examples

- **CDD** - Standard Bank Plc fined £7.6m by FCA
- **Risk Based Approach** – Coutts & Company fined £8.75m by FCA for not adequately assessing level of ML risks
- **Reporting** – An MLRO has been banned from working in the financial sector by Jersey Financial Services Commission for failing to report suspicions



# The EU 4<sup>th</sup> Directive

**The 4<sup>th</sup> Directive came into force on 26 June 2015**

- Key Changes:-
  - Risk based approach
  - Extended definition of PEP
  - Lower exemptions for one-off transactions
  - Beneficial owners





# The EU 4<sup>th</sup> Directive

**The 4<sup>th</sup> Directive came into force on 26 June 2015**

- Key Changes:-
  - Must be enacted in Members States by 26 June 2017
  - Replace 3<sup>rd</sup> EU AML directive
  - EU to issue guidance to AML supervisors



# EIGHT STEPS TO COMPLIANCE (2)

## Record Keeping

- “if it’s not written down it didn’t happen”
- Be compliant and **be seen** to be compliant
- Your records are your friends and your defence!
- Manual or electronically
- Records – what has been done and why?



# EIGHT STEPS TO COMPLIANCE (2)

## **Record Keeping – Demonstrate That:**

- Procedures, Controls and Policies are in place
- Client Due Diligence is undertaken for every client
- Client Due Diligence is kept up to date
- Risk Assessments are performed for every client
- Risk Assessments are on-going



# EIGHT STEPS TO COMPLIANCE (2)

## **Record Keeping – Demonstrate That:**

- Records of communication with clients regarding suspicious activity
- Training is being undertaken, must be recorded
- Who the MLRO is and contact details
- Records of internal and external SAR reports



# EIGHT STEPS TO COMPLIANCE (2)

## Record Keeping – Demonstrate To?

- AML supervisory body
- Law enforcement authorities e.g.
  - Police
  - National Crime Agency
  - Trading Standards



# EIGHT STEPS TO COMPLIANCE (2)

## Record Keeping

- Must keep for 5 year after end of business relationship
- Or from date of one off transaction
- 4MLD introduces requirement to destroy personal data after 5 years
- Must comply with Data Protection Act 1998
- Dis-engagement letter to record end of relationship



# EIGHT STEPS TO COMPLIANCE (3)

## Appoint MLRO

- Money Laundering Reporting Officer
- Senior position
- Appoint DMLRO
- Responsible for Internal AML Policies and Procedures



# EIGHT STEPS TO COMPLIANCE (3)

## Appoint an MLRO

- Keep a record of MLRO appointed; with contact details
- Is Nominated Officer for POCA 2002 purposes
- Referred to as Compliance Officer (4MLD)
- Receive & Review Internal SAR reports
- Submit External SAR reports





# EIGHT STEPS TO COMPLIANCE (4)

## Compliance Manual

- “Business as usual” – integrated within day to day activities
- AAT AML Toolkit
- Includes firm’s policy statement (1.3 toolkit)
- Reference tool
- Internal Policies, Controls and Procedures (4MLD)



# EIGHT STEPS TO COMPLIANCE (4)

## Compliance Manual

- Employee Screening? (4MLD)
- Internal Policies, Controls and Procedures (4MLD)
- Proportionate to nature and size of obliged entities (your firm is an obliged entity)
- Client on-boarding (taking on a new client) procedures



# EIGHT STEPS TO COMPLIANCE (5)

## Training

- ‘Relevant employees’ - (section 4.2 of AAT Toolkit)
- Annually - (section 4.3 of AAT Toolkit)
- Technical Training
- Training in firm’s own AML policies, control and procedures



# EIGHT STEPS TO COMPLIANCE (5)

## Training

- Need to train staff – probably all staff
- Need to consider quasi-employees – subcontract, outsourced work



# EIGHT STEPS TO COMPLIANCE (6)

## Customer Due Diligence

- Identify the Customer and Verify the Customer ID
- Identify Beneficial Owner(s)
- Purpose and Intended Nature of Business Relationship
- Conducting Ongoing Monitoring



# EIGHT STEPS TO COMPLIANCE (6)

## Identify & Verify clients

- Part of CDD - (part 2, section 2.1 onwards in AAT Toolkit)
- Manual or electronic copies
- [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/503927/gov\\_uk\\_guide\\_-\\_including\\_impostors\\_270216.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503927/gov_uk_guide_-_including_impostors_270216.pdf)



# EIGHT STEPS TO COMPLIANCE (6)

## Identify & Verify clients - Customer Not Present

- Adequate measures to compensate for higher risk
- Certified copy documents
- <https://www.gov.uk/certifying-a-document>
- Skype call
- Mitigate impersonation risk



# BENEFICIAL OWNER

## Establishing a relationship

- Details of the client's business activity
- Understand the source and origin of the funds

## Beneficial Owners

- Understand the structure of the business





# BENEFICIAL OWNER

## Corporate bodies

- Individual who owns or controls more than 25% of shares or voting rights
- Identify the beneficial owner(s) and control structure
- Other person on significant influence

## Partnerships

- Individual who controls/entitled to more than 25% of the capital or profits

## Charities

- Usually trustees



# BENEFICIAL OWNER

## Trusts

- Individual who is entitled to a specified interest in at least 25% of the capital or trust controller

## Estates of deceased persons

- Executor or administrator of the estate



# BENEFICIAL OWNER - PEP

## Politically Exposed Person

- PEPs will be extended to include domestic PEPs
- Article 3 4MLD – definition of PEP
- High risk client
- Senior management approval
- Establish source of wealth and source of funds
- Enhance ongoing monitoring



# Small Business, Enterprise and Employment Act

## People of Significant Control

- Companies and SE's to keep PSC register from 6 April 2016
- Companies to send PSC info to CH with the confirmation statement (replaces Annual Return) from 30 June 2016 onwards
- Further guidance expected soon



# EIGHT STEPS TO COMPLIANCE (7)

## **Risk based approach**

- Understand risk client poses
- Obtain information on client
- Use manual or electronic forms
  - (section 1.4 in AAT Toolkit)
- Existing clients – separate list



# UK National Risk Assessment 2015

## NRA

- For Money Laundering and Terrorist Financing
- First one in the UK
- October 2015
- NRA is an obligation of FATF
- Issued by HMT and Home Office



# UK National Risk Assessment 2015

## NRA

- ASP's 2<sup>nd</sup> highest risk area
- 2<sup>nd</sup> to Banks
- 23,000 businesses in sector
- £22bn combined annual turnover



# UK National Risk Assessment 2015

## **NRA – Key Sector Threats and Vulnerabilities**

1. Complicit professionals
2. Collusion with others in regulated sector
3. Coerced professionals
4. Creation of structures and vehicles that enable ML





# UK National Risk Assessment 2015

## NRA

- Provision of false accounts
- Failure to identify suspicion and submit SARs
- Low barriers to entry & mixed standards of compliance
- ASPs not regulated
- Inconsistencies in supervisors



# UK National Risk Assessment 2015

## NRA

- Majority in the regulated sector are not complicit in ML/TF
- May, unwittingly, aid ML through negligence or non-compliance



# AAT AML Toolkit – Part 6 Tax Practitioners Guidance

## NRA

- Tax advice includes assisting in completion and submission of tax returns
- Therefore includes provision of compliance services



# NRA Risk 1

## Client Tax Affairs Creates Proceeds of Crime

- Client refusal to correct errors
- Deliberate under declaration of profits/income/gain or overstatement of expenses/losses



# NRA Risk 2

## Proceeds of Crime

- Course of dealing with client tax affairs
- Apparent client is holding proceeds of crime which may or may not be tax related



# NRA Risk 3

## Risk Indicators

- Alert to laundering POC
- E.g. Significant importance on anonymity of beneficiaries or owners
- E.g. Confidential structure of complex plan to minimise tax liability – could hide POC



# UK National Risk Assessment 2015

## **NRA – Predicate Offences**

- Fraud and Tax offences
- Drugs offences
- Modern Slavery
- Acquisitive crime
- Note: UK all crimes approach to ML



# UK National Risk Assessment 2015

## NRA

- HMRC estimate £4.1 billion lost to tax evasion
- Excise duty fraud
- VAT fraud being principal threats
- DWP estimate £1.2 billion lost to fraud against the benefits system





# Risk Assessments

## Identify

- Size and structure of business
- Business Activities – what do they do?
- Products and services
- Delivery Channels



# Risk Assessments

## Assess

- Geographical area of clients
- How you engage your clients
- Payment processes – is it cash based?
- Movement of client funds



# Risk Assessments

## Monitor

- Sudden increase in business
- Unusual transactions
- Untypical types of customers



# Risk Assessments

- **Identify**
- **Assess**
- **Implement**
- **Monitor**
- **Record**



# Risk Assessments

## Implement

- Apply CDD (Customer Due Diligence)
- Ongoing monitoring



# Risk Assessments

## Look Out For:

- Unusual Business Activity, inconsistencies/discrepancies
- Unable to identify source of funds
- Transfers of money with no apparent business relationship
- Sending/receiving funds from/to locations of concern
- Wire transfers following cash deposits
- Negative media coverage of client



# Risk Assessments

## Corruption Perception Index – Transparency International

- 174 Countries Assessed
- UK 14<sup>th</sup> in index, 1<sup>st</sup> is best
- <https://www.transparency.org/cpi2014/results>



# EIGHT STEPS TO COMPLIANCE (8)

## Reporting

- Reporting procedures in place - (section 5.3/5.4 in AAT Toolkit)
- Staff to MRLO
- MLRO to NCA
- Document decisions
- Register with the NCA [www.nationalcrimeagency.gov.uk](http://www.nationalcrimeagency.gov.uk)





# EIGHT STEPS TO COMPLIANCE (7)

## Reporting

- MLROs should take steps to protect confidential source
- Only refer to source's name once in the source ID field but nowhere else
- Do not refer to names of staff that made internal report
- Highlight any particular concerns about safety (physical, reputational etc.)



# EIGHT STEPS TO COMPLIANCE (8)

## Reporting – Knowledge and Suspicion

- Not defined in legislation
- Actual knowledge that something is the case
- Suspicion is more definite than speculation
- Falls short of knowledge based on evidence



# EIGHT STEPS TO COMPLIANCE (8)

## Reporting – Tipping Off

- Do not tip off the relevant person
- Do not tell anyone that a report has been made
- Asking normal questions is not tipping off
- Asking unnecessary questions or investigating further may make you liable



# EIGHT STEPS TO COMPLIANCE (7)

## Reporting – SAR's to September 2014

- 354,186 for year
- Up 11.90% on last year
- 4,930 from ASP's (Accountancy Services Providers)
- Down 9.17%
- NRA - figures are low compared to overall size and nature of sector



# EIGHT STEPS TO COMPLIANCE (7)

## Serious Crime Act 2015

- June 2015
- Provides SAR reporters with immunity from civil liability when submitting SAR's in good faith
- Response to legal case Shah v's HSBC

# Anti-Money Laundering

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**9<sup>th</sup> March 2016**

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# Thank you

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