

ANNEX III

Sector-Specific Guidance Notes for the Securities Sector

These Sector Specific Guidance Notes (SSGN) are annexed to and should be read in conjunction with, the general Guidance Notes for Anti-Money Laundering and Anti-Terrorist Financing (AML/ATF) Regulated Financial Institutions on AML/ATF 2022(GN)

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ANNEX III

SSGN FOR THE SECURITIES SECTOR

Introduction

- III.1 This annex sets forth guidance on AML/ATF obligations under the acts and regulations of Bermuda that are specific to the securities sector and applicable to regulated securities sector providers, investment funds, fund administrators and non-licensed AML/ATF Regulated Financial Institutions (e.g., Non-Licensed Person (NLP)RFI), as noted under paragraph III.2.
- III.2 Under Sections 42A(1)(b), (e), (h) and (j) of The Proceeds of Crime Act 1997 (POCA), a person is designated as an AML/ATF RFI if the person:
- a) Carries on investment business within the meaning of Section 3 of the Investment Business Act 2003;
 - b) Carries on the business of a fund administrator within the meaning of Section 2(2) of the Investment Funds Act 2006 (IFA)
 - c) Operates an investment fund within the meaning of Section 2 of the IFA;
 - d) Carries on for or on behalf of a customer the business of providing any of the financial activities specified in Schedule 3 of POCA, including, but not limited to, trading in:
 - i. Money market instruments (including cheques, bills, certificates of deposit and derivatives);
 - ii. Foreign exchange;
 - iii. Exchange, interest rate and index instruments;
 - iv. Transferable securities; or
 - v. Commodity futures trading;
 - e) Participates in securities issues and the provision of financial services related to such issues;
 - f) Manages individual and/or collective portfolios;
 - g) Safekeeps and administers cash or liquid securities;
 - h) Otherwise invests, administers or manages funds or money; or
 - i) Is an NLP (exempt investment business) as defined under Section 2 of and required to register under Section 9 of the Proceeds of Crime (Anti-Money Laundering and Anti-Terrorist Financing Supervision and Enforcement) Act 2008 (POCA SEA).
- III.3 Under Regulations 2(1) and 4, independent professionals who, by way of business, provide legal or accountancy services to other persons when participating in financial transactions concerning the:
- a) Management of client monies, securities and other assets;
 - b) Management of bank, savings or securities accounts;
 - c) Organisation of contributions for the creation, operation or management of

- companies; or
- d) Creation, operation or management of legal persons or arrangements and buying and selling of business entities.
- III.4 Any group that the Minister of Legal Affairs designates as a financial group pursuant to Section 42B of POCA is also subject to the regulations.
- III.5 For the purposes of this SSGN, the terms AML/ATF regulated financial institution and RFI should be understood to include NLPs, ‘independent professionals’ and ‘financial groups’. The term securities sector business should be understood to include any and all of the activities described in paragraphs III.2 through III.3.
- III.6 All RFIs, independent professionals and financial groups must comply with the acts and regulations addressing AML/ATF and with the general AML/ATF RFI Guidance Notes (GN) issued by the Bermuda Monetary Authority (Authority or BMA).
- III.7 RFIs conducting securities sector business should read these SSGN in conjunction with the general GN. This annex supplements but does not replace the general GN.
- III.8 Portions of this annex summarise or cross-reference relevant information that is contained in detail in the general GN. The detailed information in the general GN remains the authoritative guidance.
- III.9 Portions of this annex include sector-specific information, such as risk indicators that are particular to securities sector business. This sector-specific information should be considered as supplementary to the general GN.

Status of the Guidance

- III.10 Pursuant to Section 49M of POCA and 12O of the Anti-Terrorism (Financial and Other Measures) Act 2004 (ATFA), these SSGN are issued by the BMA under Section 5(2) of the POCA SEA, approved by the Minister of Legal Affairs, and available for download on the website of the BMA at www.bma.bm.
- III.11 These SSGN are of direct relevance to all senior management, inclusive of the compliance officer and the reporting officer. The primary purpose of the notes is to provide guidance to those who establish and update the RFI’s risk management policies, procedures and controls for the prevention and detection of Money Laundering and Terrorist Financing (ML/TF).
- III.12 The Supreme Court (Court), or the BMA, as the case may be, in determining whether a person is in breach of a relevant provision of the acts or regulations, is required to consider whether a person has followed any relevant guidance approved by the Minister of Legal Affairs and issued by the BMA. Requirements of the Court and the BMA are detailed in the provisions of Section 49M of POCA, the Proceeds

of Crime (Anti-Money Laundering and Anti-Terrorist Financing) Regulations 2008 (POCR) Regulation 19(2), Section 120 of and paragraph 1(6) of Part I, Schedule I to ATFA and Section 20(6) of the POCA SEA.

- III.13 When a provision of the acts or regulations is directly described in the text of the guidance, the guidance notes use the term ‘must’ to indicate that the provision is mandatory.
- III.14 In other cases, the guidance uses the term ‘should’ to describe how the BMA expects an RFI to meet its legal and regulatory obligations while acknowledging an RFI may meet its obligations via alternative means, provided that those alternatives effectively accomplish the same objectives.
- III.15 Departures from this guidance, and the rationale for so doing, should be documented and RFIs should stand prepared to justify departures to authorities such as the BMA.
- III.16 RFIs should be aware that under Section 16(1) of the Financial Intelligence Agency Act 2007, the Financial Intelligence Agency (FIA), in the course of enquiring into a suspicious transaction or activity relating to ML/TF, may serve a notice in writing on any person requiring the person to provide the FIA with such information as it may reasonably require for the purpose of its enquiry.
- III.17 Detailed information is set forth in the general GN, beginning with the **Preface**.

Senior Management Responsibilities and Internal Controls

- III.18 The AML/ATF responsibilities for senior management of an RFI conducting securities sector business are governed primarily by POCA, POCA SEA, ATFA and POCR Regulations 16 through 19.
- III.19 The AML/ATF internal control requirements for RFIs conducting securities sector business are governed primarily by POCR Regulations 12, 16 and 18.
- III.20 Regulation 19 provides that failure to comply with the requirements of specified regulations is a criminal offence and carries with it significant penalties. On summary conviction, the penalty is a fine of up to \$50,000. Where conviction occurs on indictment, penalties include a fine of up to \$750,000, imprisonment for a term of two years or both.
- III.21 Section 20 of the POCA SEA empowers the BMA to impose a civil penalty on any person supervised by the BMA in an amount up to \$10 million for each failure to comply with specified regulations.
- III.22 The POCA SEA also provides for a number of criminal offences, including, with regard to NLPs carrying on business without being registered pursuant to Section 9 of the Act.

- III.23 Under the acts and regulations of Bermuda, senior management in all RFIs must:
- a) Ensure compliance with the acts and regulations;
 - b) Approve the RFI's policies, procedures and controls relating to its AML/ATF obligations;
 - c) Identify, assess and effectively mitigate the ML/TF risks posed by its customers, business relationships, countries or geographic areas, services, delivery channels, products and transactions;
 - d) Ensure that AML/ATF risk assessments remain documented, relevant and appropriate given the RFI's current risk profile;
 - e) Appoint a compliance officer at the managerial level to oversee the establishment, maintenance and effectiveness of the RFI's AML/ATF policies, procedures and controls;
 - f) Appoint a reporting officer to process disclosures;
 - g) Screen employees against high standards;
 - h) Ensure that adequate resources are devoted to the RFI's AML/ATF policies, procedures and controls;
 - i) Ensure appropriate training to relevant employees;
 - j) At least once per calendar year, independently audit and test the RFI's AML/ATF policies, procedures and controls for effectiveness;
 - k) Ensure the RFI is prepared for compliance inquiries and inspections by competent authorities, including but not limited to sample testing of customer files; and
 - l) Recognise potential personal liability if legal obligations are not met.
- III.24 RFIs must establish and maintain detailed policies, procedures and controls that are adequate and appropriate to forestall and prevent operations related to ML/TF.
- III.25 RFIs should consider using proven technology-driven solutions to minimise the risk of error and find efficiencies in their AML/ATF processes.
- III.26 Where a Bermuda RFI conducting securities sector business has branches, subsidiaries, representative offices or members of any financial group located in a country or territory other than Bermuda, it must communicate its AML/ATF policies and procedures to all such entities and it must ensure that all such entities apply AML/ATF measures at least equivalent to those set out in the acts and regulations.
- III.27 Attempts to launder money through securities sector business products or services may be carried out in any one or several of three ways:
- a) Externally, by a customer seeking to place, layer or integrate illicit assets;
 - b) Internally, by a director, manager or employee, either individually or in collusion with others inside and/or outside of the RFI conducting securities sector business; and/or
 - c) Indirectly, by a third-party service provider or an RFI, independent professional

or other intermediary facilitating transactions involving illicit assets on behalf of another person.

III.28 The majority of this annex addresses attempted ML by investors. ML risks involving intermediaries and third-party service providers are addressed in paragraphs III.61 through III.64 and III.102 through III.117. ML risks involving internal senior management, directors, managers or employees are addressed in paragraphs III.36 through III.39.

III.29 Specific requirements for an RFI's detailed policies, procedures and controls are set forth in **Chapters 2 through 11** of the general GN.

III.30 Additional details are set forth in **Chapter 1: Senior Management's Responsibilities and Internal Controls**.

Links between securities sector business practices and AML/ATF policies, procedures and controls

III.31 Persons carrying on securities sector business may be subject to acts and regulations creating requirements that achieve some of Bermuda's AML/ATF objectives. These acts and regulations include, but are not limited to:

- a) The Investment Business Act 2003 (IBA);
- b) The Investment Business Regulations 2004;
- c) The Investment Business (Client Money) Regulations 2004;
- d) Investment Business (Reporting Accountants) (Facts and Matters of Material Significance) Regulations 2006; and
- e) The IFA.

III.32 Persons carrying on securities sector business may also be subject to the requirements, principles, standards and procedures set forth in guidance documents. These guidance documents for securities sector business include, but are not limited to:

- a) General Business Conduct and Practice Code of Conduct (BMA – June 2010) made pursuant to Section 10 of the IBA;
- b) Statement of Principles (BMA – June 2010) made pursuant to Section 9 of the IBA; and
- c) Fit and Proper Persons (BMA Investment Bulletin – October 2009).

III.33 The requirements of the acts, regulations and additional guidance documents described in paragraphs III.30 through III.31 provide a suitable foundation for the AML/ATF policies, procedures and controls that Bermuda RFIs are required to adopt and implement. An RFI should not presume, however, that its existing processes are sufficient. Each RFI must ensure that it meets each of its AML/ATF obligations under Bermuda acts, regulations and this SSGN, whether as part of its

existing business processes or through separate processes.

III.34 Criminals seeking to launder money via securities sector business are attracted primarily by:

- a) Investment transactions that take place at high speeds;
- b) Investment products and services that are complex in nature and involve the use of intermediaries or other third parties in a way that may obscure an RFI's ability to accurately determine beneficial ownership and source of funds;
- c) Investment products and services that permit cross-border transfers of value;
- d) Investment products and services that permit the use of a client's money account for transactions unrelated to investment activity; and
- e) A perception that RFIs conducting securities sector business may presume that other persons have conducted or will conduct Customer Due Diligence (CDD) and ongoing monitoring and, therefore, that the RFI may be less likely to conduct CDD and ongoing monitoring itself.

Links between securities sector business, insurance business and trust business

III.35 An RFI's securities sector business may involve insurance business or trust business, including, but not limited to:

- a) Life insurance policies and both fixed and variable annuities that are investment linked;
- b) A customer that is an insurance company, agent, broker, manager or other insurance intermediary;
- c) Unit trusts; or
- d) A customer that is a trust, trustee or other person associated with a trust, including a beneficiary.

III.36 Where an RFI's securities sector business involves an insurance product, service, company, agent, broker, manager or other insurance intermediary, or where the securities sector business involves a trust or any person associated with a trust, the RFI should have due regard to the risks detailed in the general GN and annexes addressing insurance business, insurance managers and trust business.

Ownership, management and employee checks

III.37 To guard against potential ML involving owners, directors, managers and employees of RFIs conducting securities sector business, Regulation 18(1)(c) requires RFIs conducting securities sector business to screen such persons against high standards. Additional guidance on screening is set forth in paragraphs 1.73 through 1.77 of the general GN.

III.38 RFIs should ensure that screenings are conducted for the RFI itself, for any intermediary or third-party service provider and any relevant intermediary or third-

party service provider employees.

- III.39 Where any screening is conducted by a third party, the RFI should have procedures to satisfy itself as to the effectiveness of the screening procedures the third party uses to ensure the competence and probity of each person subject to screening.
- III.40 Working with intermediaries and third-party service providers that are licensed and applying AML/ATF measures at least equivalent to those in Bermuda are likely to reduce the measures a Bermuda RFI conducting securities sector business will need to undertake in order to meet its screening obligations.

Monitoring and Managing Compliance

- III.41 RFIs must appoint a compliance officer, who must be at the managerial level, who is appropriately qualified and trained, and who is required to:
- a) Ensure that the necessary compliance programme procedures and controls required by the regulations are in place; and
 - b) Coordinate and monitor the compliance programme to ensure continuous compliance with the regulations.
- III.42 RFIs must also appoint a reporting officer, who under the RFI's policies and procedures:
- a) Receives disclosures from the RFI's employees of any knowledge, suspicion or reasonable grounds for suspicion of ML/TF;
 - b) Receives access to all necessary records in a timely manner;
 - c) Considers employee disclosures in the light of all other relevant information for the purpose of determining whether or not the information or other matter contained in the report does give rise to such knowledge or suspicion;
 - d) Makes final determination on whether the reporting officer knows or suspects or has reasonable grounds to suspect that a person is engaged in ML/TF; and
 - e) Where such knowledge, suspicion, or reasonable grounds for suspicion exists, makes external reports to the FIA.
- III.43 The role, standing and competence of the Compliance Officer and the Reporting Officer and the manner in which the RFI's policies, procedures and controls are designed and implemented impact directly on the effectiveness of an RFI's AML/ATF arrangements and the degree to which the RFI complies with the acts and regulations of Bermuda. For additional information on the roles and responsibilities of the Compliance Officer and Reporting Officer, see paragraphs 1.38 through 1.51 of the general GN.

Risk-Based Approach for Securities Sector Business

- III.44 Under Regulations 6, 11, 14 and 16 and as described in **Chapter 2: Risk-Based**

Approach, RFIs, including those conducting securities sector business, must adopt a risk-based approach to managing ML/TF risks. In developing a business risk assessment and identifying and assessing the ML/TF risk to which they are exposed, RFIs should consider a range of factors which may include:

- a) The nature, scale, diversity and complexity of their business;
- b) Target markets;
- c) The number of customers already identified as high risk;
- d) The jurisdictions the RFI is exposed to, either through its own activities, the activities of customers or the activities of intermediaries or third-party service providers, especially in jurisdictions with relatively higher levels of corruption or organised crime, and those jurisdictions listed as higher risk by the Caribbean Financial Action Task Force (CFATF) and Financial Action Task Force (FATF); and
- e) The internal audit function and regulatory findings.

III.45 The National Anti-Money Laundering Committee (NAMLC) has publicly released a report on Bermuda's national assessment of ML/TF risks. RFIs should take into account the results available to them from this and future national risk assessments.

III.46 RFIs should document and be in a position to justify the basis on which they have assessed the level of risk associated with each particular combination of customer, business relationship, country or geographic area, service, delivery channel, product, transaction, intermediary or third-party service provider. This should be reflected in the RFI's risk assessments of the RFI's business and customers.

III.47 When designing and evaluating a new product or service, an RFI conducting securities sector business must, prior to launch, assess the risk of the product or service being used for ML/TF.

III.48 Each RFI must ensure that its risk assessment methodology and the results of its risk assessments are documented, regularly reviewed and amended to keep them up to date, approved by senior management and available to be shared promptly with competent authorities.

III.49 RFIs conducting securities sector business must employ a risk-based approach in determining:

- a) Appropriate levels of CDD measures, including whether to apply enhanced CDD;
- b) Risk mitigation measures commensurate with the risks posed by the RFI's customers, business relationships, countries or geographic areas, services, delivery channels, products and transactions;
- c) The level of permissible reliance, if any, that can reasonably be placed upon any intermediary or other third party;
- d) The scope and frequency of ongoing monitoring;

- e) Measures for detecting and reporting suspicious activity; and
- f) Whether and how to launch new products, services or technologies.

- III.50 The purpose of an RFI applying a risk-based approach is to ensure that its compliance resources are allocated to the risk areas where they are needed and where they have the greatest impact in preventing and suppressing ML/TF and proliferation financing.
- III.51 The higher the risk an RFI faces from any particular combination of customer, business relationship, country or geographic area, service, delivery channel, product, transaction, intermediary or third-party service provider, the stronger and/or more numerous the RFI's mitigation measures must be.
- III.52 Each RFI should ensure that it has sufficient capacity and expertise to manage the risks it faces. As risks and understandings of risk evolve, an RFI's capacity and expertise should also evolve proportionally.
- III.53 Although RFIs conducting securities sector business should target compliance resources toward higher-risk situations, they must also continue to apply risk mitigation measures to any standard and lower-risk situations, commensurate with the risks identified. The fact that a customer, transaction, intermediary or third-party service provider is assessed as being lower risk does not mean the customer, transaction, intermediary or third-party service provider is not involved in ML/TF.
- II.54 Detailed information on the requirement that RFIs use a risk-based approach to mitigate the risks of being used in connection with ML/TF is set forth in **Chapter 2: Risk-Based Approach**.

ML/TF risks in the securities sector business

- III.55 Using the risk-based approach, each RFI conducting securities sector business should determine its risk tolerance, which is the amount of ML/TF risk the RFI will accept in pursuit of its business goals.
- III.56 Each RFI should consider:
- a) The risks it is willing to accept;
 - b) The risks it is unwilling to accept;
 - c) The risks that will be sent to senior management for a decision; and
 - d) Whether the RFI has sufficient capacity and expertise to effectively manage the risks it decides to accept.
- III.57 Nothing in the acts or regulations prevents an RFI from deliberately choosing to accept higher-risk business. Each RFI must, however, ensure that it has the capacity and expertise to apply risk mitigation measures that are commensurate with the risks it faces and that it does effectively apply those measures.

- III.58 Generally, the level of risk associated with securities sector business is highest where:
- a) Adequate CDD measures are not applied to a customer;
 - b) An investor requests or initiates an unusual payment, settlement or delivery transaction; or
 - c) The involvement of intermediaries or third-party service providers reduces transparency in a securities custody and service chain or leads to an RFI engaging in impermissible reliance.

III.59 Although the acts and regulations create AML/ATF obligations specifically for persons conducting activities within the meaning of ‘investment business’, ML/TF risks or suspicions may arise with regard to activities falling outside of the meaning of ‘investment business’. Section 46 of POCA permits a person to report knowledge or suspicion of ML to the FIA.

Securities-related predicate offences for ML

III.60 RFIs conducting securities sector business are often in a unique position to identify instances of securities-related predicate offences for ML.

III.61 An RFI should ensure that its AML/ATF policies, procedures and controls, either independently or in conjunction with the RFI’s other business practices, include appropriate measures to prevent and identify instances of insider dealing, market manipulation and fraud.

Intermediaries and third-party service providers

III.62 The AML/ATF risks associated with securities sector business are increased by the involvement of intermediaries, third-party service providers and other persons or entities. An intermediary may provide services to retail customers, institutional customers, wholesale customers or both. Retail RFIs with customers that are investors must take appropriate measures to ensure that CDD is applied and that, where required, relevant information is provided to other relevant RFIs. Institutional and wholesale RFIs with customers that are retail RFIs or other intermediaries and that often provide clearing, settlement, omnibus, management, custodial and other services must take appropriate measures to ensure that their customers are applying CDD effectively to underlying investors and their funds, and that, where appropriate, retail RFIs are providing institutional and wholesale RFIs with relevant information.

III.63 Where an intermediary is not acting directly under the control or supervision of the RFI conducting securities sector business, there is a heightened inherent risk that the intermediary is unaware or unwilling to conform to required AML/ATF policies, procedures and controls. In turn, there is a heightened inherent risk that the intermediary will fail to apply appropriate due diligence measures on the customer

and source of funds and will fail to recognise and report knowledge, suspicion and reasonable grounds to know or suspect that funds or assets are the proceeds of crime, or that a person is involved in ML/TF.

- III.64 The use of third-party service providers to apply CDD and other measures similarly heightens the inherent risk of an AML/ATF failure.
- III.65 To ensure that intermediaries and third-party service providers apply appropriate AML/ATF measures, RFIs conducting securities sector business must carefully apply appropriate due diligence and any reliance and outsourcing measures. See paragraphs III.102 through III.117 and paragraphs 3.23 through 3.25, 5.117 through 5.148 and 5.149 through 5.174 of the general GN.

Transparency in securities custody and service chains

- III.66 The involvement of intermediaries can result in investment managers and custodians being one or more steps removed from the underlying investors and investments. Where CDD is not managed effectively, degrees of removal can reduce the visibility of retail, institutional and wholesale RFIs into the security custody and service chain and prevent an RFI from adequately identifying investors and conducting ongoing monitoring of the business relationship and transactions.
- III.67 Any lack of transparency in a securities custody and service chain may enable or cause an RFI to transact with or on behalf of an investor, intermediary or third party that is committing or seeking to commit an ML/TF offence or that is a target of international sanctions. Such an act could expose an RFI to prosecution and penalties for failure to meet its AML/ATF and international sanctions obligations under the acts and regulations.
- III.68 In addition to the requirements of the acts and regulations, including but not limited to: the IBA, the Investment Business Regulations 2004, the Investment Business (Client Money) Regulations 2004 and the IFA, RFIs conducting securities sector business should take appropriate measures to prevent the use or provision of any omnibus, pooled account or other arrangement from preventing the effective application of CDD and ongoing monitoring throughout the securities custody and service chain. See paragraphs III.102 through III.117.
- III.69 As a general matter, a non-exhaustive list of factors that will affect the level of risk of any securities sector business relationship or transaction includes:
- a) Customer and any beneficial owner;
 - b) Product or service to be provided;
 - c) Involvement of any intermediaries or third-party service providers;
 - d) Ability to obtain information about underlying investors;
 - e) Nature of the business relationship formed;
 - f) Geographic connections;

- g) Methods used to send and receive any payment connected with the product or service; and
- h) Transactions undertaken following the establishment of the business relationship.

Operators of investment funds (retail funds)

- III.70 Investment fund operators may operate a retail investment fund, typically an authorised unit trust or open-ended investment company.
- III.71 Customers of retail funds are primarily natural persons, entities investing as a principal or regulated firms acting on behalf of underlying customers. In such cases, the RFI's customer will be primarily the individual or entity concerned. The RFI must also consider whether there are any beneficial owners or controllers and what other persons, including any third parties or intermediaries, are involved in the business relationship.
- III.72 Risk factors that operators of retail investment funds commonly encounter include but are not limited to:
- a) Products and services risk factors:
 - i. Third-party payers or subscribers, which could disguise the source or destination of laundered funds;
 - ii. Ability to pay in cash or withdraw cash;
 - iii. Ability to receive payments from or send payments to third parties;
 - iv. Ability to transfer holdings to a third party;
 - v. Access to one of an RFI's products or services would provide a customer with access to another product or service that would normally require additional diligence on the customer, but that additional diligence is not performed;
 - b) Customer and business relationship risk factors:
 - i. Complex ownership structures, which can make it easier to conceal underlying beneficiaries;
 - ii. Requests to use numbered accounts or to 'hold mail';
 - iii. Customer is a cash-intensive business;
 - iv. Customer is represented by a third party;
 - v. The customer's relationship with the RFI involves a correspondent account;
 - vi. Involvement of a Politically Exposed Person (PEP) in the customer or business relationship;
 - vii. High-value transaction activity; and
 - viii. High-volume transaction activity.

Operators of investment funds (institutional funds)

- III.73 Institutional investment funds are often open only to tax-exempt investors, such as

pension schemes and charities. Institutional investment customers are often regulated. In addition, institutional investment customers are often represented by a third-party investment manager, which may be a separate entity within the customer's group of companies.

- III.74 In the context of an institutional investment, the RFI's customer is primarily the pension scheme or charity entity concerned. The RFI must also consider whether there are any beneficial owners or controllers and what other persons, including any third parties or intermediaries, are involved in the business relationship. An RFI may obtain customer information from any investment manager involved in the relationship, so long as the information obtained complies with the requirements of Bermuda's acts and regulations.
- III.75 Risk factors that operators of institutional investment funds commonly encounter include, but are not limited to, any funds or share classes that may admit non-regulated entities or that may admit entities with higher-risk geographic connections.

Fund administrators

- III.76 Fund administrators typically maintain investment fund accounts, process the issue, conversion and redemption units of a fund, and distribute fund dividends to participants.
- III.77 Customers of a fund administrator are primarily the fund itself and investors in the fund. The RFI must also consider whether there are any beneficial owners or controllers and what other persons, including any third parties or intermediaries, are involved in the business relationship.
- III.78 ML risks for fund administrator RFIs arise primarily from foreign investors in the funds being administered. RFIs should take care not to over-rely for CDD or other AML/ATF purposes on foreign third parties introducing investors into the funds; RFIs must ensure that the requisite level of due diligence is performed.
- III.79 Risk factors that fund administrators commonly encounter include, but are not limited to the following customer and business relationship risk factors:

- a) Foreign funds or investors that render difficult or impossible the application of appropriate due diligence;
- b) The involvement of intermediaries that obscures the identity of underlying investors or beneficial owners;
- c) Over-reliance on foreign third parties;
- d) Inability to confirm the source of wealth or source of funds;
- e) Involvement of PEPs;
- f) Customer expectations of privacy that conflict with the RFI's AML/ATF obligations;
- g) Complex ownership structures, which can make it easier to conceal underlying

- beneficiaries;
- h) Customers represented by a third party;
- i) Involvement of a PEP in the customer or business relationship;
- j) High-value transaction activity; and
- k) High-volume transaction activity.

NLPs

- III.80 Most NLPs conducting securities sector business in Bermuda are either investment businesses or investment funds.
- III.81 Customers of NLPs are primarily natural persons, including sophisticated private investors and high-income private investors, collective investment schemes approved by the BMA and entities with total assets of not less than \$5 million. In such cases, the RFI's customer will be primarily the individual or entity concerned. The RFI must also consider whether there are any beneficial owners or controllers and what other persons, including any third parties or intermediaries, are involved in the business relationship.
- III.82 ML risks for NLPs arise primarily from the involvement of sophisticated private investors, high-income private investors and PEPs, and from the size and source of investor assets. In recent years, the majority of assets held by NLPs were from outside Bermuda, potentially increasing both the risk of ML/TF and the difficulty of applying appropriate CDD.
- III.83 Risk factors that NLPs commonly encounter include, but are not limited to the following customer and business relationship risk factors:
- a) Complex ownership structures, which can make it easier to conceal underlying beneficiaries;
 - b) Customers that are sophisticated private investors or high-income private investors;
 - c) Customers with assets from outside Bermuda;
 - d) Involvement of a PEP in the customer or business relationship;
 - e) Customers represented by a third party;
 - f) High-value transaction activity; and
 - g) High-volume transaction activity.

Financial advisors

- III.84 Financial advisors may engage in discretionary or advisory investment management. In both cases, the RFI may handle incoming or outgoing funds, or incoming or outgoing transfers may be carried out entirely by the customer's custodian.
- III.85 Advisory investment management is perceived to pose a higher inherent risk of ML/TF due to the client-driven nature of the relationship in which the financial

advisor primarily provides advice. By comparison, discretionary investment management, in which the financial advisor is the primary investment decision-maker, poses a lower inherent risk of ML/TF.

- III.86 Most financial advisor RFIs deal with low volumes of high-value customers. For these customers, RFIs should put in place a customer onboarding process by which the RFI obtains a level of understanding of the customer's circumstances, needs and priorities, and anticipated inflows and outflows of funds in order to determine suitable investment parameters.
- III.87 RFIs should maintain ongoing contact with the customer in order to review market developments and performance and to review the customer's circumstances. Unexpected inflows or outflows of funds are not common occurrences and should be a subject of discussion between the RFI and the customer.
- III.88 In most cases, all money and other assets within the portfolio are held under the control of a regulated custodian, with funds paid to or from the customer through its bank. Financial advisor RFIs do not typically provide a mechanism for the movement of assets from one person to another, although some financial advisor RFIs permit limited third-party payments.
- III.89 The typical investors to whom financial advisor RFIs provide services are high net worth or high-income individuals, trusts, companies, government bodies and other investing institutions such as pension schemes, charities and open or closed-ended pooled investment vehicles. In such cases, the RFI's customer will be primarily the individual or entity concerned. The RFI must also consider whether there are any beneficial owners or controllers and what other persons, including any third parties or intermediaries, are involved in the business relationship.
- III.90 Risk factors financial advisor RFIs commonly encounter include, but are not limited to:
- a) Products and services risk factors:
 - i. Changes to strategy or agreements that are not approved by those persons authorised to give authority;
 - ii. Third-party payers or subscribers, which could disguise the source or destination of laundered funds;
 - iii. Access to one of an RFI's products or services would provide a customer with access to another product or service that would normally require additional diligence on the customer, but that additional diligence is not performed;
 - b) Customer and business relationship risk factors:
 - i. Foreign-formed or foreign-managed trusts and companies;
 - ii. Complex ownership structures, which can make it easier to conceal underlying beneficiaries;
 - iii. Customers represented by a third party;

- iv. Involvement of a PEP in the customer or business relationship;
- v. High-value transaction activity; and
- vi. High-volume transaction activity.

Wealth managers

- III.91 Wealth managers conducting securities sector business typically provide a range of investment services, including advice, discretionary fund management and brokerage to natural person investors, ranging from the mass affluent to individuals with high and ultra-high income or net worth. The services are characterised by their bespoke nature and tailored to a customer's particular needs.
- III.92 Wealth managers may be part of a bank or private bank. Guidance for bank RFIs is set forth primarily in the general GN.
- III.93 ML risks for wealth managers arise primarily from customers who are wealthy and powerful, customers with multiple and complex accounts, business relationships that involve jurisdictions maintaining statutory confidentiality, secrecy, privacy or data protection restrictions and customers who expect or demand a level of confidentiality that conflicts with an RFI's AML/ATF obligations.
- III.94 Wealth managers should apply enhanced due diligence measures throughout each wealth management relationship, obtaining and verifying information beyond that which is typically required for retail banking.
- III.95 In selecting the appropriate enhanced due diligence measures to be applied, RFIs conducting wealth management securities business should consider obtaining additional information and approvals, including the following:
- a) Additional information on the customer, such as occupation, the volume of assets and information available through public databases;
 - b) Additional information on the nature of the customer's business and the nature and purpose of the business relationship (see paragraphs 4.1 through 4.4);
 - c) Additional information on the customer's source of funds and source of wealth (see paragraphs 5.110 through 5.113);
 - d) The reasons for a customer using any complex structure;
 - e) Additional information on the reasons for planned or completed transactions; and
 - f) Approval of senior management to commence or continue the business relationship (see paragraph 5.109).
- III.96 Risk factors wealth manager RFIs commonly encounter include, but are not limited to:
- a) Products and services risk factors:
 - i. Use of multiple accounts, products and services;

- ii. Use of personal accounts for business purposes, or use of business accounts for personal purposes;
- b) Customer and business relationship risk factors:
 - i. Customers involving foreign-formed or foreign-managed trusts and companies;
 - ii. Complex ownership structures, which can make it easier to conceal underlying beneficiaries;
 - iii. Customers represented by a third party;
 - iv. Involvement of a PEP in the customer or business relationship;
 - v. Reluctance or refusal to provide information with an RFI request to meet its AML/ATF obligations;
 - vi. A customer or business relationship that involves a higher-risk geographic connection;
 - vii. A customer or business relationship that involves a jurisdiction where the RFI's ability to meet its AML/ATF obligations is likely to be impeded by confidentiality, secrecy, privacy or data protection restrictions;
 - viii. High-value transaction activity; and
 - ix. High-volume transaction activity.

III.97 Information regarding payments related to securities sector business is set forth in paragraphs III.153 through III.164.

III.98 Additional indicators of higher risk in securities sector business are discussed in detail in paragraphs III.249 through III.255.

Customer Due Diligence

III.99 Under Regulation 6, RFIs conducting securities sector business must carry out CDD.

III.100 Detailed information on CDD is set forth in **Chapters 3, 4 and 5** of the general GN and paragraphs III.71 through III.182.

III.101 Carrying out CDD allows RFIs to:

- a) Guard against impersonation and other types of fraud by being satisfied that customers are who they say they are;
- b) Know whether a customer or person associated with a customer is acting on behalf of any unknown or unexpected person;
- c) Identify any legal barriers (e.g., international sanctions) to providing the product or service requested;
- d) Maintain a sound basis for identifying, limiting and controlling risk exposure;
- e) Avoid committing offences under POCA and ATFA relating to ML/TF; and
- f) Assist law enforcement by providing information on securities sector business customers or activities being investigated.

III.102 CDD measures that must be carried out include:

- a) Identifying and verifying the identity of each customer;
- b) Understanding the nature of the customer's business and the purpose and intended nature of the customer's business relationship with the RFI;
- c) Identifying the source of wealth and source of funds associated with the customer;
- d) Collecting information about the legal powers that regulate and bind a customer that is a legal person or legal arrangement;
- e) Identifying and verifying signatories, directors and other persons exercising control over the management of the customer or its relationship with the RFI;
- f) Identifying and taking adequate measures on a risk-sensitive basis to verify the identity of the beneficial owner(s) or the customer;
- g) For a customer that is a legal entity or legal arrangement, identifying the name and verifying the identity of the relevant natural person having the position of chief executive or a person of equivalent or similar position; and
- h) Updating the CDD information at appropriate times. This includes ensuring that information on the ultimate beneficial owners and/or controllers of companies, partnerships and other legal entities is known to the RFI, properly updated and recorded.

III.103 In addition, RFIs should also understand, where relevant:

- a) The investment experience and objectives of each customer;
- b) The suitability of any investment recommendations to a customer;
- c) Whether the customer is retail or non-retail;
- d) Whether the customer is acting for their own account or the account of one or more other persons; and
- e) Whether the customer seeks a short or long-term business relationship.

III.104 RFIs should also understand whether, within the meaning of Regulation 1 of the Investment Business (Client Money) Regulations 2004, the customer qualifies and seeks to be treated as any of the following:

- a) A high-income private investor;
- b) A high net worth private investor; or
- c) A sophisticated private investor.

III.105 High-level principles regarding CDD are set forth in **Chapter 3: Overview of CDD** of the general GN.

III.106 Detailed information on CDD for legal persons and other legal arrangements is set forth in paragraphs 4.61 through 4.136 and Annex I.

Nature of the customer's business and purpose and intended nature of the business relationship

- III.107 An RFI must understand the nature of the customer's business and the purpose and intended nature of each proposed business relationship or transaction. In some instances, the nature of the customer's business and the purpose and intended nature of a proposed business relationship may appear self-evident. Nonetheless, an RFI must obtain information that enables it to categorise the customer's business and the nature, purpose, size and complexity of the business relationship, such that the business relationship can be effectively monitored.
- III.108 An RFI should obtain information sufficient for it to be reasonably satisfied that there is a legal, commercial or personal rationale for the securities sector business work being undertaken.
- III.109 To obtain an understanding sufficient to monitor a securities sector business relationship or transaction, an RFI should collect information, including, but not limited to:
- a) The source of wealth and source of funds to be used in the securities sector business relationship or transaction;
 - b) The anticipated type, volume, value, frequency, duration and nature of the activity that is likely to be undertaken through the securities sector business relationship or transaction;
 - c) The geographic connections of the customer and each beneficial owner, administrator, advisor, operator, employee, manager, director or other person who is able to exercise significant power over the securities sector business relationship or occasional transaction;
 - d) The means of payment (cash, wire transfer, other means of payment);
 - e) Whether there is any bearer arrangement and if so, the reasons for and details of the arrangement;
 - f) Whether the investment product, service, any underlying assets or related transaction are to be used as collateral; and
 - g) Whether any payments are to be made to or by third parties and if so, the reasons for and details of the request.

Source of wealth and source of funds

- III.110 Enquiries regarding the source of wealth and source of funds are among the most useful sources of information leading to knowledge, suspicion or reasonable grounds for suspicion that funds or assets are criminal property or that a person is involved in ML/TF.
- III.111 RFIs should make enquiries as to how a customer has acquired the wealth, whether in currency, securities or any other assets, to be used with regard to the investor business relationship or transaction.
- III.112 The extent of such enquiries to understand and determine the legitimacy of a customer's source of wealth and source of funds should be made using a risk-based

approach.

- III.113 RFI should also ensure that they understand the source of funds and specific means of payment, including the details of any account that a customer proposes to use.
- III.114 Additional information on the source of funds and source of wealth is set forth in paragraphs 5.110 through 5.113 of the general GN.

Definition of a customer in a securities sector business context

- III.115 An RFI's customer is generally a private natural person, legal person, trust or other legal arrangement with and for whom a business relationship is established, or with or for whom an occasional transaction is carried out. A given securities sector business relationship or transaction may have more than one person who is a customer, whether directly as an investor or as another person involved in advising on or managing an investment or otherwise involved in a securities custody and service chain.
- III.116 A customer that is not a private natural person generally involves a number of natural persons, such as the directors, trustees, beneficial owners and other persons who directly or indirectly own or have the ability to control the customer. An RFI's customer includes the natural persons who comprise the entity or arrangement and its relationship with the RFI.
- III.117 For the purposes of this SSGN, a customer includes each of the following:
- a) Each private natural person, legal person, trust or other legal arrangement that is an investor seeking a securities sector business product or service;
 - b) Any beneficial owner of an investor; and
 - c) Any intermediary or other person acting with regard to its own account, another intermediary or an investor or investment, whether on an advisory, discretionary, administrative, controlling, operative or custodial basis.
- III.118 In line with the general GN, RFIs must obtain and verify identification information for each person who is a customer in the securities sector business context.
- III.119 Full information on the meaning of customer, business relationship and occasional transaction and on identifying and verifying natural persons, legal persons, trusts and other legal arrangements is set forth in **Chapter 4: Standard CDD Measures**.

Definition of beneficial owner in a securities sector business context

- III.120 Irrespective of the geographic location of a customer, the complexity of a customer's structure or the means by which any business relationship is initiated, RFIs must know the identity of the persons who effectively own and control a customer.

- III.121 Under Regulation 3, RFIs must consider as beneficial owners any persons, whether private natural persons, legal persons or legal arrangements, that:
- a) Effectively control or own more than 25% of a customer's funds, assets, shares or voting rights; or
 - b) In the case of trusts or similar legal arrangements, any persons who have control over the trust, are members of a class of persons in whose main behalf the trust or other legal arrangement is set up or operates, or who are entitled to a specified interest in the property of the trust or other legal arrangement.

III.122 The meaning of 'control' and 'own' in this context should be interpreted broadly to comprise the capacity to:

- a) Manage funds, assets, accounts or investments without requiring further authorisation;
- b) Override internal procedures and control mechanisms;
- c) Derive benefit, whether presently or in the future;
- d) Exercise a specified interest, whether presently or in the future; and/or
- e) Add or remove beneficiaries, trustees or other persons associated with a customer.

III.123 At all times, RFIs should identify and take reasonable, risk-based measures to verify the natural persons who, either directly or indirectly via another natural person, legal person or legal arrangement, ultimately control or own more than 25% of a customer's funds or assets.

Obtaining and verifying customer identification information

III.124 RFIs must obtain and verify identification information for each person who is a customer in the securities sector business context.

III.125 A person who is a customer in the securities sector business context may be a natural person, legal person, trust or other legal arrangement. For each type of customer, an RFI should follow the identification and verification requirements in **Chapter 4: Standard CDD Measures**, as supplemented by any relevant Annexes.

Obtaining and verifying a customer's beneficial owner information

III.126 In addition, and in line with the guidance for natural persons, legal persons, trusts and other legal arrangements, RFIs must obtain identification information for the beneficial owners of any customer and verification information, where necessary, following a risk-based assessment.

III.127 Where an RFI's customer is an investor, for example, where the RFI is an introducing broker or other person that accepts or has accepted instructions directly from an investor and the investor is a legal person, trust or other legal arrangement,

the RFI should verify:

- a) The ownership and control structures of the customer, to include in the case of multi-layered structures information sufficient to fully understand the customer's intermediate ownership and control structure;
- b) At least one natural person holding the position of chief executive or a person of equivalent or similar position;
- c) Subject to paragraphs 4.89 and 4.90, the identity of all directors, signatories and other persons exercising control over the management of the customer;
- d) The identity of all other persons purporting to act on behalf of the customer or by whom binding obligations may be imposed on the customer; and
- e) Whether each private natural person owning or acting on behalf of the customer is appropriately authorised.

III.128 Information on the identification and verification of beneficial owners is set forth in Regulation 3 and **Chapter 4: Standard CDD Measures** of the general GN.

III.129 Additional information specific to the beneficial ownership of trusts is set forth in Regulation 3(3) and paragraphs I.78 through I.87 of Annex I.

Obtaining and verifying intermediary information

III.130 For the purposes of this SSGN, a customer that is an intermediary includes but is not limited to:

- a) A fund authorised under section 13 of the IFA, an excluded fund as set forth in Section 6(2) of the IFA and an exempted fund as set forth in Sections 6A and 7 of the IFA;
- b) An intermediary within the meaning of Section 2 of the Investment Business (Client Money) Regulations 2004;
- c) A fund administrator within the meaning of Section 2(2) of the IFA;
- d) An operator within the meaning of Section 2 of the IFA;
- e) A controller within the meaning of Section 2A of the IFA;
- f) The non-Bermudian equivalent of any of the persons named above; and
- g) Any person transacting on behalf of one or more underlying customers rather than on their own behalf.

III.131 In general, unless an intermediary is acting for its own account, an intermediary is not an underlying investor. An RFI with a customer that is an intermediary typically accepts instructions from the intermediary and not from any underlying investor.

III.132 Where an RFI's customer is an intermediary, the RFI should follow the identification and verification requirements for natural persons, legal persons, trusts and other legal arrangements in **Chapter 4: Standard CDD Measures** of the general GN.

III.133 An RFI must make a determination concerning the appropriateness of establishing a

business relationship with any intermediary. Because intermediaries generally act on behalf of underlying investors or other retail, institutional or wholesale intermediaries, there is a risk that an intermediary (in failing to apply appropriate policies, procedures and controls) may expose another RFI in the securities custody and service chain to liability for violations of the acts and regulations pertaining to AML/ATF and international sanctions.

III.134 Where an RFI is a fund administrator within the meaning of section 2(2) of the IFA or an operator of an investment fund within the meaning of section 2 of the IFA, the RFI must:

- a) Undertake due diligence on the fund, its underlying investors and any other parties appointed to the fund; and
- b) Conduct ongoing monitoring of the fund's transactions and arrangements to ensure that all obligations under the acts and regulations are being met.

III.135 RFIs must take appropriate measures to determine whether an intermediary with which a business relationship has been proposed applies adequate AML/ATF and international sanctions measures to its business, the intermediary's underlying investors and any other retail, institutional or wholesale intermediaries with which the intermediary has business relationships. To do so, an RFI should establish:

- a) Whether the intermediary is a Bermuda RFI or a wholly owned subsidiary of a Bermuda RFI;
- b) Whether the intermediary is a non-Bermuda person or entity that is regulated and applies AML/ATF and international sanctions measures at least equivalent to those in Bermuda, or whether the intermediary is a wholly owned subsidiary of such a person or entity;
- c) The geographic locations where the intermediary transacts business and the location of the parent company, if the intermediary is a wholly owned subsidiary;
- d) Whether the intermediary establishes or maintains correspondent accounts for non-Bermuda financial institutions;
- e) Whether the intermediary establishes or maintains private banking accounts;
- f) Whether the intermediary is a shell entity;
- g) Whether any of the intermediary's customers, employees, managers, beneficial owners or directors are PEPs;
- h) Whether the intermediary facilitates activities, for example, dealing in thinly traded securities that are recognised as being vulnerable to ML/TF, corruption, insider dealing, market manipulation, fraud or the evasion of sanctions;
- i) The customer base of the intermediary;
- j) The business of the intermediary, including the products, services and geographic connections of persons, including any intermediaries of the intermediary, that are linked with the securities sector business the intermediary seeks to conduct with the RFI;
- k) The professional reputation of the intermediary;

- l) The ownership and management structure of the intermediary and any other retail, institutional or wholesale intermediaries appointed to or working with or on behalf of the intermediary; and
- m) The adequacy of the intermediary's AML/ATF and international sanctions policies, procedures and controls.

III.136 Where an RFI's customer is an intermediary, the RFI and intermediary, should ensure that a division of responsibility for compliance with AML/ATF and international sanctions obligations is set forth clearly in a contractual agreement that comports with the regulations addressing permissible reliance and outsourcing arrangements. The RFI should bear in mind that, although it may not contract out its AML/ATF obligations, it may, where reliance and outsourcing regulatory requirements are adhered, contract with another party to assist the RFI in meeting its AML/ATF obligations.

III.137 Using a risk-based approach, RFIs should consider including in the agreement described in paragraph III.108 the following rights and obligations:

- a) The RFI will communicate its AML/ATF and international sanctions standards and other requirements to the intermediary;
- b) The intermediary will comply with those standards and requirements;
- c) Where the intermediary has customers who themselves engage in securities sector business with customers of their own, the intermediary will ensure that underlying investors, whether retail, institutional or wholesale, are subject to the legal and regulatory standards and requirements of the jurisdictions, including Bermuda, in which persons taking part in the securities custody and service chain are located, or in which they are subject to regulation;
- d) The intermediary will conduct securities sector business with or through the RFI on behalf of the intermediary's underlying customers only where the underlying customers and their beneficial owners have been subjected to satisfactory due diligence;
- e) The RFI is entitled to obtain from the intermediary, and the intermediary will provide without delay, information concerning the intermediary's underlying customers where the RFI requires such information in order to meet its AML/ATF and international sanctions obligations; and
- f) The RFI is entitled to verify with the intermediary, or through the engagement of an independent third party, whether the RFI's AML/ATF and international sanctions obligations have been met.

III.138 RFIs should periodically assess their customers who are intermediaries to determine the appropriateness of maintaining a business relationship with the intermediary and the adequacy of the agreement(s) governing the respective AML/ATF and international sanctions obligations of the RFI and the intermediary.

III.139 Using a risk-based approach, an RFI may require an intermediary to provide identification and/or verification information for the intermediary's underlying

customers as a condition for commencing or maintaining a business relationship.

- III.140 An intermediary may provide an RFI with the names of the intermediary's underlying customers, either by providing the information directly or through the use of segregated accounts that include the underlying customer's name in the name of the account holder. An intermediary's request for a segregated account held in a name such as 'ABC Investment Company Ltd of John Smith' may assist an RFI in meeting its AML/ATF and international sanctions obligations but does not necessarily create a customer relationship between the RFI and the intermediary's underlying customer.
- III.141 Similarly, where a life insurance company is the legal and beneficial owner of the funds or other investments held in an RFI and the policyholder has not been led to believe that they have rights over the account with the RFI, the life insurance company, and not the policyholder, is the RFI's customer.
- III.142 Where an RFI with an intermediary customer holds some limited information about an intermediary's underlying customer, the RFI may nonetheless treat the intermediary as its customer for CDD purposes, provided that the following circumstances are met:
- a) The omnibus account or other business relationship is established by or on behalf of an intermediary for the purpose of executing transactions that will clear or settle at another financial institution, or the intermediary making use of the RFI's services, provides limited information to the RFI for the purpose of delivering assets to the custody account of the beneficial owner at another financial institution;
 - b) The limited information given to the RFI about any underlying customers is used primarily to assist the intermediary with:
 - i. Record-keeping;
 - ii. To establish sub-accounts that hold positions for a limited duration to facilitate the transfer of assets to another financial institution; or
 - iii. For purposes of ensuring that appropriate AML/ATF measures are applied;
 - c) All transactions in the omnibus account or sub-accounts at the RFI are initiated by the intermediary; and
 - d) The underlying customer has no direct control over the omnibus account or subaccounts at the RFI.
- III.143 Where an RFI with an intermediary customer holds limited information about an intermediary's underlying customer and the RFI determines that it is reasonable to treat the intermediary as the RFI's customer, the RFI must, nonetheless, use all available information, including any limited information about an intermediary's underlying customer, to evaluate ML/FT risks and to ensure compliance with international sanctions; an RFI may not ignore such information.
- III.144 Information concerning the applicability of simplified due diligence to securities

sector business is set forth in paragraphs III.165 through III.174.

III.145 Information concerning an RFI's application of enhanced due diligence to securities sector business is set forth in paragraphs III.175 through III.182.

Timing of customer due diligence

III.146 An RFI must apply CDD measures when it:

- a) Establishes a business relationship;
- b) Carries out an occasional transaction with a value of \$15,000 or more, whether the transaction is carried out in a single operation or several operations which appear to be linked, or carries out any wire transfer in an amount of \$1,000 or more (see **Chapter 8: Wire Transfers**);
- c) Suspects ML/TF; or
- d) Doubts the veracity or adequacy of documents, data or information previously obtained for the purposes of identification or verification.

III.147 RFIs conducting securities sector business must identify the following before entering into any business relationship or conducting any occasional transaction:

- a) The customer and any beneficial owners of the customer;
- b) The nature of the customer's business;
- c) The purpose and intended nature of the business relationship; and
- d) The source of funds.

III.148 Before establishing any business relationship or concluding any transaction, RFIs must also verify the identity of the customer and any beneficial owners of the customer. See paragraphs 3.13 through 3.21 of the general GN.

III.149 In addition, each time a customer makes a complex, unusually large transaction, or unusual pattern of transactions in connection with securities sector business, under Regulation 7(2)(b), the RFI must conduct ongoing monitoring to determine whether there is an apparent economic or lawful purpose and should consider whether the RFI needs to obtain and verify the source of the funds or source of wealth and the objectives of the customer.

III.150 Verification of identity should also take place or be confirmed:

- a) Before any payment is initiated to, from the account of, or on behalf of the customer, other than routine fees paid to the RFI;
- b) Before any manager, beneficial owner, director or similar person associated with an intermediary is permitted to act on behalf of the intermediary or its underlying customers;
- c) Subsequently, when there is any change in information previously provided; and

- d) When otherwise deemed necessary due to information obtained through risk assessment or ongoing monitoring.
- III.151 Where a particular securities sector business relationship or transaction presents higher ML/TF risks, for example, where a PEP or a target of international sanctions is involved, RFIs should apply enhanced due diligence (see **Chapter 5 Non-Standard CDD Measures**).
- III.152 In order to keep ageing identity information accurate and up to date, RFIs should take advantage of opportunities to obtain updated documentation. Such opportunities include, but are not limited to:
- a) A change in the address of a customer;
 - b) The expiration of a document establishing identity;
 - c) A receipt of payment from, or a request for payment to, a previously unknown account; and
 - d) The appointment of a new employee, manager, beneficial owner, director or similar person to act on behalf of an intermediary.
- III.153 Using a risk-based approach, an RFI may consider the appropriateness of opening an investor account and accepting a subscription payment upon receipt of a valid application form, provided that the RFI withholds payment and transfer of redemptions, dividends and all other funds and assets until full AML/ATF documentation and information has been received and evaluated as sufficient.
- III.154 Detailed information on the timing of CDD measures is set forth in **Chapter 3: Overview of CDD**.
- Reliance on intermediaries
- III.155 As set forth in paragraphs III.61 through III.64, the significant involvement of intermediaries in securities sector business requires RFIs that choose to enter into reliance relationships with intermediaries to ensure that those relationships comply with regulatory requirements.
- III.156 Regulation 14 and paragraphs 5.117 through 5.148 set forth the circumstances in which reliance on a third party is permissible. Paragraphs 3.23 through 3.25 provide additional relevant guidance.
- III.157 Where reliance is permissible, the following duties cannot be delegated to a relied-upon person; they remain with the relying RFI:
- a) Conducting ongoing monitoring to scrutinise transactions undertaken throughout the course of the relationship to ensure that the transactions are consistent with the RFI's knowledge of the customer, beneficial owners, nature of the customer's business, purpose and intended nature of the business

- relationship and, where necessary, the source of funds or wealth; and
b) Reporting knowledge of suspicion of ML/TF.

III.158 In any reliance situation, the relying RFI retains responsibility for any failure to comply with a requirement of the regulations, as this responsibility cannot be delegated.

III.159 RFIs may rely upon a third party that is:

For Bermuda persons

- a) An AML/ATF RFI, as defined in Section 42A(1) of POCA; or
- b) An independent professional, as defined in Regulation 2(1) that is supervised for Bermuda AML/ATF purposes by a designated professional body in accordance with Section 4 of the POCA SEA.

For non-Bermuda persons

- a) An institution that carries on business in a country or territory other than Bermuda and that business corresponds to the business of an AML/ATF RFI or an independent professional. The independent professional must be subject to mandatory professional registration recognised by law; and
- b) Subject to requirements equivalent to those laid down in the regulations; and
- c) Supervised by a supervisory authority for compliance with those requirements.

III.160 Where an RFI seeks to rely upon or outsource to a non-Bermuda person and the RFI seeks to determine whether the non-Bermuda person is subject to AML/ATF regulations equivalent to those of Bermuda, the RFI should consider not only the degree to which the non-Bermuda jurisdiction regulates financial institutions for AML/ATF compliance but also the degree to which the non-Bermuda jurisdiction regulates the specific type of entity with which the RFI seeks an AML/ATF reliance or outsourcing relationship. For example, where the non-Bermuda person is an attorney, accountant or investment company, the RFI should consider whether the non-Bermuda jurisdiction regulates, supervises or monitors attorneys, accountants or investment companies, respectively, for compliance with AML/ATF regulations equivalent to those in Bermuda.

III.161 Before an RFI conducting securities sector business can rely on CDD conducted by a third party, the RFI must determine whether the third party carried out at least the standard level of customer verification.

III.162 RFIs may rely upon another person or institution to carry out CDD measures only when the person or institution being relied upon confirms in writing that the measures have actually been applied. A Bermudian RFI or a non-Bermudian entity conducting business corresponding to the business of a Bermudian RFI that has relied upon another person to apply certain CDD measures may not pass on

verification to a third institution.

- III.163 Relying RFIs must satisfy themselves that copies of documents, data and other information used by the intermediary for verification of identity, nature of the customer's business, purpose and intended nature of the business relationship, and the sources of wealth and funds will be made available by the intermediary upon request, without delay, for at least five years after the account is closed.
- III.164 Periodically and on a risk-sensitive basis, relying upon RFIs should test the willingness and ability of relied-upon intermediaries to actually make available requested evidence of verification. This is particularly relevant when a customer is assessed as being higher risk, when the intermediary is situated in or a transaction involves a higher-risk jurisdiction, or when knowledge, suspicion or reasonable grounds for suspicion of ML/TF is present.
- III.165 Where an RFI determines that the information it has received is adequate and all other criteria for relying upon a third party have been met, the RFI may determine that it has satisfied its CDD obligations.
- III.166 Where, however, an RFI determines that relevant documentation is not available or is inadequate, the RFI will need to obtain additional documentation by ensuring that either:
- a) The relied upon intermediary obtains the information in accordance with the relevant Bermuda acts, regulations and guidance notes; or
 - b) The relying RFI obtains the information itself.
- III.167 In addition to using a risk-based approach to determine the level of reliance an RFI can place on an intermediary, RFIs should consider whether to introduce AML/ATF standards and related training as a condition of accepting or maintaining a business from an intermediary.
- III.168 Any use of a pro-forma certificate should not heedlessly be accepted as an adequate performance of CDD. Pro-forma certificates may reduce duplication of effort and documentation only where the RFI determines after the careful assessment that the pro-forma certificate, in combination with the RFI's and intermediary's AML/ATF policies, procedures and controls, meets all of the requirements of the relevant Bermuda acts, regulations and guidance notes.
- III.169 Where an RFI is unable to confirm that an intermediary is subject to sufficient regulation and supervision in respect of AML/ATF, reliance on that intermediary is not permissible. Nevertheless, an outsourcing arrangement that complies with the regulations may be possible.

Outsourcing

- III.170 An outsourcing arrangement occurs where an RFI conducting securities sector business uses a service provider to perform an activity, such as applying CDD measures, that would normally be carried out by the RFI. Irrespective of whether the service provider is in Bermuda or overseas and irrespective of whether the service provider is within or independent of any financial group of which the RFI may be a member, any outsourcing arrangement is subject to the regulations, including Regulation 14, and both this SSGN and the general GN.
- III.171 Outsourced activities must be carried out in accordance with the RFI's policies, procedures and controls. The RFI must have specific policies, procedures and controls for monitoring and managing any service provider to which the RFI outsources an activity relating to AML/ATF. In addition, the RFI must ensure that the service provider has in place AML/ATF systems, controls and procedures that are in compliance with Bermuda AML/ATF requirements. An RFI's board or similarly empowered body or natural person, such as the compliance officer, must clearly define and document the roles, responsibilities and duties of persons responsible for all outsourced activities as if the activities were performed in house according to the RFI's own standards of internal control and oversight.
- III.172 In any outsourcing arrangement, an RFI conducting securities sector business cannot contract out its statutory and regulatory responsibilities to prevent and detect ML/TF.
- III.173 Where an RFI conducting securities sector business outsources an activity to a service provider, the RFI remains responsible at all times for compliance with the regulations and both the SSGN and the general GN.
- III.174 An RFI considering an outsourcing arrangement with an intermediary should introduce measures to ensure that the intermediary has in place adequate AML/ATF systems, controls and procedures. These measures may include but are not limited to:
- a) Requiring sight of the intermediary's AML/ATF policies, procedures and controls;
 - b) Requesting and reviewing information regarding the intermediary's risk assessment of its underlying customer base and its implementation of risk mitigation measures;
 - c) Requesting and reviewing a copy of the relevant section of the last inspection report undertaken by the intermediary's regulator;
 - d) Devising a standard set of customer due diligence procedures and requiring an undertaking from the intermediary that procedures to the same standard will be applied;
 - e) Requiring the right to physically audit the introducer's AML/ATF policies, procedures and controls and periodically testing those policies, procedures and controls; and/or
 - f) Obtaining any of the information set forth in paragraph III.107.
- III.175 When considering an outsourcing arrangement, RFIs should also have regard to

paragraph III.132.

- III.176 Paragraphs 5.149 through 5.174 of the general GN set forth the circumstances in which an outsourcing arrangement is permissible.

Refusing or terminating securities sector business

- III.177 If for any reason an RFI is unable to complete CDD measures in relation to a customer, Regulation 9 establishes that the RFI must:
- a) In the case of a proposed business relationship or transaction, not establish that business relationship, not open any account and not carry out any occasional transaction with or on behalf of the customer;
 - b) In the case of an existing business relationship, terminate that business relationship with the customer; and
 - c) Consider whether the RFI is required to make a suspicious activity report to the FIA in accordance with its obligations under POCA and ATFA.
- III.178 Where an RFI conducting securities sector business declines or terminates business due to knowledge, suspicion or reasonable grounds for suspicion that the business might be criminal in intent or origin, the RFI must refrain from referring such declined business to another person.
- III.179 Where an RFI requests information from an entity to which it has outsourced the application of AML/ATF measures or from a relied-upon intermediary and the request is not met, the RFI will need to take account of that fact in its assessment of the intermediary in question, and of the legal and other risks associated with outsourcing, relying upon or maintaining a business relationship with the intermediary in the future. In addition, the RFI should review its application of CDD in respect of any underlying customers of the intermediary.
- III.180 Each outsourcing agreement should include a termination and exit management clause that, in the event that an RFI discontinues its outsourcing arrangement with the service provider, allows the outsourced activities and any related data to be transferred to another service provider or to be reincorporated into the outsourcing RFI. Care should be taken to ensure that any termination of an outsourcing arrangement is carried out without detriment to the continuity and quality of the provision of services to customers and to the RFI's ability to effectively conduct CDD, ongoing monitoring and other AML/ATF obligations.

Receiving and sending payments

- III.181 The ML/TF risks associated with an investor receiving and sending funds, including subscriptions, other capital contributions, redemptions, dividends, interest or any other payments other than fees paid to the RFI, are lowest where:

- a) No cash deposits, withdrawals or payments are permitted;
 - b) No third parties are permitted to send or receive payments other than a personal representative named on the death or disablement of the investor;
 - c) The RFI ensures that payments are received from and made to an account held in the name of the investor at an RFI subject to the regulations or at an institution that is situated in a country or territory other than Bermuda that imposes requirements equivalent to those in Bermuda, that effectively implements those requirements and that is supervised for effective compliance with those requirements; and
 - d) The RFI permits no changes to its payment policies, procedures and controls concerning the above without careful review of the impact such changes would have on the RFI's risk assessments and ability to effectively meet its AML/ATF obligations.
- III.182 No investor payments, including but not limited to redemptions and distributions, should be made until appropriate due diligence has been completed.
- III.183 An RFI should establish how any initial, recurring or one-off payment to the RFI, intermediary or third-party service provider is to be made, from where and by whom.
- III.184 Where payment is to be made from an account other than in the name of the customer, the reasons for this must be understood, assessed and recorded. Where considered necessary, evidence of the identity of the account holder should be obtained.
- III.185 The RFI should take ongoing measures to satisfy itself that each payment received was actually made from the anticipated account.
- III.186 Where funds are being remitted from several accounts, an RFI must understand the reasons for this and consider whether the arrangement has an apparent economic or lawful purpose.
- III.187 Where an RFI is sending funds to an investor, whether as a redemption, dividend, interest or other payment, the RFI should ensure that payment is sent only to an account in the name of the authorised recipient.
- III.188 Where there is a request for payment to be made to more than one account, the reasons for this should be understood, assessed and recorded. Where considered necessary, evidence of the identity of the account holder(s) must be obtained.
- III.189 Where there is a request for any payment to be made by cheque, the reasons for this should be understood, assessed and recorded. Where an RFI approves the issuance of payment by cheque, any cheque should be marked 'account payee only'.
- III.190 In circumstances where payment is made in cash or bearer negotiable instruments, an RFI should be prepared to demonstrate that it has determined and applied appropriate

risk mitigation measures and documented relevant policies, procedures and controls. An RFI's reporting officer should review any securities sector business cash or bearer instrument transaction that may present a higher risk.

- III.191 Paragraph 7.14 of the general GN states that each RFI should establish norms for cash transactions and procedures for the identification of unusual cash transactions or proposed cash transactions.
- III.192 Paragraphs 4.99 through 4.103 of the general GN provide additional guidance on the use of bearer instruments.

Applicability of simplified due diligence to securities sector business

- III.193 Simplified due diligence involves the application of reduced or simplified CDD measures in specified circumstances.
- III.194 RFIs may consider applying reduced or simplified due diligence measures only in conformance with the acts, regulations and paragraphs 5.1 through 5.13 of the general GN and where the RFI has:
 - a) Taken into account the results of Bermuda's national risk assessment;
 - b) Conducted and documented a risk assessment providing the RFI with reasonable grounds for believing that there is a low risk of ML/TF; and
 - c) No knowledge, suspicion or reasonable grounds for suspicion of ML/TF.
- III.195 Regulation 10 and paragraph 1 of the Schedule to the regulations authorise RFIs to apply simplified due diligence measures for other securities sector business customers provided the following criteria are met:
 - a) The product is a pension, superannuation or similar scheme which provides retirement benefits to employees, where contributions are made by an employer or by way of deduction from an employee's wages and the scheme rules do not permit the assignment of a member's interest under the scheme;
 - b) In the case of insurance policies or savings products of a similar nature, the product has an annual premium of no more than \$1,000 or a single premium of no more than \$2,500;
 - c) In the case of products which are related to the financing of physical assets where the legal and beneficial title of the assets is not transferred to the customer until the termination of the contractual relationship, the product has annual payments not exceeding \$15,000; or
 - d) In all other cases, the product has a maximum threshold of \$15,000;

and

- a) The product has a written contractual base;
- b) Any related transactions are carried out through an account of the customer with

an RFI subject to the regulations or with a banking institution that is situated in a country or territory other than Bermuda that imposes requirements equivalent to those in Bermuda that effectively implements those requirements and that is supervised for effective compliance with those requirements;

- c) The product or related transaction is not anonymous and its nature is such that it allows for the timely application of CDD measures where there is a suspicion of ML/TF;
- d) The benefits of the product and any related transactions cannot be realised for the benefit of third parties, except in the case of death, disablement, survival to a predetermined advanced age or similar events;
- e) The benefits of the product and any related transactions are only realisable in the long term;
- f) The product and any related transactions cannot be used as collateral; and
- g) During the contractual relationship, no accelerated payments are made, no surrender clauses are used and no early termination takes place.

III.196 In addition, customers for which it may be appropriate to reduce or simplify the application of CDD measures include:

- a) AML/ATF RFIs transacting solely on their own behalf (see paragraph 5.146 of the general GN);
- b) Companies listed on an appointed stock exchange (see paragraphs 4.97 through 4.98 of the general GN);
- c) Employee pension schemes (see paragraphs 4.131 through 4.136 of the general GN); and
- d) Bermuda public authorities.

III.197 Where the customer is an independent professional (or similar professional) and the product is an account into which monies of underlying customers are pooled, Regulation 10(4) permits simplified due diligence on the independent professional (or similar professional) only where the following conditions are met:

- a) The pooled account is held in Bermuda by an independent professional that is subject to and supervised for compliance with Bermuda's AML/ATF acts and regulations and has effectively implemented those requirements; and
- b) The RFI holding the pooled account has confirmed in writing and confirms, via periodic testing, that it will receive, upon request, information on the identity of the underlying customers whose monies are pooled in the account.

or

- a) The pooled account is held by an independent professional (or similar professional) in a country or territory other than Bermuda that imposes equivalent AML/ATF requirements; and
- b) The independent professional (or similar professional) is supervised for compliance with that jurisdiction's AML/ATF requirements and has effectively

- implemented those requirements; and
- c) The institution holding the pooled account has confirmed in writing and confirms, via periodic testing, that it will receive, upon request, information on the identity of the underlying customers whose monies are pooled in the account.

III.198 An RFI must discontinue the application of any reduced or simplified CDD measures and apply either standard or enhanced due diligence measures where:

- a) A customer exercises a right to cancel or effectuate an early redemption;
- b) Any other provision of paragraphs III.166 through III.169 is no longer met; or
- c) The RFI has reason to doubt that the risk associated with any business relationship or occasional transaction is anything other than lower risk.

III.199 Notwithstanding the regulations' provisions for applying reduced or simplified CDD measures, an RFI may consider it appropriate or necessary to apply standard or enhanced CDD where none is required by the regulations. An RFI may consider it appropriate or necessary to apply CDD for practical business reasons, for the purpose of screening customers for international sanctions targets or any other reason.

III.200 Where reduced or simplified due diligence is appropriate for only one party to a securities sector business relationship or occasional transaction, RFIs must adhere to this SSGN and the general GN in identifying and verifying other parties to the relationship or transaction.

III.201 Where a customer involves an entity for which simplified due diligence is appropriate, RFIs must nonetheless adhere to this SSGN and the general GN in identifying and verifying signatories and other persons connected with the customer and its business relationship with the RFI.

III.202 Detailed information on the applicability of simplified due diligence is set forth in paragraphs 3.18 and 5.1 through 5.13 of the general GN.

Enhanced due diligence for securities sector business

III.203 Enhanced due diligence is the application of additional CDD measures where necessary to ensure that the AML/ATF measures in place are commensurate with higher ML/TF risks.

III.204 Regulation 11 requires RFIs to apply enhanced due diligence in all situations where a customer or business relationship, or any country or geographic area, service, delivery channel, product or transaction with which the customer engages or the business relationship is involved, presents a higher than the standard risk of ML/TF.

III.205 In addition, enhanced due diligence must be applied in each of the following

circumstances:

- a) The business relationship or occasional transaction has a connection with a country or territory that represents a higher risk of ML, corruption, TF or being subject to international sanctions, including but not limited to any country that has been identified as having a higher risk by FATF or CFATF (see paragraphs 5.17 through 5.19 of the general GN);
- b) The customer or beneficial owner has not been physically present for identification purposes (see paragraphs 5.25 through 5.29 of the general GN); and
- c) The business relationship or occasional transaction involves a politically exposed person (see paragraphs 5.96 through 5.116 of the general GN) and Annex IV.

III.206 Where an RFI determines that enhanced due diligence measures are necessary, it must apply specific and adequate measures to compensate for the higher risk of ML/TF.

III.207 In selecting the appropriate additional measures to be applied, RFIs should consider obtaining additional information and approvals, including one or more of the following:

- a) Additional information on the customer, such as the persons that comprise, own and control the customer, volume of assets and information available through public databases;
- b) Additional information on the nature of the customer's business and the nature and purpose of the business relationship (see paragraphs 4.1 through 4.4 of the general GN);
- c) Additional information on the source of wealth and source of funds of the customer (see paragraphs 5.110 through 5.113 of the general GN);
- d) Additional information on the reasons for planned or completed transactions;
- e) Approval of the RFI's senior management to commence or continue the business relationship (see paragraph 5.109 of the general GN); and
- f) The information set forth in paragraph III.107.

III.208 Moreover, RFIs should consider applying additional measures, such as:

- a) Limiting or precluding early redemption;
- b) Updating more frequently the identification and verification data for the customer, its beneficial owner(s) and any other persons who owns or may exercise control over the customer or who may instruct the RFI on behalf of the customer;
- c) Conducting enhanced monitoring of the business relationship by increasing the number and frequency of controls applied and by identifying patterns of conduct requiring further examination;
- d) Ensuring that payments are carried out through an account in the customer's

- name through an RFI subject to the regulations or through an institution that is situated in a country or territory other than Bermuda that imposes requirements equivalent to those in Bermuda that effectively implements those requirements and that is supervised for effective compliance with those requirements; and
- e) Lowering the threshold of ownership below 25% and understanding the voting rights of equity shares to ensure a complete understanding of the control structure of the entity involved.

- III.209 Detailed information on enhanced due diligence is set forth in **Chapter 5: Non-Standard CDD Measures**.
- III.210 Specific indicators of higher risk in securities sector business are discussed in greater detail in paragraphs III.249 through III.255.

International Sanctions

- III.211 RFIs conducting securities sector business should implement a sanctions compliance programme in line with the guidance set forth in **Chapter 6: International Sanctions**.
- III.212 RFIs should have in place processes for screening against sanctions list both customers, prospective customers, service providers and any third-party intermediaries seeking to introduce new business. RFIs should also have in place processes for performing background checks to identify information about a customer's association with financial or other crimes or with PEPs.
- III.213 RFIs should determine whether any persons or activities connected with a securities sector business customer and the natural persons connected with any such persons that are legal persons, trusts or other legal arrangements are sanctions targets.
- III.214 RFIs conducting securities sector business should scrutinise all investment instruments to ensure that they do not represent obligations of, or ownership interests in, entities owned or controlled by sanctions targets. RFIs should have particular regard for sovereign debt securities, oil and gas futures contracts and other investment vehicles and securities that may involve a sanctions target through an intermediary in another portion of a securities custody and service chain.
- III.215 Where an RFI conducting securities sector business identifies an investment asset that is subject to freezing under a sanction in effect in Bermuda, the RFI should ensure that the asset is not redeemed, paid, withdrawn, endorsed, guaranteed, subject to a book transfer or dealt with in any other way in violation of the acts and regulations.
- III.216 RFIs must be aware that, in contrast to AML/ATF measures, which permit securities sector businesses some flexibility in setting their own timetables for verifying (see

Regulation 8) and updating CDD information (see Regulations 6(2) and 7(2)(c)), an RFI risks breaching a sanctions obligation as soon as a person, entity, good, service or activity is listed under a sanctions regime in effect in Bermuda. In addition, whereas an RFI may choose to transact with a higher-risk natural person or entity, it may not transact with any natural person or entity subject to the Bermuda sanctions regime without first ensuring that an appropriate licence is in effect.

III.217 RFI should note that the application of reduced or simplified CDD measures and delays in identifying or verifying the identity of a beneficiary may prevent an RFI from effectively identifying a sanctions target, in turn causing the RFI to breach a sanctions regime in effect in Bermuda.

III.218 Detailed information is set forth in **Chapter 6: International Sanctions**.

Ongoing Monitoring for Securities Sector Business

III.219 Regulations 6(3), 6(3A), 7, 11(4)(c), 12(1)(b), 13(4), 14(A)(2)(d), 16 and 18 require RFIs to conduct ongoing monitoring of the business relationship with their customers.

III.220 Ongoing monitoring in the context of securities sector business supports several objectives:

- a) Maintaining a proper understanding of an investor's owner's controllers and activities;
- b) Assessing the appropriateness of maintaining a business relationship, outsourcing arrangement or reliance arrangement with an intermediary or other third party and the adequacy of the agreement(s) governing the respective AML/ATF and international sanctions obligations of the RFI and the intermediary or other third party;
- c) Ensuring that CDD documents and other records are accurate and up to date;
- d) Providing accurate inputs for the RFI's ongoing risk assessment processes;
- e) Testing the outcomes of the RFI's ongoing risk assessment processes; and
- f) Detecting and scrutinising unusual or suspicious conduct in relation to the customer.

III.221 Failure to adequately monitor a customer's business relationship could expose an RFI to abuse by criminals and may call into question the adequacy of the RFI's AML/ATF policies, procedures and controls and the integrity or fitness and properness of the RFI's management.

III.222 Ongoing monitoring of a business relationship includes:

- a) Scrutinising transactions undertaken throughout the course of the relationship (including, where necessary, the source of wealth, source of funds, investor experience and objectives, and any prospectus) and other aspects of the business

relationship to ensure that the transactions and customer's conduct are consistent with the RFI's knowledge of the customer, the customer profile, any underlying investors and the persons who own, control and act on behalf of the customer and any underlying investors;

- b) Investigating the background and purpose of all complex or unusually large transactions and patterns of transactions that have no apparent economic or lawful purpose;
- c) Recording in writing the findings of investigations;
- d) Determining whether a customer or person connected with a customer is a PEP and whether a customer relationship involves a country that represents a higher risk for ML, corruption, TF or being subject to international sanctions, including but not limited to a country that has been identified by the FATF or CFATF as being higher risk;
- e) Reviewing existing documents, data and information to ensure that they are accurate, up to date, adequate and relevant for the purpose of applying CDD measures in the context of securities sector business; and
- f) Adjusting risk profiles and risk assessments on the basis of information reviewed.

III.223 Ongoing monitoring also includes an RFI maintaining up-to-date information on the permissibility under the regulations of any reliance upon intermediaries for AML/ATF purposes and taking any needed corrective actions.

III.224 Ongoing monitoring must be carried out on a risk-sensitive basis. The inherent ML/TF risk levels associated with securities sector business should be taken into account when determining baseline levels of ongoing monitoring. Higher-risk customers and business relationships must be subjected to enhanced due diligence and more frequent and/or intensive ongoing monitoring.

III.225 Bearing in mind that some criminal activity may be so widespread as to appear to be the norm, RFIs should establish norms for lawful transactions and conduct in relation to securities sector business customers and the persons who own and control those customers. See paragraphs 7.11 through 7.14 of the general GN.

III.226 Once an RFI has established norms for lawful transactions and conduct, it must monitor the business relationship, including transactions, patterns of transactions and conduct by customers and the persons who own, control and act on behalf of those customers, including any underlying investors, to identify transactions and conduct falling outside of the norm.

III.227 The determination of norms for a category of customers or a category of persons who own, control or act on behalf of a customer should be based initially upon the information obtained in order to understand the nature of the customer's business and the purpose and intended nature of the business relationship with the RFI. See paragraphs III.75 through III.76 and III.79 through III.86.

- III.228 An RFI or intermediary's knowledge of its customers should be sufficiently detailed to enable it to assess any investment event properly and should allow it to evaluate the consistency of the event with the customer's profile.
- III.229 Where an RFI becomes aware at any time that it lacks sufficient information about an existing customer, it should take steps to ensure that all relevant information is obtained as soon as is reasonably practicable. See paragraph III.138.
- III.230 Monitoring may take place both in real time and after the event and it may be manual and automated. Irrespective, any system of monitoring should ensure at its core that:
- a) Customers, persons who own, control and act on behalf of customers, transactions and conduct are flagged in exception reports for further examination;
 - b) The exception reports are reviewed promptly by the appropriate person(s); and
 - c) Appropriate and proportionate action is taken to reduce the possibility of ML/TF occurring without detection.
- III.231 Where an RFI accepts higher-risk securities sector business, it must ensure that it has the capacity and expertise to effectively conduct ongoing monitoring of the business relationship and the persons who comprise that relationship (see paragraph III.56).

Trigger events

- III.232 In the securities sector business, various transactions or conduct taking place after initial CDD measures are applied may require the application of additional CDD as part of an RFI's ongoing monitoring. These trigger events include, but are not limited to:
- a) Early redemptions of long-term investments;
 - b) Changes in the type of investment product;
 - c) Changes of address;
 - d) Change in policyholder details, including any change in ownership;
 - e) Changes in the payment method or source;
 - f) Requests for payment to a third party;
 - g) Subsequently discovered information about an investor or intermediary, or other person connected with a customer;
 - h) Customers primarily using a securities sector business RFI's funds transfer or value transfer services rather than its investment services;
 - i) Indications of market manipulation, insider dealing or fraud; and
 - j) Information received from a competent authority.
- III.233 Where an RFI is monitoring the reliability of an intermediary upon which it relies for AML/ATF purposes, additional trigger events include, but are not limited to:

- a) Changes in the volume of business through the intermediary;
 - b) Changes in fee amounts the intermediary charges customers; and
 - c) Changes to the AML/ATF regulatory status of the intermediary or of the country or territory in which the intermediary is regulated.
- III.234 The background and purpose of each trigger event should, as far as possible, be examined in order to determine whether the risk ratings assigned to the business relationship require modification and whether any additional risk-mitigation measures need to be put in place. The findings of the examination should be recorded and maintained in accordance with the record-keeping obligations set forth in **Chapter 11: Record-Keeping** and paragraphs III.242 through III.248.
- III.235 Where an investor takes up any right to decline to proceed with an investment or to exercise an early redemption, the circumstances surrounding the request should be examined.
- III.236 Where a payment is made to an investor due to the exercise of a cancellation or early redemption, the payment should be made to the ceding account from which the funds were originally sent. See paragraphs III.153 through III.164.
- III.237 RFIs should exercise caution with regard to any securities sector business that involves the use of bearer instruments. Because bearer instruments can be exchanged easily from person to person without notifying the RFI of the resulting changes in ownership and control, bearer instruments limit an RFI's ability to conduct CDD that meets the requirements of the acts, regulations and this SSGN.
- III.238 Paragraphs 4.99 through 4.103 of the general GN set forth additional guidance concerning bearer instruments.
- III.239 Paragraphs 5.110 through 5.113 of the general GN and III.72 through III.76 set forth additional guidance on sources of wealth and funds.
- III.240 Detailed information on ongoing monitoring is set forth in **Chapter 7: Ongoing Monitoring**.

Suspicious Activity Reporting

- III.241 The suspicious activity reporting requirements for RFIs are governed primarily by Sections 43 through 48 of POCA, Sections 5 through 12 of ATFA and Regulations 16 and 17.
- III.242 RFIs conducting securities sector business must put in place appropriate policies and procedures to ensure that knowledge, suspicion and reasonable grounds for suspicion that funds or assets are criminal property or that a person is involved ML/TF are identified, enquired into, documented and reported.

- III.243 The definitions of knowledge, suspicion and reasonable grounds to know or suspect are set forth in paragraphs 9.7 through 9.13 of the general GN.
- III.244 Many customers may, for acceptable reasons, have an erratic pattern of transactions or activity. A transaction or activity that is identified as unusual, therefore, should not be automatically considered suspicious or as providing reasonable grounds for suspicion but should cause the RFI to conduct further, objective enquiries to determine whether or not the transaction or conduct is indeed suspicious or provides reasonable grounds for suspicion.
- III.245 Enquiries into unusual transactions should be in the form of additional CDD measures to ensure an adequate, gap-free understanding of the relationship, including the purpose and nature of the transaction and/or conduct in question and the identity of the persons who initiate or benefit from the transaction and/or conduct.
- III.246 All employees, regardless of whether they have a compliance function, are obliged to report to the reporting officer within the RFI each instance in which they have knowledge, suspicion or reasonable grounds for suspicion that funds or assets are criminal property or that a person is involved in ML/TF.
- III.247 An RFI's reporting officer must consider each report in light of all available information and determine whether it gives rise to knowledge, suspicion or reasonable grounds for suspicion that funds or assets are criminal property or that a person is involved in ML/TF.
- III.248 Where, after evaluating an internal suspicious activity report, the reporting officer determines that there is knowledge, suspicion or reasonable grounds for suspicion that funds or assets are criminal property or that a person is involved in ML/TF, the reporting officer must promptly file an external suspicious activity report with the FIA.
- III.249 The FIA no longer accepts any manually submitted suspicious activity reports (including those faxed or emailed). The FIA accepts only those suspicious activity reports that are submitted electronically via the [goAML](#) system, which is available at **www.fia.bm**.
- III.250 Where a reporting officer considers that an external report should be made urgently, initial notification to the FIA may be made by telephone but must be followed promptly by a full suspicious activity report.
- III.251 The FIA is located on the 6th Floor, Strata 'G' Building, 30A Church Street, Hamilton HM11 and it can be contacted during office hours on telephone number (441) 292-3422, on fax number (441) 296-3422, or by email at info@fia.bm.
- III.252 RFIs should ensure that any intermediaries that are customers or are being relied upon have appropriate policies, procedures and controls to identify, enquire into,

document and report to a competent authority knowledge, suspicion or reasonable grounds for suspicion that funds or assets are criminal property or that a person is involved in ML/TF.

- III.253 Because some securities products and services are highly complex, RFIs should ensure that suspicious activity reports adequately describe and explain the products, services, transactions and conduct connected with each report.

Failure to report and tipping-off offences

- III.254 Where an employee fails to comply with the obligations under Section 46 of POCA or Schedule 1 of ATFA to make disclosures to a reporting officer and/or to the FIA promptly after information giving rise to knowledge, suspicion or reasonable grounds for suspicion comes to the attention of the employee, the employee is liable to criminal prosecution.

- III.255 The criminal sanction, under POCA and ATFA, for failure to report is a prison term of up to three years on summary conviction or ten years on conviction on indictment, a fine up to an unlimited amount, or both.

- III.256 Sections 20A through 20I of the POCA SEA grant the BMA other enforcement powers when it considers that an RFI has contravened a requirement imposed on it, including the requirement to report suspicious activity. Those other enforcement powers include the following powers to:

- a) Issue directives;
- b) Restrict an RFI's licence;
- c) Revoke an RFI's licence;
- d) Publicly censure a person;
- e) Prohibit a natural person from performing functions in relation to an AML/ATF regulated activity; and
- f) Wind up or dissolve a company or firm that is or has been a licensed entity.

- III.257 Section 20H of the POCA SEA grants the court the authority to enter an injunction where there is a reasonable likelihood that any person will contravene a requirement under the regulations or any direction or licence condition imposed by the BMA.

- III.258 Section 47 of POCA and Section 10A of ATFA contain tipping-off offences.

- III.259 It is a tipping-off offence under Section 47 of POCA and Section 10 of ATFA if a person knows, suspects or has reasonable grounds to suspect that an internal or external report has been made to the reporting officer or to the FIA and the person discloses to any other person:

- a) Knowledge or suspicion that a report has been made; and/or
- b) Information or any other matter likely to prejudice any investigation that might

be conducted following such a disclosure.

- III.260 It is also a tipping-off offence if a person knows, suspects or has reasonable grounds to suspect that a police officer is acting, or proposing to act, in connection with an actual or proposed investigation of ML/TF and the person discloses to any other personal information or any other matter likely to prejudice the actual or proposed investigation.
- III.261 Any RFI investigation into a customer or a customer's activities and any approach to the customer or to an introducing intermediary should be made with due regard to the risk of committing a tipping-off offence. See paragraphs 9.82 through 9.88 of the general GN.
- III.262 Detailed information on suspicious activity reporting, including related offences and constructive trusts, is set forth in **Chapter 9: Suspicious Activity Reporting**.

Employee Training and Awareness

- III.263 The responsibilities of RFIs to ensure appropriate employee training and awareness are governed primarily by Regulations 16 and 18.
- III.264 RFIs must take appropriate measures to ensure that relevant employees:
- a) Are aware of the acts and regulations relating to ML/TF;
 - b) Undergo periodic training on how to identify transactions or conduct which may be related to ML/TF; and
 - c) Know how to properly report knowledge, suspicion and reasonable grounds for suspicion that a transaction or conduct may be related to ML/TF.
- III.265 Each RFI must also ensure that relevant employees receive appropriate training on its AML/ATF policies and procedures relating to:
- a) Risk assessment and management;
 - b) CDD measures;
 - c) Ongoing monitoring;
 - d) Record-keeping;
 - e) Internal controls;
 - f) International sanctions (see paragraphs 6.52 through 6.54 of the general GN).
- III.266 In a securities sector business context, training should enable employees to:
- a) Readily identify investment products, services and transactions that may be abused for ML/TF purposes;
 - b) Understand how beneficial owners are defined under the acts and regulations and be capable of identifying those persons and verifying their identity;
 - c) Be capable of identifying and verifying the source of wealth and source of funds

information;

- d) Effectively vet investors, intermediaries, third-party service providers and their beneficial owners, and the persons who own them, control them and act on their behalf;
- e) Identify falsified documents;
- f) Assess the risks associated with a securities sector business relationship or occasional transaction and related transactions to and from an investor or intermediary's account; and
- g) Conduct ongoing monitoring of the customer and the securities sector business relationship with the RFI; and
- h) Recognise and report transactions or conduct where there is knowledge, suspicion or reasonable grounds for suspicion of ML/TF.

III.267 Where an employee exercises discretion for or in relation to a customer, the RFI must ensure that the employee has an appropriate level of knowledge and experience to exercise the discretion properly, in accordance with the duties and obligations arising under the acts and regulations. Training may supplement the requisite level of knowledge and experience but likely cannot adequately replace it.

III.268 RFIs should recognise that, often, multiple ML/TF typologies and techniques are used in a single transaction or in a series of related transactions. RFIs should, therefore, be alert to indicators of potentially suspicious transactions from all categories of typology or technique. RFIs should also incorporate the regular review of ML/TF trends and typologies into their employment screening and compliance training programmes, as well as into their risk identification and assessment procedures. Information on trends, typologies and techniques is available from a wide variety of publicly available sources, including but not limited to FATF and CFATF publications.

III.269 Detailed information on employee training and awareness is set forth in **Chapter 10: Employee Training and Awareness**.

Record-Keeping

III.270 The record-keeping obligations of RFIs are governed primarily by Regulations 15 and 16 of the POCR.

III.271 Under Regulation 16(4), each RFI must have systems in place enabling it to respond promptly to enquiries from a supervisory authority, the FIA or a police officer about whether the RFI maintains or has maintained during the previous five years a business relationship with any person and the nature of that relationship.

III.272 RFIs must keep specified records for a period of at least five years following the date on which the business relationship ends or, in the case of an occasional transaction, following the date on which the transaction, or the last in a series of transactions, is completed.

- III.273 RFI's conducting securities sector business should ensure that adequate procedures are in place to allow the RFI, in combination with any intermediaries, to access:
- a) Initial documentation including, but not limited to, records of beneficial ownership, structure and control, copies of regulatory documentation and copies of documentation supporting verification;
 - b) All confirmation notes, account statements and correspondence pertaining to the operation of the business relationship; and
 - c) Payment transaction details sufficient to identify and, where applicable, verify the proposed and actual sources and recipients of funds and assets.
- III.274 Where records are maintained by intermediaries or third-party service providers, RFI's should ensure that any records are stored securely and are capable of being retrieved upon request and without delay.
- III.275 RFI's must not rely upon, outsource to or accept as a customer any person where access to required records without delay is likely to be impeded by confidentiality, secrecy, privacy or data protection restrictions.
- III.276 Detailed information on the records that must be kept is set forth in **Chapter 11: Record-Keeping**.

Risk Factors for Securities Sector Business

- III.277 In addition to the non-exhaustive list of risk factors set forth in paragraph 2.37 of the general GN and III.68, RFI's conducting securities sector business should consider sector-specific risk factors, including those in paragraphs III.250 through III.255 below, in order to fully assess the ML/TF risks associated with a particular securities sector business relationship or transaction. The non-exhaustive list of sector-specific risk factors below addresses customers and business relationships, countries and geographic areas, products and services, transactions, delivery channels, and intermediaries and third-party service providers.
- III.278 Customer and business relationship risk factors include, but are not limited to:
- a) Situations in which it is difficult to identify the natural persons who are a customer's beneficial owners, administrators, advisors, operators, employees, managers, directors or other persons able to exercise significant power over the securities sector business relationship or occasional transaction. This includes situations where identification is hindered because a person is a legal person, trust or other type of legal arrangement;
 - b) Situations in which an RFI is unclear whether its customer is acting on its own behalf or as an intermediary on behalf of underlying investors;
 - c) Situations in which an RFI is unable to adequately develop an understanding of its customer's business, the purpose and intended nature of the customer's business relationship with the RFI and the customer's anticipated activities in

- connection with the business relationship;
- d) Unjustified delays in the production of identity documents or other requested information;
 - e) A customer that is unwilling or unable to provide satisfactory CDD information, including the source of wealth and source of funds;
 - f) A customer that appears to take deliberate action to provide anonymity to underlying investors;
 - g) Inconsistencies between the information provided by a customer and information the RFI obtains elsewhere;
 - h) A customer who represented that they are acting on their own behalf appears to be acting on behalf of one or more other persons;
 - i) A customer acting through one or more intermediaries or other persons in order to avoid the application of CDD measures;
 - j) A customer seeking products or services that appear unusual given the customer's investment experience and objectives;
 - k) A customer who is unwilling to invest in more appropriate securities, where the purchase of the securities would require the application of additional CDD measures;
 - l) The involvement of a PEP in the securities sector business relationship;
 - m) The unexplained and illogical use of corporate structures, intermediaries, express trusts, nominee shares or the use of bearer negotiable instruments;
 - n) Any business relationship or transaction involving an apparent unnecessary complexity;
 - o) A customer that also engages in securities sector business whether as an intermediary or otherwise, but the customer's type of entity is unregulated or is regulated in a jurisdiction with weak AML/ATF oversight;
 - p) Any change in the nature or value of an investment product or service that is inconsistent with a customer's sources of wealth and funds as recorded in the customer's profile;
 - q) Levels of funds, assets or transactions exceeding what a reasonable person would expect of a customer with a similar profile;
 - r) Sudden and unexplained deposits, withdrawals, subscriptions, redemptions, transfers or lifestyle changes;
 - s) Lack of concern by investor overcharges or losses due to the early redemption of a long-term product;
 - t) An investor appearing indifferent to the profit or loss generated by securities sector business activities;
 - u) An investor seeking multiple accounts with an RFI or intermediary for no apparent reason;
 - v) An investor showing undue interest in client money account operations;
 - w) An investor seeking to borrow heavily against assets soon after obtaining or investing them;
 - x) The unexplained use of a power of attorney or other third-party mandate;
 - y) Apparent collusion between an investor and an intermediary or RFI employee;
 - z) A customer accepting highly unfavourable terms in exchange for access to a client's money account;

- aa) A customer offering to pay extraordinary fees for unusual services or for services that would not ordinarily warrant such a fee; and
- bb) Requests for no correspondence to go to the investor.

III.279 Country and geographic risk factors include, but are not limited to:

- a) A securities sector business relationship established with funds originating from foreign banks in high-risk jurisdictions;
- b) A customer, beneficial owner, administrator, advisor, operator, employee, manager, director or other person who is able to exercise significant power over the securities sector business relationship or occasional transaction who is a resident in, or citizen of, a high-risk jurisdiction;
- c) A securities sector business transaction to or from a high-risk jurisdiction;
- d) A securities sector business transaction linked to business in or through a high-risk jurisdiction;
- e) The involvement of an intermediary, whether as a customer, for clearing purposes or in another role, where the intermediary's type of entity is unregulated or is regulated in a jurisdiction with weak AML/ATF oversight;
- f) Securities sector business involving persons or transactions with a material connection to a jurisdiction, entity, person or activity that is a target of an applicable international sanction; and
- g) A securities sector business relationship or transaction for which an RFI's ability to conduct full CDD may be impeded by a jurisdiction's confidentiality, secrecy, privacy or data protection restrictions.

III.280 Products and services risk factors include, but are not limited to:

- a) Client money accounts that permit payments to or from third parties;
- b) Investment products that can be used as collateral;
- c) Investment-linked insurance policies;
- d) Single premium life insurance policies that store value; and
- e) Investment products or services that allow a transfer of value without the knowledge of the RFI.

III.281 Transaction risk factors include, but are not limited to:

- a) A securities sector business relationship that, once established, receives cash payments or payments from multiple sources;
- b) A client money account with several signatories, any of which appears to have no relationship with the other signatories;
- c) Cash or bearer instrument transactions in circumstances where such a transaction would normally be made by cheque, banker's draft or wire transfer;
- d) The purchase or sale of a security where no purpose for the transaction is discernible or where the circumstances otherwise appear unusual;
- e) The subscription, redemption, exchange or transfer of funds or assets with values that fall consistently just below threshold and reporting levels;

- f) A dormant account receiving one or more subscriptions in close succession, followed by daily withdrawals that continue until the account balance has been fully, or nearly fully, drawn down;
- g) The placement of funds into a client money account, followed by withdrawal, where little or no investment of the funds takes place;
- h) The purchase of valuable assets followed by instant redemption;
- i) A customer appearing indifferent to the profit or loss generated by securities sector business activities;
- j) A customer that makes use primarily or solely of an RFI's cash management and/or payment services and rarely or never engages in investment activity;
- k) Requests for early redemption or cancellation of a long-term investment product or service that would result in a payment being made to the customer, particularly where such requests result in an economic penalty to the customer;
- l) A customer seeking to transfer value between a personal portfolio and a corporate portfolio over which the customer has control;
- m) A customer transferring assets via journaling or book transfer with no apparent business purpose;
- n) A customer requesting that certain payments be routed through a correspondent account held by the RFI rather than through the customer's own account;
- o) Transactions for unregistered or unregulated investment vehicles;
- p) Payment by a means which allows for anonymity of the transaction;
- q) Payment of a subscription in one currency, followed by a request for repayment in a different currency;
- r) Payments made in a form that the RFI does not normally process or accept and that the RFI has not adequately risk-rated, potentially including, but not limited to, payments involving digital assets;
- s) Requests for payments to accounts that are not in the name of the investor;
- t) Payments received from an account that is not in the name of the investor;
- u) Unusual requests to borrow against an investment;
- v) A customer engaging in investment activity, for example, dealing in thinly traded securities or the use of bearer instruments, that is recognised as being vulnerable to ML/TF, corruption, insider dealing, market manipulation, fraud or the evasion of sanctions, particularly where the RFI has information suggesting the customer's interest in the activity is due to limited regulation of the activity;
- w) Securities sector business customers requesting payments to or from overseas locations with instructions for payment to be made in cash;
- x) Transactions within a securities sector business relationship or within a client money account that have no apparent legitimate business, tax or legal purpose;
- y) Transfers of funds or assets to a third party to which CDD has not been satisfactorily applied;
- z) Transactions of size or volume that exceeds what a reasonable person would expect of a customer with a similar profile, or given the nature and stated purpose of the securities sector business relationship; and
- aa) Transactions that the RFI cannot fully explain and document.

III.282 Delivery channel risk factors include, but are not limited to:

- a) Non face-to-face relationships with securities sector business customers;
- b) Any request to carry out significant transactions using cash or using any payment or value transfer method such as a bearer instrument that obscures the identity of any of the parties to the transaction;
- c) The involvement of intermediaries or third-party service providers that do not apply AML/ATF measures at least equivalent to those in Bermuda;
- d) Apparent collusion between a customer and any director, manager or employee of an intermediary;
- e) An intermediary accepting extraordinary fees for unusual services, or for services that would not ordinarily warrant such a fee; and
- f) A sudden change in the volume of business connected with an intermediary.

III.283 Intermediary and other third-party risk factors include, but are not limited to:

- a) Competition or financial incentives lead an RFI to adopt a high-risk tolerance toward customers, intermediaries or third-party service providers, or lead an RFI to fail to adhere to legal requirements or internal controls;
- b) The involvement of any person in carrying out any AML/ATF function in relation to securities sector business, including the reliance upon, outsourcing to or accepting as a customer any intermediary or other person that has not been sufficiently reviewed for compliance with paragraphs 5.117 through 5.174 of the general GN and III.92;
- c) Any situation in which an RFI is unable to confirm that an intermediary has adopted and effectively implemented an acceptable AML/ATF compliance programme;
- d) Any intermediary suspected of criminal activities, particularly financial crimes or association with criminal associates;
- e) Any intermediary with a history of non-compliance with laws or regulations or that has been the subject of negative attention from credible media or law enforcement;
- f) Any intermediary located in a higher-risk country or country with weak AML/ATF regulation;
- g) A business relationship with any intermediary that serves high-risk customers without appropriate risk mitigation measures;
- h) Any intermediary that has failed to attend or complete AML/ATF training programmes requested by an RFI;
- i) Any unexplained relationship between an investor and any intermediary, third party, administrator, advisor, operator, employee, manager, director or other person who is able to exercise significant power over the securities sector business relationship or occasional transaction;
- j) Any intermediary that categorically refuses to provide the RFI or any other intermediary in the securities custody and service chain with reasonably requested information concerning any underlying customer of the intermediary; and
- k) The involvement of a recently established intermediary in a securities sector

business relationship, particularly where the background of the intermediary does not appear to be particularly transparent.
