

Ensuring compliance with AML/CFT

T&T Securities and Exchange Commission

IN THIS week's article, the respective roles of the regulator and registrants in ensuring compliance with Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) requirements will be discussed. The registrant plays an important role in ensuring that AML/CFT measures adopted in the market are robust and in this regard, the function of the Compliance Officer (CO) within registrant companies is of paramount importance and will be the specific area of focus.

The regulator

The Financial Action Task Force (FATF) Standards and Recommendations are the global benchmark for assessing the strength and effectiveness of a country's AML/CFT regime. A key element of FATF's Recommendations 2012, is the application of a risk-based approach to AML/CFT supervision. Under the risk-based approach, countries and financial institutions are expected to:

- i. understand, identify and assess their risks;
 - ii. take appropriate actions to mitigate those risks; and
 - iii. allocate their resources efficiently by focusing on higher risk areas.
- Given its role as regulator, it is incumbent on the TTSEC to be familiar with the AML/CFT risks that may develop within the securities sector, and to ensure that measures to mitigate the attendant risks are implemented. In fulfilling this mandate, Figure 1 outlines the six (6) measures that have been employed by the TTSEC.

Figure 1: TTSEC's Risk Mitigation Measures

AML/CFT GUIDELINES

The TTSEC published AML/CFT Guidelines for the Securities Sector, which outlines the minimum requirements of registrants in fulfilling their AML/CFT obligations. In November 2018, these guidelines were amended to ensure the alignment of the regulation and supervision policies and practices of the TTSEC with national legislation and international best practice.

ESTABLISHMENT OF AMINGW

In 2013, the TTSEC convened an internal Anti-Money Laundering and Combating the Financing of Terrorism Working Group ("The AMINGW"), in a effort of creating a centralised team of specialists that would lead the TTSEC's AML/CFT mandate. The AMINGW facilitates the communication of AML/CFT related information and knowledge across the divisions of the Commission and takes the lead in interactions with registrants on AML/CFT related matters.

ON-SITE AND OFF-SITE REVIEWS

Prior to the enactment of the Securities Act, 2012 ("SA 2012"), the TTSEC was limited in its ability to conduct on-site inspections, other than inspections "en route". With the passage of the SA 2012, sections 89 and 90 authorised the TTSEC to conduct compliance reviews and issue deficiency letters or compliance directions as part of its routine functions. Pursuant to these provisions, the Division of Compliance and Inspections (DCI) was created to carry out on-site inspections.

SECTORIAL RISK ASSESSMENT

The TTSEC is now in the practice of capturing data related to AML/CFT from its registrants through the use of surveys. The information gleaned from the surveys are used by the Commission, along with the information obtained through National Risk Assessments, to create an AML/CFT risk profile for each registrant. The assigned risk ratings are intended to form part of the body of information that can be used to inform the priority listing of the DCI Division in undertaking its compliance reviews (on-site inspections).

MARKET ENTRY SURVEILLANCE

Persons defined under the SA 2012 that are seeking registration with the TTSEC must meet the prescribed standards in order to obtain or renew their registrations. Additionally, under the SA 2012, applicants must satisfy the TTSEC's requirements of the fit and proper criteria in order to be registered. Factors which are considered under the fit and proper criteria include the applicant's financial solvency, educational background, character, financial integrity and their ability to comply with the requirements of the SA 2012. This measure helps to prevent the launch of investment vehicles where beneficial ownership is opaque. Registrants' records must be kept current and made available to the Commission during compliance inspection reviews.

NAMLC MEMBER

The TTSEC also holds a seat on the National Anti-Money Laundering and Combating the Financing of Terrorism Committee ("NAMLC"), through which we contribute and participate in activities geared towards the development and implementation of the national AML/CFT agenda.

The registrant What is a CO?

The CO is responsible, inter alia, for the implementation of the AML/CFT policies and practices within registrant firms and will be guided by the existing legislation in this regard. In carrying out their function, the main role of the CO is to ensure that the registrant is not exposed to criminal risk, and does not inadvertently or deliberately facilitate financial crime.

Regulation 3(1) of the Financial Obligations Regulations, 2010 (the FORs), stipulates that each financial institution must designate a manager, or official employed at managerial level as its CO. Regulation 4(2) of the FORs requires approval by the relevant supervisory authority of the CO designated by the financial institution/registrant. These requirements are also set out in Guidelines 6 and 7 of the Commission's AML/CFT Guidelines for the Securities Sector, which was updated and amended in November, 2018. The guidelines also state that the CO of a financial institution; that is part of a financial group, may be designated as the CO for

more than one of the financial institutions within the financial group, providing that the CO is employed within the financial group.

The TTSEC assesses each CO application and considers whether the person designated is fit and proper to function in the position of CO. As part of the assessment process, the TTSEC will additionally review:

- I. The educational and professional experience of the CO.
- II. Confirm that the CO is employed at a managerial level and can therefore effectively carry out their duties, which includes reporting to, and gaining support from, the Board (or equivalent executive body).
- III. The reputation, character, reliability and financial integrity, of the CO.

The major responsibilities of the CO

The CO has the overall responsibility for the implementation of the Registrant's AML/CFT compliance programme. At a minimum, the CO must perform the functions and duties as prescribed in Regulation 4(1) of the

FORs and among other things should:

1. Have oversight of the AML/CFT control activity in all relevant business areas;
2. Ensure that the AML/CFT compliance programme is adequate in relation to the Registrant's identified inherent risks, with consideration given to local and international developments;
3. Ensure that regular and proper risk assessments of the inherent ML and TF risks are carried out. This would include timely assessments of new products, services and client on boarding procedures in order to identify potential Money Laundering/Terrorism Financing (ML/TF) risks and develop appropriate control mechanisms;
4. Ensure that periodic assessments of AML/CFT control mechanisms are carried out, to confirm their continued relevance and effectiveness in addressing changing ML/TF risks. Continually assess operational changes, including the introduction of new technology and processes in order to

ensure that ML/TF risks are addressed;

5. Ensure that system resources, including those required to identify and report suspicious transactions, are adequate and effective.

6. Ensure that AML/CFT policies and procedures are formalised, kept up to date and approved by the Board of Directors;

7. Ensure that ongoing AML/CFT training programmes are carried out for all new and existing employees, senior management and the Board of Directors and ensure that such AML/CFT training programmes are up-to-date and relevant to the Registrant's business;

8. Ensure that systems and other processes that generate information used in reports to senior management are adequate and appropriate;

9. Report relevant information to the Board of Directors and/or senior management regarding the adequacy of the AML/CFT; and

10. Ensure that any changes to the AML/CFT compliance programme are disseminated to all employees and assist departments in the implementation of the AML/CFT compliance programme.

As we continue to explore the many facets of the AML/CFT compliance programme, we will focus on the Compliance Programme, Customer Due Diligence and Beneficial Owners in our next article in *Express Business*.

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