

## Wolfsberg Statement – Anti-Money Laundering Guidance for Mutual Funds and Other Pooled Investment Vehicles

### Preamble

The continuing threat of money laundering is most effectively managed by understanding and addressing the potential money laundering risk associated with customers and their transactions. The Wolfsberg Group<sup>1</sup> has developed this Guidance to assist mutual funds and other pooled investment vehicles (together referred to in this Guidance as "Pooled Vehicles", "PV" or "PVs") to manage their money laundering risk.

Investors in many jurisdictions invest in PVs to seek professional management, diversification, and access to investment opportunities that might otherwise not be available.

PVs include unit investment trusts, hedge funds, private equity funds, and funds-of-funds. They vary greatly in the legal forms they take (e.g., corporations, trusts, partnerships, or contract), the investment objectives they pursue, the jurisdictions in which they are organized, the level of regulation to which they are subject, the type of investor they solicit, and the manner in which their shares, units or interests (collectively referred to in this Guidance as "Shares") are distributed.

Given the variety of PVs and the different levels of money laundering risk, PVs should develop and tailor their anti-money laundering ("AML") policies and procedures to address the particular risks of their business. It should be understood that this Guidance is not intended to discourage PVs from engaging in activities that may be perceived to be higher risk. Rather this Guidance sets out relevant considerations for PVs to consider in identifying and dealing with situations entailing different levels of money laundering risk. This Guidance does not supersede applicable laws and regulations where they are more stringent.

It is the responsibility of the PV's management (e.g., directors, trustees, or partners) to establish, implement and monitor the operation of an appropriate AML program. This Guidance may assist in that process. Depending on applicable legislation, the AML program, including the customer due diligence ("CDD") process set forth in Section 3, will be conducted either by the PV or by its designated Service Providers<sup>2</sup> such as transfer agents, investment advisors, registrars, banks, etc. (collectively referred to in this Guidance as "Service Provider"). This Guidance does not address the relationship between the PV and any such Service Provider in any detail in respect of AML responsibilities, except to note that where such arrangements are in place, and where applicable legislation does not otherwise regulate this situation, a clear understanding should be reached on the respective roles and responsibilities of the PV and the Service Provider, and the PV should exercise due care to ensure that the Service Provider is capable of carrying out the role agreed.

### 1. Money Laundering Risk

This Guidance is intended to apply to all PVs generally, notwithstanding the variety noted above. However, such variety means that the money laundering risk associated with respect

---

<sup>1</sup> The Wolfsberg Group consists of the following leading international financial institutions: ABN AMRO Bank N.V., Banco Santander Central Hispano S.A., Bank of Tokyo-Mitsubishi Ltd., Barclays Bank, Citigroup, Credit Suisse, Deutsche Bank AG, Goldman Sachs, HSBC, JPMorgan Chase, Société Générale, and UBS AG. This Guidance was prepared in association with Dexia Group, Lloyds TSB and RBC Financial Group.

<sup>2</sup> Operational and administrative services are usually conducted either by affiliated organizations or unaffiliated third parties. Hereafter in this Guidance, unless otherwise indicated, reference to the PV includes the Service Provider.

to particular PVs differs. While it is difficult to generalize, many PVs are perceived to entail a lower risk of money laundering for a number of reasons, including the following:

- assets typically flow into PVs from (and interests in PVs are typically distributed by) other financial institutions which are themselves regulated for AML purposes. This reduces the risk of a PV being involved in money laundering activities;
- many PVs have measures and controls in place that make them less attractive for money laundering purposes – such as restrictions on cash withdrawals from, or on transactions with, parties other than the investor; and
- PVs are commonly used for long term investment purposes (and some may have minimum investment periods and/or weighted fee structures) making high turnover or short term investment unattractive and/or unusual.

However, because of the sheer size of the PV industry, the ready accessibility of PVs to investors, and the ease with which money launderers can simulate the behaviour of legitimate investors, it is possible that PVs will be used by criminals laundering the proceeds of their crimes in a manner that may be extremely difficult (at times impossible) to detect. To mitigate these risks, PV's should consider how to implement a reasonably designed risk based AML program taking into account the factors mentioned in this Guidance.

## **2. Relationships between PVs and Investors**

Fundamental to an understanding of any PV's AML obligations is a recognition that the overall arrangements by which Shares in PVs are offered to investors and the overall arrangements under which a PV consequently deals with investors will fall into one of two broad categories as described below. One PV may have both categories of relationships, and the relationship used in any particular case depends on a variety of characteristics, including the nature of the PV and the jurisdiction in which such Shares are issued or distributed.

The two categories of relationships between PVs and investors can be summarised as follows:

### **Direct Relationships**

In these cases, the PV has a direct relationship with the investors because the PV processes their applications and/or receives funds directly from the investors. Applications for Shares can be received either by the PV or by a Service Provider to which the PV has delegated the activity of processing the application and/or receiving the funds.

### **Indirect Relationships**

In these cases, the PV does not directly process the application and/or receive the funds directly from the investor. Shares are distributed by or through intermediaries such as banks, broker-dealers, insurance companies/agents, investment advisers, financial planners, or other financial institutions (collectively referred to in these principles as "Intermediaries"). Shares may be held by or through the Intermediaries in so-called "omnibus accounts"<sup>3</sup>. In such situations, and subject to the considerations set out in Section 4, the PV's customer is the Intermediary. Accordingly, the PV has no direct relationship with the investors (regardless of whether the investors are the shareholders of record or not).

This Guidance, therefore, differentiates between direct and indirect relationships between the PV and the investors – although in all cases, a risk-based approach should be considered in implementing the AML standards described.

---

<sup>3</sup> "Omnibus accounts", which may also be called "nominee" or house accounts, are used when an Intermediary acquires the Shares on behalf of its customers (i.e., the investors). In such cases, the Shares are usually acquired in the name of the Intermediary, but there may be cases where the Intermediary establishes an account with the PV that specifies sub-accounts on behalf of the investors. Even in such cases, the customers of the Intermediary would not be treated as customers of the PV.

### 3. Customer Due Diligence

#### 3.1. Introduction

There is no one approach to CDD that can, as a matter of general principle, be adopted by all PVs, due to the variety of characteristics of PVs and due to the different distribution channels through which Shares may be offered to investors as described above.

In general terms, CDD commonly includes:

- identification and verification of the identity of the investor and the beneficial owner;
- understanding the purpose of the investment (which may be self-evident in the case of certain specific products and services); and
- conducting ongoing due diligence on investors and scrutiny of their transactions.

Reflecting the lower risk of money laundering described above, simplified CDD measures may be applied in many cases when accepting investors into a PV.

To determine the appropriate level of CDD required in the context of any particular PV, the PV should consider the following factors:

- **Investor Risk** - The type of investors it will deal with e.g. whether the investors will be financial institutions or otherwise regulated or public companies (including publicly traded companies and government entities – but see below on country risk) (all lower risk of money laundering) compared with complex and non-transparent investors e.g. trusts, foundations or other private investment vehicles (higher risk of money laundering). Similarly, given the nature of the investors to which the PV is directed, retirement pension funds will generally undertake simplified CDD on investors;
- **Country Risk** - The breadth of distribution of its Shares (e.g. direct distribution to investors resident in the same jurisdiction as the PV will generally involve a lower risk of money laundering when compared to direct distribution to investors resident in a large number of different countries or even distribution globally);
- **Condition Risk** - The characteristics of the PV itself. Some PVs entail higher risk of money laundering (e.g. funds allowing redemption without limitation of time, amounts, etc.); and
- **Value Risk** - The amounts of any investment (which may be affected by any minimum investment requirements) and any restrictions on methods of payment of subscriptions (e.g. a PV receiving comparatively small investments and restricting subscriptions and redemptions to funds transferred to it from (or by it to) accounts with financial institutions held in the name of the relevant investor will generally present lower risk of money laundering).

In a direct relationship, the PV should perform risk-based CDD on the investor.

In an indirect relationship, the PV should consider the level of due diligence that should be performed on the Intermediary, as described in Section 4, taking into account the regulatory environment in the relevant jurisdiction, and the Intermediary's responsibilities in respect of AML policies, procedures, and controls. Depending upon the outcome of the PV's due diligence on the Intermediary, (and also depending on the requirements of local law), the PV should determine the level of CDD<sup>4</sup> (if any) that it should undertake on the investor. Where

---

<sup>4</sup> Where this Guidance refers to "CDD" or "customer due diligence" in the context of an indirect relationship, where the PV should perform its own CDD measures on an investor, performance of such due diligence does not render the investor a customer of the PV. In such situations, the investor remains the Intermediary's customer.

the PV considers it necessary to perform its own CDD measures on the investor, but is unable successfully to do so, the investment should not be accepted by the PV.

Sections 3.2, 3.3, and 3.4 apply to PVs in direct relationships and in indirect relationships in which PVs determine that they should perform a level of CDD on the investor.

### **3.2. Identification of Investors and Verification of Identity**

The PV (or the Intermediary in cases described in Section 4) should take reasonable measures to identify and verify the identity of the investor.

The extent of identification procedures undertaken by the PV should be risk-based, reflecting the nature of the investor, the PV and/or the particular transaction. In lower risk situations, simplified identification procedures may be applied.

The identity of investors must be verified at least in accordance with applicable laws and regulations. Appropriate verification methodologies may include documentary or non-documentary (e.g. electronic database screening) methods and/or include cross-checks to verify information via reporting agencies, public databases, or other reliable sources (e.g. ensuring that tax identification or social security number information is valid and corresponds to the investor). Appropriate verification methodologies may also include checking that funds are received from an account held in the name of the investor with an appropriately regulated financial institution.

Where they are required to be obtained, identification documents should be current at the time of account opening.

The PV should normally have obtained all required documentary (or non-documentary) evidence of the identity of the investor by the time of account opening. In cases where the documentation is not provided promptly and remains incomplete, then on any redemption request (and subject to applicable law and regulation), the PV should retain the redemption proceeds and should not accept any further transactions as long as the required documentary evidence has not been received. In addition, in such cases, the PV should also consider making a suspicious activity report to the appropriate authorities.

### **3.3. Beneficial Ownership**

A PV should apply a risk based approach (taking into account the factors mentioned at Section 3.1) in determining whether identification of the beneficial owner and/or enhanced due diligence (see Section 3.4) is required on an investor.

The PV should identify the beneficial owner only where this is reasonable and practicable taking into account the particular circumstances of the investment (type of investor, product, transactions etc.) and the PV's overall risk based approach and where it is apparent that the investor is acting on behalf of another party.

### **3.4. Enhanced Due Diligence**

Enhanced due diligence on investors will generally be required only in the context of situations (identified based on the factors outlined at Section 3.1) involving an investor that appears to present a particularly higher risk of exposure to money laundering.

In identifying these situations, a PV should also consider issues of country risk and investor risk<sup>5</sup> (investor risk including particularly situations where investors are "Politically Exposed Persons"<sup>6</sup>).

---

<sup>5</sup> Country risk and Customer risk are considered in the Wolfsberg Statement on Guidance on a Risk Based Approach For Managing Money Laundering Risks (see <http://www.wolfsberg-principles.com/>) and the factors described in that Statement are applicable to assist Pooled Vehicles in developing a risk based approach for their CDD programmes.

<sup>6</sup> See the Wolfsberg Group Frequently Asked Questions with Regard to Politically Exposed Persons at <http://www.wolfsberg-principles.com/faq.html>

The management of the PV should review investors that present higher risks and are subject to enhanced due diligence.

## **4. Intermediaries**

### **4.1. Introduction**

A variety of Intermediaries may be involved in the conduct of indirect relationships, and the PV should always undertake risk based due diligence on the Intermediary.

Each PV shall define its own policy in this regard, but in all cases, this risk based approach to due diligence on the Intermediary should focus on the level of regulatory supervision to which the Intermediary is subject, on the country in which the Intermediary is based, and the reputation and integrity of the Intermediary to determine whether the Intermediary is:

- itself subjected to adequate AML regulation in the context of its dealings with its clients and is supervised for compliance with such regulation (an Intermediary meeting the standards described in this bullet point being referred to in this Guidance as a "Regulated Intermediary"); or
- otherwise an Intermediary that the PV reasonably believes employs adequate AML procedures such that the PV concludes that it would be reasonable for the PV not to ascertain the identity of the Intermediary's customers itself (e.g. where the Intermediary is an affiliate of an adequately regulated entity or otherwise as described in Section 4.4) (an Intermediary meeting the standards described in this bullet point being referred to in this Guidance as an "Acceptable Intermediary").

Laws and regulations to which PVs are subject frequently refer to the distinction between countries having AML regulation that "effectively implements and meets FATF standards"<sup>7</sup> and those which do not for the purposes of determining whether AML regulation applicable to the Intermediary is adequate. Whilst making reference to this indicator, this Guidance does not advocate that this is the only standard to be employed.

Due diligence on Intermediaries may be performed by different entities, depending on the circumstances and whether or not a Service Provider is involved.<sup>8</sup>

Any distribution agreement entered into between the PV and an Intermediary will not generally affect the outcome of the due diligence undertaken on the Intermediary but may assist the overall CDD process by creating contractual obligations for the Intermediary to perform certain tasks.

Establishment of relationships with Acceptable Intermediaries should be approved by the management of the PV. As required by the circumstances, periodic due diligence or review of all Intermediaries should also be carried out by the PV.

### **4.2. Intermediaries in Countries Meeting FATF Standards**

#### **4.2.1 Regulated Intermediaries<sup>9</sup>**

The PV does not have to perform its own CDD measures on the investors as set out in Section 3. The PV is not required to "drill down" to the regulated Intermediary's customers.

---

<sup>7</sup> A country's AML laws and regulations may meet FATF standards without that country being a member of the FATF.

<sup>8</sup> In case of an unaffiliated Service Provider and depending on the nature of the contractual relationship between the PV and each unaffiliated Service Provider or on the legal framework in the jurisdiction of the PV, due diligence on Intermediaries will be the responsibility of the PV but may be delegated to and performed by the Service Provider.

<sup>9</sup> Regulated Intermediaries are to be understood in this Guidance as being under the regulatory supervision of the local authority and having to comply with domestic AML legislation.

In such cases, the PV may allow the Intermediary to open an "omnibus account". It may be opened in the Intermediary's name for all transactions that the Intermediary places with the PV on behalf of the Intermediary's customers and the PV need not obtain any information on the underlying investors.

#### **4.2.2 Unregulated Intermediaries**<sup>10</sup>

If the PV does not consider Section 4.4 applicable, the PV has to perform its own CDD measures on the investors as set out in Section 3. The PV is required to "drill down" and perform risk based CDD on the unregulated Intermediary's customers.

In such cases, the PV should either open individual accounts in the name of each investor in its register or open an "omnibus account" in the name of the Intermediary, provided that the PV also receives a complete list of the investors from the Intermediary to allow it to perform its own CDD measures on the investors.

#### **4.3. Intermediaries in Countries Not Meeting FATF Standards**

Unless the PV reasonably concludes that Section 4.4 is applicable, the absence of an adequate AML framework in the country in question would normally require the PV to "drill down" to perform its own risk based CDD measures on the investor as set out in Section 3.

The PV may still open individual accounts in the name of each investor in its register or open an "omnibus account" in the name of the Intermediary, provided that the PV receives a complete list of the investors from the Intermediary to allow it to perform its own CDD measures on the investors.

#### **4.4. Acceptable Intermediaries**

If the Intermediary is an Acceptable Intermediary, then the PV may decide that it need not "drill down" to perform its own CDD measures on the investors.

One example in which such a decision may be made is the case of an Intermediary that is a member of a group of companies where their parent is based in a country meeting FATF standards and the particular Intermediary is subjected to and applies a group wide AML policy reflecting those standards.

Another example in which such a decision may be made is the case where, after review of the Intermediary's AML policies and procedures, the PV concludes that the Intermediary's AML program is sufficiently comparable to the one of the Regulated Intermediary.

In all such cases, the PV should review the Intermediary on a regular basis and update its due diligence accordingly to assure itself that it remains appropriate to treat the Intermediary as an Acceptable Intermediary.

### **5. Monitoring of Unusual and Reporting of Suspicious Activities**

Monitoring forms an integral part of AML procedures and should be carried out on transactions, to control adherence to AML policies and procedures, and support the detection and investigation of unusual or suspicious activities. Depending on the type of Shares and type of investors, a PV may decide to monitor the investor's transactions by comparing them with those of a "typical investor".

The PV may decide to what extent fulfillment of these monitoring responsibilities will need to be supported through the use of automated systems or other means.

---

<sup>10</sup> Unregulated Intermediaries are those Intermediaries which are not (or not sufficiently) supervised by the local regulatory body on AML matters and / or not subject to AML law or regulation.

As required by applicable law, the PV, its Service Provider, or the Intermediary must report suspicious activities to the appropriate local authorities.

## **6. Record Retention**

The PV should establish record retention arrangements for all AML related documents. The documents must be kept for a minimum of five years after the date the relationship is closed or the transaction record is made.

## **7. AML Program**

The management of the PV retains overall responsibility for the PV's AML program and should therefore approve the PV's AML program on establishment and review its continued effectiveness on a regular basis.

The AML Program should reflect this Guidance and will include the identification of a Money Laundering Reporting or Prevention Officer who will support and advise the PV's management of the establishment, implementation and monitoring of the PV's AML Program.<sup>11</sup>

The PV's AML Program will also include training on the prevention, identification and reporting of suspicions, of money laundering for, at a minimum, employees who have investor contact and for compliance personnel. Regular training (on commencement of employment and regularly thereafter) should also give guidance on the PV's own internal procedures and the risks of money laundering to which the PV is exposed and on how to identify unusual or suspicious activities. In addition, employees should be informed about major changes in applicable AML laws and regulations.

---

<sup>11</sup> Implementation of the measures described in Sections 5 to 7 (inclusive) of this Guidance will depend to some extent on the size and nature of the PV. Many PVs have no employees and in such cases AML obligations will frequently be undertaken by a relevant Service Provider. In such situations, these requirements may not be applicable to the PV itself in practice although the PV and its management retain responsibility for ensuring that such matters are properly addressed. PVs that have only a small number of employees may incorporate some of these measures internally and require others to be handled by relevant Service Providers.