

**Guidance on Assessment of Money Laundering and Terrorism Financing Risks and Formulation of Related Control Programs by Futures Commission Merchants**

1. This Guidance is established in accordance with the “Directions Governing Anti-Money Laundering and Countering Terrorism Financing of Securities and Futures Sector” for the purpose of preventing money laundering and countering terrorism financing. This Guidance covers aspects such as how futures commission merchants (FCM) in Taiwan identify and assess money laundering and terrorism financing risks in connection with their businesses and establish an anti-money laundering and countering terrorism financing program (AML/CFT program) as basis for implementation.

2. The risk control mechanism or internal control system of a FCM should include identification, assessment, and management of money laundering and terrorism financing risks, and formulation of relevant written policies and procedures, and formulation of AML/CFT program based on the result of risk assessment, and periodic reviews.

A risk-based approach is designed to assist the development of prevention and mitigation measures comparable to the extent of money laundering and terrorism financing risks in order for a FCM to determine its allocation of resources for anti-money laundering and countering terrorism financing, establish its internal control system, and formulate and implement policies, procedures and control measures which should be taken for its AML/CFT program.

Futures business involves a diversity of businesses. The money laundering and terrorism financing risks associated with each business are different. A FCM shall take into consideration such differences in futures businesses when assessing and reducing its exposures to money laundering and terrorism financing risks.

The examples described and appendices provided in this Guidance are not mandatory provisions. The risk assessment mechanism of a FCM should be appropriate to the nature and scale of its businesses. For a FCM where its size is smaller or its business is relatively simple, a simple risk assessment is sufficient. However for a FCM offering more complex transactions and services, having a large number of branches offering a wide variety of transactions, or having diverse customer groups, the higher level risk assessment procedure should be in place.

3. A FCM shall adopt appropriate measures to identify and assess its money laundering and terrorism financing risks, and set specific risk assessment items based on the risk identified to further control, mitigate or prevent the risk.

Specific risk assessment items should include at least three indicators, that is, geography, customer and product, and a further analysis for each risk item should be conducted to determine detailed risk factors.

1) Geographic risk:

- (1) A FCM should identify regions with higher risk of money laundering and terrorism financing.
- (2) When producing a list of countries/regions with higher money laundering and terrorism

financing risks, a FCM may select applicable references based on practical experience of its respective branch or referred to the attachment below in consideration of individual needs.

2) Customer risk:

- (1) A FCM should take overall consideration of an individual customer's background, occupation and characteristics of socio-economic activities, region, organizational pattern and structure of a non-natural person customer in order to identify the customer's money laundering and terrorism financing risks.
- (2) When identifying the risk of an individual customer and determining her/his risk level, a FCM may take the following risk factors as the basis for assessment:
  - a. Customer's geographic risk: Determine the risk score of customer's nationality and country of residence based on the list of countries/regions with money laundering and terrorism financing risks as defined by the FCM.
  - b. Money laundering risk associated with customer's occupation and line of business: Determine the risk score of customer's occupation and line of business based on money laundering risk by occupation and line of business as defined by the FCM. High-risk lines of business are such businesses as engaged in intensive block trades, or firms or trusts that are easily used to hold personal assets.
  - c. The channel through which the customer opened an account and built business relations.
  - d. The amount involved when the customer opened an account and built business relationships.
  - e. The transaction amount expected for the account.
  - f. Whether the customer shows other signs of high money laundering and terrorism financing risk; for example, the customer is unable to make reasonable explanations when the address left on file is too far from the FCM, the customer is a company with anonymous shareholders or being able to issue bearer stocks, or the equity complexity of a corporate customer, such as whether the shareholding structure is obviously unusual or overly complex relative to its nature of business.

3) Transaction risk:

- (1) A FCM shall identify an individual transaction or service which may bring higher money laundering and terrorism financing risks based on the nature of the transaction or service.
- (2) A FCM shall, before introducing a new type of transaction, conduct comprehensive assessment of money laundering risk, and establish appropriate risk management measures based on risk control principles.
- (3) Examples of transaction risk factors are illustrated below:
  - a. Has the customer ever been in default?
  - b. Whether the business or transaction is conducted face-to-face?
  - c. Is huge amount of margin or premium deposited or withdrawn, or quickly transferred?
  - d. The degree of association with cash.

4. A FCM shall establish risk levels and classification rules for different customers.

There should be at least two risk levels in the classification of customers, i.e. "high risk" and "general risk", as the basis for enhancing customer due diligence (CDD) measures and the strength of ongoing monitoring mechanisms. For a FCM that adopts only two risk levels, since the "general risk" rating is still higher than "low risk" rating mentioned in Points 5 and 7 of this Guidance, the FCM may not adopt simplified CDD measures for customers with a "general risk" rating.

A FCM may not disclose the risk rating of a customer to the customer or to any person unrelated to performing the duties of money laundering prevention.

5. Those persons that hold important political positions in foreign countries, terrorists or terrorist groups under economic sanctions, or identified or investigated by foreign governments or international organizations on anti-money laundering are regarded directly as high-risk customers. A FCM may also, based on its own business type and consideration of associated risk factors, set the types of customers who should be directly regarded as high-risk customers.

A FCM may, based on results of a complete written risk analysis, define by itself the types of customers who may be directly regarded as low-risk customers. The results of the written risk analysis should be able to fully surmise that the lower risk classification is suitable for such type of customers.

6. For new customers, a FCM shall determine their risk rating when establishing business relations. For existing customers with identified risk rating, a FCM shall conduct a risk reassessment based on its risk assessment policies and procedures.

Although a FCM has assessed the risk of a customer when first establishing a business relation with the customer, for some customers, their overall risk profiles become clear only after they have made transactions. Therefore, when finding out any significant change in a customer's identity or background information or detecting changes in a customer's transaction patterns, the risk rating of the customer should be adjusted in a timely manner.

As for the timing for conducting a reassessment of customer risk, a few examples are given below:

- (1) When a customer opens an additional account or builds new business relations.
- (2) When conducting a regular review of a customer according to the customer's risk rating.
- (3) When reporting suspected money laundering transactions, which may lead to the occurrence of an event that substantially changes the risk profile of a customer.

7. A FCM shall establish corresponding control measures based on the identified risks to reduce or prevent the risks of money laundering. A FCM shall determine different control measures applicable to customers with different risk ratings based on the risk profiles of customers.

As for risk control measures, a FCM should take different control measures for all types of high-risk customers based on its risk control policies, monitoring and procedures to effectively manage and reduce known risks. A few examples are given below:

- (1) Conduct enhanced due diligence on a customer, for examples:
  - a. Obtain relevant information on account opening and purpose of business: such as the purpose

of account, expected customer transaction activities, etc.

- b. Conduct evaluation of customer assets: obtain information on the customer's sources of wealth, sources of fund for transactions, types and quantities of assets.
- c. Obtain additional business information of customer: understand customer's latest business activities and transaction information.
- d. Obtain descriptions and information on transactions going forward or completed.
- e. Conduct site visits or telephone surveys based on customer patterns to verify the customer's actual operating status.

(2) Obtain the approval of higher management level.

(3) Increase the frequency of customer review.

(4) Enhance the monitoring mechanism.

For customers with the highest risk rating, a FCM shall conduct a customer review at least once every two years.

For customers with low-risk ratings, a FCM may take simplified CDD measures based on its risk control policies, monitoring and procedures. To simplify customer due diligence, the following steps may be adopted:

(1) Reduce the frequency of customer identity information update.

(2) Reduce the degree of ongoing monitoring, and use a reasonable threshold amount as a basis for reviewing transactions.

(3) If the purpose and nature of business relations with a customer can be deduced from his/her transaction type or the established business relations, it is not necessary to gather specific information or adopt special measures for understanding the purpose and nature of business relations.

In the event of the following circumstances when conducting customer due diligence and ongoing monitoring, simplified CDD measures are not allowed:

(1) Where the customers are from or in countries or jurisdictions known to have inadequate AML/CFT regimes, including but not limited to those which designated by international organizations on AML/CFT as countries or regions with serious deficiencies in their AML/CFT regime, and other countries or regions that do not or insufficiently comply with the recommendations of international organizations on AML/CFT as forwarded by the Financial Supervisory Commission (FSC).

(2) Where a customer or a transaction is suspected of money laundering or terrorism financing.

8. A FCM shall establish a regular and comprehensive money laundering and terrorism financing risk assessment operation so the management can timely and effectively understand the overall money laundering and terrorism financing risks faced by the FCM, and decide the mechanism which should be established and develop appropriate risk mitigation measures.

A FCM shall establish a regular and comprehensive money laundering and terrorism financing risk assessment operation based on the following indicators:

(1) The nature, scale, diversity and complexity of business.

- (2) Target markets.
- (3) Number and scale of business transactions: Consider general transaction activities and customer characteristics.
- (4) High risk related management data and reports: such as the amount, quantity or proportion of high-risk services or transactions, the nationality, place of registration or business place of customers, the amount or proportion of transactions involving high-risk areas, etc.
- (5) Business and products, including the channels and manner by which business and services are provided to customers, the way to implement customer due diligence measures, such as the extent to which information systems is used, whether a third person is entrusted to perform the due diligence, etc.
- (6) The results of inspection conducted by internal auditors and supervisory authority.

When a FCM conducts comprehensive money laundering and terrorism financing risk assessment operation mentioned in the preceding paragraph, aside from considering the above indicators, the information obtained from other internal and external sources is recommended as supporting information. For example:

- (1) The management reports provided by internal management (e.g. supervisors of business units, customer relations manager, etc.).
- (2) Relevant reports released by international organizations and other countries on anti-money laundering and countering terrorism financing.
- (3) Information on money laundering and terrorism financing risks released by the competent authorities.

The results of comprehensive money laundering and terrorism financing risk assessment performed by a FCM should be used as a basis for the development of an AML/CFT program. A FCM should allocate adequate personnel and resources based on the results of risk assessment and take effective countermeasures to prevent or mitigate risks.

When a FCM has material changes, such as the occurrence of a material event, major development of management and operation, or the occurrence of new threats, risk assessment should be re-conducted.

9. A FCM shall formulate and implement an AML/CFT program according to its money laundering and terrorism financing risks and business scale. The AML/CFT program shall cover internal policies, procedures and controls regarding customer due diligence, record keeping, and reporting of cash transactions above a certain amount and transactions suspected of money laundering, and cover designation of management personnel to coordinate and supervise the implementation of AML/CFT program, establishment of a proper employee selection/recruitment process, implementation of continuous employee training programs, and independent audit function to test the effectiveness of the FCM's AML/CFT system. A FCM may formulate and implement its AML/CFT program in accordance with relevant provisions of this Guidance.
10. The policies formulated by a FCM in accordance with this Guidance should be implemented after approval by the board of directors (or responsible unit in charge according to the delegation of authority) and reported to the Financial Supervisory Commission for record along with its "Guidelines for Anti-Money Laundering and Countering Terrorism Financing." The policies should

be reviewed periodically. The same applies to any amendment thereto.

Attachment: References for formulating a list of countries/regions with higher risks of money laundering and terrorism financing

1. Countries or regions with serious deficiencies in their AML/CFT regime, and other countries or regions that do not or insufficiently comply with the recommendations of international organizations on AML/CFT as forwarded by the Financial Supervisory Commission (FSC).
2. Countries or regions under economic sanctions or other similar actions taken by the United Nations, the United States or the European Union.
3. Countries or regions designated as Offshore Financial Centers by the International Monetary Fund (IMF Offshore Financial Centers. <http://www.imf.org/external/NP/ofca/OFCA.aspx>).
4. Countries or regions with primary money laundering concern (Special Measures for Jurisdictions, Financial Institutions, or International Transactions of Primary Money Laundering Concern. [http://www.fincen.gov/statutes\\_regs/patriot/section311.html](http://www.fincen.gov/statutes_regs/patriot/section311.html)) listed by USA PATRIOT Act's Section 311.
5. Countries or regions with a considerable degree of corruption listed by the Corruption Perceptions Index of Transparency International (Transparency International's Corruption Perceptions Index. [http://cpi.transparency.org/cpi2013/in\\_detail/](http://cpi.transparency.org/cpi2013/in_detail/)).
6. Countries or regions that provide financing or support to terrorists (such as State Sponsors of Terrorism released by United States Department of State, <http://www.state.gov/j/ct/list/c14151.htm>) or accept the presence of listed terrorist organizations.