

CAYMAN ISLANDS MONETARY AUTHORITY

PRIVATE SECTOR CONSULTATION



AMENDMENTS TO SECTION 3.104(d) AND APPENDIX H OF THE GUIDANCE NOTES ON THE PREVENTION AND DETECTION OF MONEY LAUNDERING AND TERRORIST FINANCING IN THE CAYMAN ISLANDS

A. Introduction

1. Sections 34(1)(b) and (c) of the Monetary Authority Law (2013 Revision) (as amended) ("MAL") state that –

After private sector consultation and consultation with the Financial Secretary, the Authority may –

(b) issue or amend statements of guidance concerning the requirements of the money laundering regulations or the provisions of the regulatory laws; and

(c) issue or amend rules or statements of principle or guidance to reduce the risk of financial services business being used for money laundering or other criminal purposes.

2. Requirements specific to the private sector consultation are outlined in section 4(1) of the MAL as follows:

When this Law requires private sector consultation in relation to a proposed measure –

(a) the Authority shall give to each private sector association a draft of the proposed measure, together with –

- i. an explanation of the purpose of the proposed measure;*
- ii. an explanation of the Authority's reasons for believing that the proposed measure is compatible with the Authority's functions and duties under section 6;*
- iii. an explanation of the extent to which a corresponding measure has been adopted in a country or territory outside the Islands;*
- iv. an estimate of any significant costs of the proposed measure, together with an analysis of the benefits that will arise if the proposed measure is adopted; and*
- v. notice that representations about the proposed measure may be made to the Authority within a period specified in the notice (not being less than thirty days or such shorter period as may be permitted by subsection (3));and*

(a) before proceeding with the proposed measure, the Authority shall have regard to any representations made by the private sector associations, and shall give a written response, which shall be copied to all the private sector associations.

3. The Cayman Islands Monetary Authority ("Authority" or "CIMA") seeks consultation and comment from the private sector associations concerning:
 - a. an amendment to section 3.104(d) of the Guidance Notes on the Prevention and Detection of Money Laundering and Terrorist Financing in the Cayman Islands (the "GNs") as set out in paragraph 9 below; and
 - b. an amendment to Appendix H of the Guidance Notes to add the Gibraltar Stock Exchange to the list of approved stock exchanges and markets.

B. Background

4. In March 2015, a director of the GSE made a request to the Authority for Gibraltar's Stock Exchange (GSE) to be added to Appendix H of the GNs.
5. Appendix H of the GNs contains a list of markets and stock exchanges that are approved by the Authority. Sub-section 3.104(d) of the GNs states that "documentary evidence of identity will not normally be required if the client":-

"is a company quoted or fund listed on the Cayman Islands Stock Exchange or other market or exchange approved by the Monetary Authority. These are listed in Appendix H. This list is subject to review and may be updated periodically".

6. Financial services providers can rely on the due diligence conducted by the stock exchanges listed in Appendix H, therefore, this list provides an alternate verification process for purposes of the GNs.
7. This is the only purpose of the list in Appendix H. No other reference to Appendix H is made in the GNs.
8. This approach to simplified customer due diligence is permitted in the Financial Action Task Force's (FATF) 40 Recommendations on Combating Money Laundering and the Financing of Terrorism and Proliferation (the Recommendations). The Guidance to Recommendation 10 – Customer Due Diligence allows simplified due diligence if a customer is "a company listed on a stock exchange and subject to disclosure requirements which impose requirements to ensure adequate transparency of beneficial ownership."
9. The Authority is now proposing to add the GSE to the list in Appendix H and new wording for section 3.104(d) of the GNs to simplify the process of adding stock exchanges to the list in Appendix H, as follows:

"documentary evidence of identity will not normally be required if the client: - is a company quoted or fund listed on the Cayman Islands Stock Exchange or other market or exchange approved by the Monetary Authority. Markets and Exchanges located in a Schedule 3 country are deemed to be an approved

market or exchange for the purposes of the Guidance Notes. Approved markets and exchanges are listed in Appendix H. This list is for illustrative purposes only and may not be exhaustive. The Authority will update the list periodically.”

C. Purpose of Proposed Measure and Consistency with the Authority’s Functions

10. The purpose of the proposed amendment is to add the Gibraltar Stock Exchange to the list of approved stock exchanges in Appendix H of the GNs and to simplify the process by which stock exchanges located in certain countries can become approved stock exchanges. There are currently 17 stock exchanges located in Schedule 3 countries that are not listed in Appendix H. Please see Table 1 below.

Table 1 – Stock exchanges located in Schedule 3 countries that are not currently listed in Appendix H

Bahamas: Bahamas International Stock Exchange
Bahrain: Bahrain Stock Exchange
Barbados: Barbados Stock Exchange
BVI: British Virgin Islands Stock Exchange
Denmark: Copenhagen Stock Exchange
Finland: Helsinki Stock Exchange
Gibraltar: Gibraltar Stock Exchange
Guernsey & Jersey: Channel Islands Securities Exchange
Iceland: Iceland Stock Exchange
Isle of Man: Isle of Man Stock Exchange
Malta: Malta Stock Exchange
Netherlands: Amsterdam Stock Exchange
Panama: Bolsa de Valores de Panama
People’s Republic of China: Shanghai Stock Exchange & Shenzhen Stock Exchange
Turkey: Borsa Istanbul
United Arab Emirates: Abu Dhabi Securities Exchange

11. It is important to note that the 7 stock exchanges that are currently listed in Appendix H but that are not located in countries listed in Schedule 3 will be grandfathered.
12. The proposed amendment will also enhance the Authority’s transparency with respect to the policy behind the approval of stock exchanges for purposes of the GNs.
13. This proposal is consistent with section 6 of the Monetary Authority Law which states:

Section 6(1) of the MAL provides that the principal responsibilities of the Authority include its regulatory functions, inter alia, “to monitor compliance with the money laundering regulations.”

Section 6(3) of the MAL provides that in performing its regulatory functions, the Authority shall, *inter alia*,

- b) endeavour to reduce the possibility of financial services business or relevant financial business being used for the purpose of money laundering or other crime;
- f) recognise the need for transparency and fairness on the part of the Authority.

14. As the GSE is regulated by the Gibraltar Financial Services Commission and that Gibraltar is on the list of countries in Schedule 3, it is believed that the inclusion of the GSE on the list of approved stock exchanges poses little risk. For a comprehensive list of the revised Appendix H, please refer to **Annex 1**.

D. Implementation in Other Jurisdictions

15. Legislation and Guidance in Jersey, the Bahamas, Canada and Bermuda were examined. Jersey has not issued a list of approved stock exchanges for the purposes of anti-money laundering requirements but rather relies on criteria. The Bahamas relies on a list of stock exchanges issued by the Securities Commission. While anti-money laundering regulations in Bermuda speak to approved stock exchanges Bermuda Guidance Notes for AML/ATF Regulated Financial Institutions on Anti-Money Laundering & Anti-Terrorist Financing also appear to allow financial services providers to make their own assessment of a stock exchange. Canada recognizes any stock exchange located in that country as well as those that appear on a list issued by the Ministry of Finance.
16. Table 2 sets out the criteria used in Canada, Jersey and Bermuda to determine whether a stock exchange is approved for the purpose of simplified customer due diligence.

Table 2 – Criteria used in other jurisdictions

Bermuda	Canada	Jersey
<p>5.121 Where the institution has satisfied itself that the customer is a company or its subsidiary listed on an appointed stock exchange, simplified due diligence may be applied.</p> <p>5.122 If the market is outside Bermuda, but is one which subjects companies whose securities are admitted to trading to disclosure obligations which are contained in international standards and are equivalent to the specified disclosure obligation in Bermuda, similar</p>	<p>Simplified CDD can be applied (...)</p> <p>(m) instances where the entity in respect (..) is a corporation that has minimum net assets of \$75 million on its last audited balance sheet and whose shares are traded on a Canadian stock exchange or a stock exchange designated under subsection 262(1) of the <i>Income Tax Act</i>, and operates in a country that is a member of the Financial Action Task</p>	<p>Simplified CDD procedures can be applied if the customer is a body corporate the securities of which are listed –</p> <p>(i) on an IOSCO-compliant market, or</p> <p>(ii) on a European Union regulated market; or</p> <p>(b) outside the EEA, a regulated financial market which subjects companies whose securities are admitted to trading to disclosure obligations which are contained in international standards and are equivalent to the</p>

treatment is permitted.	Force;	specified disclosure obligations;
-------------------------	--------	-----------------------------------

17. The jurisdictional comparison reveals a variety of approaches used in other jurisdictions to apply the exemption permitted by FATF Recommendation 10. On that basis, it is believed that the proposed amendment to the GNs, as set out in paragraph 9 above, is not inconsistent with the practice in other jurisdictions.

E. Significant Costs and Benefits

18. The table below shows the estimated costs and benefits of the proposed amendment to the GNs:

Table 3 – Estimated Costs and Benefits of Proposed Amendment

	Costs	Benefits
<i>CIMA</i>	<ol style="list-style-type: none"> 1. Initial cost of amending the GNs 2. Queries from financial services providers about the change to the approval of stock exchanges 3. Potential queries from financial services providers if list does not match up to criteria 	<ol style="list-style-type: none"> 1. No need to update list for every request 2. Increased transparency for industry regarding the policy behind the list in Appendix H 3. Fewer queries from stock exchanges that would like to be approved for purposes of the GNs 4. Less consultation required on changes to list 5. Fewer resources expended to update the approved stock exchanges, as criteria would likely not change as often as a list
<i>Cayman Islands</i>	None	<ol style="list-style-type: none"> 1. Expanding the list of approved stock exchanges enhances the appeal of the jurisdiction internationally
<i>Regulated Entities</i>	<ol style="list-style-type: none"> 1. Some confusion between the criteria and the list may exist if the list is not updated sufficiently frequently 	<ol style="list-style-type: none"> 1. Less cost for financial services providers who deal with companies listed on an approved stock exchange 2. Increased circumstances when simplified due diligence can be performed 3. Provides rationale behind

	Costs	Benefits
		simplified due diligence measures

F. Comments and Consultation

19. The Authority seeks consultation through written comments and representations from the private sector associations concerning the amendments to the GNs.

20. The Authority must receive representations by 1700hrs on June 23 2015.

21. Comments and representations must be addressed to

The Managing Director
Cayman Islands Monetary Authority
P.O. Box 10052
80e Shedden Road
Elizabethan Square
Grand Cayman KY1-1001
Cayman Islands
Tel: 345-949-7089
Fax: 345-945-3909
Email:
Consultation@cimoney.com.ky
and copied to t.hamilton@cimoney.com.ky

22. The Authority shall have due regard to any representation made by the private sector associations and industry stakeholders. The Authority shall provide a written response collating the feedback received and the Authority's position on this feedback. This response shall be copied to all relevant private sector associations only.

ANNEX 1

Appendix H - Approved Markets And Exchanges

In addition to the Cayman Islands Stock Exchange, the following are markets and exchanges approved by the *Monetary Authority* as at [date], 2015. Amendments to this list may be made by the *Monetary Authority* from time to time. Such amendments will be gazetted.

Abu Dhabi Securities Exchange	Luxembourg Stock Exchange
American Stock Exchange	Madrid Stock Exchange
Amsterdam Stock Exchange	Malta Stock Exchange
Athens Stock Exchange	Mexican Stock Exchange
Australian Securities Exchange	Montreal Exchange
Barbados Stock Exchange	Munich Stock Exchange
Bahamas International Stock Exchange	Nagoya Stock Exchange
Bahrain Stock Exchange	NASDAQ
Barcelona Stock Exchange	National Stock Exchange
Berlin Stock Exchange	New York Stock Exchange
Bermuda Stock Exchange	New Zealand Stock Exchange
Bilbao Stock Exchange	NYSE Arca
Bolsa de Comercio de Buenos Aires	OMX Nordic Exchange
Bolsa de Comercio de Santiago	Osaka Securities Exchange
Bolsa de Valores de Caracas	Oslo Stock Exchange
Bolsa de Valores de Lima	Philadelphia Stock Exchange
Bolsa de Valores de Panama	Rio de Janeiro Stock Exchange
Borsa Istanbul	Sao Paulo Stock Exchange (Bovespa)
Borsa Italiana SPA	Shanghai Stock Exchange
Boston Stock Exchange	Shenzhen Stock Exchange
British Virgin Islands Stock Exchange	Singapore Exchange
Channel Islands Securities Exchange	Stuttgart Stock Exchange
Chicago Stock Exchange	SWX Swiss Exchange
Copenhagen Stock Exchange	Taiwan Stock Exchange
Dusseldorf Stock Exchange	Tel Aviv Stock Exchange
Euronext Brussels	The Stock Exchange of Thailand
Euronext Lisbon	Tokyo Stock Exchange
Euronext NV	Toronto Stock Exchange
Euronext Paris	Valencia Stock Exchange
Frankfurt Stock Exchange	Vienna Stock Exchange
Fukuoka Stock Exchange	
Gibraltar Stock Exchange	
Hamburg and Hannover Stock Exchange	
Helsinki Stock Exchange	
Hong Kong Stock Exchange	
Iceland Stock Exchange	
International Securities Exchange	
Irish Stock Exchange	
Isle of Man Stock Exchange	
Johannesburg Stock Exchange	
Korea Stock Exchange	
Kuala Lumpur Stock Exchange	
London Stock Exchange	

