Cayman Islands Monetary Authority

SUMMARY OF PRIVATE SECTOR CONSULTATION AND FEEDBACK STATEMENT

2019 AMENDMENTS TO THE GUIDANCE NOTES ON THE PREVENTION AND DETECTION OF MONEY LAUNDERING AND TERRORIST FINANCING IN THE CAYMAN ISLANDS OF DECEMBER 13, 2017 – *TARGETED FINANCIAL SANCTIONS*

Regulatory Measure: ***AML/CFT Guidance Notes***

Section of proposed Regulatory Measure[1]	Industry Comment	Authority's response	Consequent amendments to the draft Requirements
GENERAL COMMENTS			
	The GN are vague on the interaction between TFS and AML/TF. Since a large component of TFS relates to addressing terrorist financing risk, the guidance notes need clarify how the TFS impacts TF and whether one supersedes the other.	The proposed amendments form part of the broader GNs and therefore should be read in conjunction with all other sections of the GNs.	No amendments required.
	It is not clear if and how the TFS is to be proportionately applied to FSPs such as captives and general insurers/reinsurers for which the risk of TFS risks are generally low.	There is no proportional application of the GNs for any category of FSPs. Therefore, all FSPs are obligated to comply with the requirements of the GN amendments. Some parts of the GNs already apply to general insurers and the Authority's approach to AML/CFT supervision of general insurers is described in Part V of the GNs.	No amendments required.

[1] Where applicable, the paragraph numbers quoted in brackets represent the new paragraph number for the related section as presented in the revised version of the measure.

More specifically, it is unclear how captives and insurers are expected to comply with "freeze without delay" when the financial assets are held at banks or investment managers who should be the FSPs that fall under the TFS.		Freezing obligations can only apply where an FSP is in possession of funds or other assets belonging to a designated person or entity.	No amendments required.
The reporting requirements appear to be duplicative since it appears, they apply to both insurers/reinsurers as well as to the banks/financial institutions holding the assets relating to these insurers/reinsurers. For example, if a bank's sanctions check identifies a designated individual or entity, and files a report with the FRA, does the insurer also need to file a duplicative asset freeze report? This not only adds unnecessary cost of the insurance entities but also unduly burdens the FRA.		The measure imposes reporting obligations on the FSP which takes the action as legally required. Therefore, only when an FSP has itself frozen funds or other assets of a designated person or entity is it required to submit an AFR.	No amendments required.
GN do not address any transition time frame. GN should address whether FSPs will have a transition period to complete their review of existing client lists and make the required reports once the GNs come into effect.		These amendments do not impose any new requirements on FSPs and as such the expectation is that these GNs will come into effect on the date that they are gazetted.	No amendments required.
SECTION SPECIFIC COMMENTS			
H4 (G4 and G5)	Requires financial institutions to maintain records of any potential matches to names and sanctions lists and related actions, whether the match turns out to be a true match of a false positive. It also lists, at minimum, the information that should comprise that record. Of the minimum information listed, number five (e.g, the nature of the relationship with the person or entity involved, including the attempted or refused transaction) is not embedded in our client screening record or part or our accompanying disposition. While the Bank maintains the nature of the client relationship on file in our client master system, the record is independent from the client screening tool and the particular screening hit(s) generated. Given the volume of potential screening hits, to tick and tie that information to each hit may prove impracticable. Our outstanding question is whether the client master system record, although separate and apart	The Authority confirms that data held in a separate system is sufficient for the purposes of establishing the nature of the relationship with false positive matches. However, it is imperative that in the case of true matches, comprehensive information is recorded and maintained as required in H5. We note that the first part of paragraph H4 made reference to all potential matches, while the latter part referred to true matches.	Paragraph H4 has now been split into two paragraphs namely, paragraphs G4 and G5.

	from the client screening tool and its audit trail of hits, is sufficient to satisfy this point.		
H20 to H23 (G24 to G28)	GN para 20 to 23 requires reporting of to the FRA but it is unclear if this is meant to be immediate (i.e. every time there is an attempted transaction by a listed entity or individual) or as soon as possible, or periodic (i.e monthly or quarterly) reporting.	The expectation is that the required reporting by FSPs takes place as soon as practicable.	Paragraphs G24 to G28 have been amended to include the text '***as soon as practicable'*** to clarify the obligations.
H23 (G28)	Requires financial institutions to advise the Governor of any actions taken in relation to a delisted person or entity. This requirement exceeds the scope of our current legal reporting obligation, for example, we don't notify OFAC of actions taken with respect to a former SDN, as there are no longer sanctions-related prohibitions associated with the party. Additionally, "any action" is overly broad; as drafted it neither specifies the type(s) of actions that require reporting nor prescribes a time period post-delisting for when that reporting is no longer mandated. Lastly, this requirement presupposed that Sanctions Compliance is familiar with and privy to all actions taken with respect to a formerly designated party.	In the event that a person or entity is delisted, the obligation to freeze no longer exists, therefore all funds or other assets which had been frozen must be unfrozen. The actions referred to in section H23 are detailed in paragraphs H28 and H29.	The paragraph referred to (now G28) has been amended slightly to clarify the requirement.
H26 (G31)	The GN para 26 says filing a SAR does not provide protections under sanctions legislation. But it fails to address the fact that entities who had declined a client due to a positive match during the KYC/onboarding process, may have filed a SAR prior to the TFS reporting obligations come into effect, on the expectations that they were protected under the AML/TF GN. GN para 26 should be expanded to address this.	The proposed amendments to the GNs seek to clarify the obligations of FSPs as it relates to TFS. The obligations are already enshrined in the GNs[2] in various sections including Section 1(G) paragraph 8 which states: *"FSPs should take note of their obligations under different international targeted financial sanctions/orders, and designations and directions issued in relation to TF/PF as applicable and comply. United Nations and European Union sanctions are implemented in*	No amendment required.

[2] See also the FRA's *Industry Guidance - Targeted Financial Sanctions with Respect to Terrorism, Terrorist Financing, Proliferation, and Proliferation Financing within the Cayman Islands,* December 2017

		the Cayman Islands by way of Overseas Orders in Council. FSPs must take actions such as filing suspicious activity reports, freezing funds, and informing the Governor as required under the relevant laws/orders if they discover a relationship that contravenes any applicable sanctions orders or directions. For the list of applicable sanctions orders, see section on "Sanctions Compliance" in Part II of these Guidance Notes."	
H28 (G33)	Imposes a two-prong reporting requirement on financial institutions. The first is to notify the person or entity that the assets are no longer subject to blocking and the second is to notify the Governor of the actions taken. Neither reflects our current operating model or legal obligations and Sanctions Compliance would also challenge why it's incumbent on a financial institution, as opposed to the government, to notify a party of its delisting.	The delisting of a person or entity and the unfreezing of assets of that delisted person/entity are separate actions. Once an FSP becomes aware that a person/entity has become delisted, the FSP is obligated to unfreeze the assets of the person/entity and reactivate the relevant accounts. The FSP is expected to notify the person/entity of the assets being unfrozen and reactivation of relevant accounts and not that they have been delisted. The FSP is also expected to notify the Competent Authority of these actions.	No amendments required.