

GUIDANCE NOTE

***ISSUED BY THE CYPRUS SECURITIES AND EXCHANGE
COMMISSION***

***ON ACCORDANCE WITH SECTION 60(3) OF THE
PREVENTION AND SUPPRESSION OF MONEY LAUNDERING
ACTIVITIES LAW OF 1996 ON:***

(A) CUSTOMER IDENTIFICATION PROCEDURES

(B) RECORDKEEPING PROCEDURES

(C) RECOGNITION OF SUSPICIOUS TRANSACTIONS

***(D) APPOINTMENT AND DUTIES OF MONEY LAUNDERING
COMPLIANCE OFFICERS, INTERNAL REPORTING OF
SUSPICIOUS TRANSACTIONS AND REPORTING OF
SUSPICIOUS TRANSACTIONS TO THE UNIT FOR
COMBATING MONEY LAUNDERING***

***(E) EDUCATION AND TRAINING OF BROKER FIRM
EMPLOYEES***

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**I. THE PREVENTION AND SUPPRESSION OF MONEY LAUNDERING
ACTIVITIES LAW (LAW 61 (I) OF 1996)**

1. MAIN PROVISIONS

1.1 Purposes

The main purpose of Law 61 (I) of 1996 (hereinafter to be referred to as "the Law") is to define and criminalise the laundering of the proceeds generated from all serious criminal offences and provide for the confiscation of such proceeds aiming at depriving criminals from the profits of their crimes. Upon the enactment of the Law, the Confiscation of Proceeds of Trafficking of Narcotic Drugs and Psychotropic Substances Law (Law 39(I) of 1992) which dealt only with drug money laundering, was repealed as all its main provisions have been incorporated in the new legislation. The main provisions of the Law, which are of direct interest to brokerage firms and their employees, are as follows:

1.2 Prescribed offences (Section 3 of the Law)

The Law has effect in respect of offences which are referred to as "prescribed offences" and which comprise of :

- (a) money laundering offences, and
- (b) predicate offences

1.3 Money Laundering offences (Section 4 of the Law)

Under the Law, every person who knows, or ought to have known that any kind of property is proceeds from a predicate offence is guilty of an offence if he carries out any of the following:

- (i) converts or transfers or removes such property, for the purpose of concealing or disguising its illicit origin or of assisting any person who is involved in the commission of a predicate offence to evade the legal consequences of his actions;

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- (ii) conceals or disguises the true nature, source, location, disposition, movement, rights with respect to property or ownership of this property;
- (iii) acquires, possesses or uses such property;
- (iv) participates in, associates or conspires to commit, or attempts to commit and aids and abets and provides counseling or advice for the commission of any of the offences referred to above;
- (v) provides information with respect to investigations that are being performed for laundering offences for the purpose of enabling the person who acquired a benefit from the commission of a predicate offence to retain the proceeds or the control of the proceeds from the commission of the said offence.

Commitment of the above offences is punishable on conviction by a maximum of fourteen (14) years imprisonment or a fine or both of these penalties, in the case of a person knowing that the property is proceeds from a predicate offence, or by a maximum of five (5) years imprisonment or a fine or both of these penalties, in the case of ought to have known.

It is a defense, under section (26) of the Law, in criminal proceedings against a person in respect of assisting another to commit a money laundering offence that he **intended to disclose** to a police officer or the Unit for Combating Money Laundering (hereinafter to be referred to as "the Unit") his suspicion or belief that the agreement or arrangement related to proceeds from a predicate offence and that his failure to make the disclosure was based on reasonable grounds. Also, under section (26) of the Law, any such disclosure should **not be treated as a breach of any restriction imposed by contract**.

In the case of employees of persons whose activities are supervised by one of the authorities established under Section (60), the Law recognises that the **disclosure may be made to a competent person** (e.g. a Money Laundering Compliance Officer) in accordance with established internal procedures and such disclosure shall have the same effect as a disclosure made to a police officer or the Unit.

1.4 Predicate offences (Section 5 of the Law)

Criminal offences as a result of which proceeds were generated that may become the subject of a money laundering offence, as defined above, are the following:

- (a) premeditated and attempted murder;
- (b) drug trafficking;
- (c) illicit importation, exportation, purchasing, selling, disposition, possession, transfer and trafficking of arms and munitions;
- (d) importation, exportation, purchasing, selling, disposition, possession, transfer of stolen objects, pieces of art, of antiquities and tokens of cultural heritage;
- (e) the abduction of a minor or a mentally retarded person or of any other person against his will for any unlawful purpose;
- (f) the detachment of money or of property of any other kind by use or threat of use of force or other illicit act;
- (g) offences relating to corruption of public or private servants;
- (h) living on the earnings of prostitution and offences associated with the procurating and induction of women and minors;
- (i) offences contrary to the provisions of the Convention for the Natural Protection of Nuclear Material (Ratification and Other Provisions) Law of 1997; and
- (j) offences contrary to the provisions of the Convention for the Prohibition of Chemical Weapons (Ratification) Law of 1998.

For the purposes of money laundering offences it does not matter whether the predicate offence is subject to the jurisdiction of the Cyprus Courts or not (Section 4(2) of the Law).

1.5 Failure to report (Section 27 of the Law)

It is an offence for any person who, in the course of his trade, profession, business or employment, acquires knowledge or reasonable suspicion that another person is engaged in money laundering not to report his knowledge or suspicion as soon as it is reasonably practical, after the information came to his attention, to a police officer or to the Unit. Failure to report in these circumstances is punishable on conviction by a maximum of five (5) years imprisonment or a fine not exceeding Cy£3.000 (three thousand pounds) or both of these penalties.

1.6 Tipping - off (Section 48 of the Law)

Further to the offence (v) under the section on money laundering offences above, it is also an offence for any person to prejudice the search and investigation of money laundering offences by making a disclosure, either to the person who is the subject of a suspicion or any third party, knowing or suspecting that the authorities are carrying out such an investigation and search. "Tipping-off" under these circumstances is punishable with imprisonment up to five (5) years.

1.7 Relevant financial business (Section 61 of the Law)

The Law recognises the important role of the financial sector for the forestalling and effective prevention of money laundering activities and places additional administrative requirements on all institutions, including brokers, engaged in "relevant financial business", which is defined to include the activities listed below:

- (i) Deposit taking;
- (ii) Lending (including personal credits, mortgage credits, factoring with or without recourse, financial or commercial transactions including forfeiting);
- (iii) Finance leasing, including hire purchase financing;
- (iv) Money transmission services;

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- (v) Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts);
- (vi) Guarantees and commitments;
- (vii) Trading for own account or for account of customers in:-
 - (a) money market instruments (cheques, bills, certificates of deposits etc.);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest rate instruments;
 - (e) transferable instruments;
- (viii) Underwriting share issues and the participation in such issues;
- (ix) Consultancy services to enterprises concerning their capital structure, industrial strategy and related issues including the areas of mergers and acquisitions of business;
- (x) money broking;
- (xi) Investment business, including dealing in investments, managing investments, giving investment advice and establishing and operating collective investment schemes. For the purposes of this section, the term "investment" includes long term insurance contracts, whether linked long-term or not;
- (xii) Safe custody services;
- (xiii) Custody and trustee services in relation to stocks.

1.8 Procedures to prevent money laundering (Section 58 of the Law)

The Law requires all persons carrying on financial business, as defined above, to establish and maintain specific policies and procedures to guard against their business and the financial system in general being used for the purposes of money laundering. In essence these procedures are designed to achieve two purposes: firstly, to facilitate the recognition and reporting of suspicious transactions and, secondly, to ensure through the strict implementation of the "know-your-customer" principle and the maintenance of adequate record keeping procedures, should a customer come under investigation, that the broker is able to provide its part of the audit trail. The Law requires that all persons engaged in relevant financial business institute a number of procedures. In fact, it is illegal for any person, in the course of relevant financial business, to form a business relationship or carry out an one-off transaction with or for another, unless the following procedures are instituted:

- **Identification procedures of customers;**
- **Record keeping procedures** in relation to customers' identity and their transactions;
- **Internal reporting procedures** to a competent person - (e.g. a Money Laundering Compliance Officer) appointed to receive and consider information that give rise to knowledge or suspicion that a customer is engaged in money laundering activities;
- **Other internal control and communication procedures** for the purpose of forestalling and preventing money laundering;
- **Measures for making employees aware** of the above procedures to prevent money laundering and of the legislation relating to money laundering; and
- **Provision of training to their employees** in the recognition and handling of transactions suspected to be associated with money laundering.

The Directors, Managers, Secretary and other officers of a body corporate as well as the body corporate itself, who fail to comply with the above requirements

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commit an offence punishable on conviction by a maximum of two (2) years imprisonment or a fine of Cy£2.000 (two thousand pounds) or both of these penalties.

In determining compliance with section (58) of the Law, a Court may take into account any relevant **supervisory or regulatory guidance** issued by the supervisory authority concerned and, where no guidance applies, **any other relevant instructions** issued by the supervisory body that regulates the trade, profession and business carried on by that person.

The purpose of the guidance notes issued by the Cyprus Securities and Exchange Commission, as the supervisory authority of brokers in Cyprus, is to provide a practical interpretation of the requirements of the Law in respect to business carried on by brokers and to indicate good brokerage practice.

Where a supervisory authority is of the opinion that a person falling within its responsibility has failed to comply with the provisions of the Law relating to financial business it has a legal obligation to refer the matter to the Attorney General. Where a supervisory authority obtains information and is of the opinion that any person may have been engaged in money laundering then it has a legal obligation to disclose the relevant information to the Unit.

1.9 Supervisory authorities (Section 60 of the Law)

The Council of Ministers, by its decision of 7 November, 1997, designated, in accordance with Section 60 of the Law, the Cyprus Securities and Exchange Commission as the **supervisory authority** for the Cyprus capital market. In this regard, the Cyprus Securities and Exchange Commission has, therefore, been assigned with the duty of assessing compliance of all brokers with the special provisions of the Law in respect of their business.

The Cyprus Securities and Exchange Commission, in its capacity as supervisory authority, may issue **guidance notes** to all brokers in Cyprus in order to assist them in achieving compliance with the Law.

1.10 Confiscation orders (Section 8 of the Law)

Courts in Cyprus are empowered to make a confiscation order, on application by the Attorney General, on the assets of a person, including funds held on deposit with banks, if they determine that a person has benefited from committing a predicate offence. A confiscation order can be made before a person is sentenced or otherwise dealt with in respect of any predicate offence.

1.11 Restraint and charging orders (Sections 14 and 15 of the Law)

Courts in Cyprus may also, by a **restraint order**, prohibit any person from dealing with any realisable property. In addition, they may also make a **charging order**, under section 15 of the Law, on realisable property (immovable property and securities).

1.12 Orders for the disclosure of information (Section 45 of the Law)

Courts in Cyprus may, on application by the investigator, make an order for the disclosure of information by a person who appears to the Court to be in possession of the information to which the application relates. Such an order applies **irrespective of any legal or other provision which creates an obligation for the maintenance of secrecy or imposes any constraints on the disclosure of information**. As already stated under "tipping off", a person who makes any disclosure which is likely to obstruct or prejudice an investigation into the commission of a predicate offence, knowing or suspecting that the investigation is taking place, is guilty of an offence.

1.13 Service of orders to a supervisory authority (Section 71 of the Law)

Service of an order made under this Law to a supervisory authority shall be deemed as service to all persons who are subject to the control of the supervisory authority. Provided that the supervisory authority concerned shall be obliged to notify forthwith all the persons subject to its control about the order made under the Law.

**II. GUIDANCE NOTE ISSUED BY THE CYPRUS SECURITIES AND EXCHANGE COMMISSION
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OF MONEY LAUNDERING ACTIVITIES LAW OF 1996**

2. CUSTOMER IDENTIFICATION PROCEDURES

2.1 Introduction

- 2.1.1 The Law requires institutions such as brokers carrying on financial business to maintain customer identification procedures in accordance with S.62-65 of the Law. The essence of these requirements is that, except where the Law states that customer identification need not be made, a broker must verify the identity of a prospective customer.
- 2.1.2 The Law does not specify what may or may not represent adequate evidence of identity. The Cyprus Securities and Exchange Commission as the supervisory authority for brokers issues this Guidance Note to brokers under the provisions of S.60 of the Law in order to set out the practice to which brokers should adhere in order to comply with the requirements of the Law on the subject of customer identification.
- 2.1.3 The Law requires that identification must be carried out as soon as is reasonably practicable after contact is first made between a broker and a prospective customer. What constitutes "reasonably practicable" time span must be determined in the light of all the circumstances including the nature of the business, the geographical location of the parties and whether it is practical to obtain the evidence before commitments are entered into or money changes hands. As a rule, brokers are expected to seek and obtain satisfactory evidence of identity of their customers prior to the execution of any transactions whatsoever.
- 2.1.4 Records of the supporting evidence and methods used to verify identity must be retained for five years after the relevant transaction or the end of the business relationship.
- 2.1.5 A broker should establish to its satisfaction that it is dealing with a real person (natural or legal) and verify the identity of those persons who have power to operate on behalf of the customer.

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- 2.1.6 Whenever possible, the prospective customer should be interviewed personally.
- 2.1.7 The verification procedures necessary to establish the identity of the prospective customer should basically be the same whatever type of service is required. The best identification documents possible should be obtained from the prospective customer i.e. those that are the most difficult to obtain illicitly. However, it must be appreciated that no single form of identification can be fully guaranteed as genuine or representing correct identity and the identification process will generally need to be cumulative. For practical purposes a person's address is an essential part of identity and thus there needs to be separate verification of the current permanent address of the prospective customer.
- 2.1.8 The evidence of identity required should be obtained from documents issued by reputable sources. Where practical, file copies of the supporting evidence should be retained. Alternatively the reference numbers and other relevant details should be recorded.
- 2.1.9 In respect of joint ownership of titles where the surname and/or address of the joint holders differ, the name and address of all holders, not only the first named, should normally be verified in accordance with the procedures set out below.

2.2 Cyprus Resident Personal Customers

- 2.2.1 The following information should be obtained from prospective Cyprus resident customers:
- (i) true name and/or names used;
 - (ii) current permanent Cyprus address, including postal code;
 - (iii) date of birth;
 - (iv) profession or occupation.

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2.2.2 Ideally the name or names used should be verified by reference to a document obtained from a reputable source which bears a photograph. Wherever possible a current valid full passport or national identity card should be requested and the number registered.

There are obviously a wide range of other documents that customers might produce as evidence of their identity. It is for each broker firm to decide the appropriateness of such documents in the light of other security procedures operated.

2.2.3 In addition to the name verification, it is important that the current permanent address should also be verified. Some of the best means of verifying address are:

- (i) requesting sight of a recent utility bill, local authority tax bill, bank statement (to guard against forged or counterfeit documents care should be taken to check that the documents offered are originals);
- (ii) checking a local telephone directory.

2.2.4 In addition to the above, an introduction from a respected customer personally known to the Manager, or from a trusted member of staff, may assist the verification procedure. Details of the introduction should be recorded on the customer's file.

2.3 Non-Cyprus Resident Personal Customers

2.3.1 For prospective customers who are not normally resident in Cyprus, it is important that, as far as possible, verification procedures similar to those for Cyprus resident customers should be carried out and the same information obtained.

2.3.2 For those prospective non-Cyprus resident customers who make face to face contact it is recognised that address verification procedures may be difficult. However passports or national identity cards will always be available and the relevant reference numbers should be recorded. In addition, brokers are advised, if in any doubt, to seek to verify identity with a reputable credit or financial institution in the customer's country of residence.

2.3.3 For prospective non-resident customers who come into contact with a broker from abroad, it will not be practical to seek sight of a passport or national identity card. Verification of identity should therefore be sought from a reputable credit or financial institution in the applicant's country of residence. Verification details should be requested covering true name or names used, current permanent address and verification of signature.

2.4 Accounts for clubs, societies and charities

In the case of transactions in the names of clubs, societies and charities, a broker should satisfy itself as to the legitimate purpose of the organisation by, for example, requesting sight of the constitution. Where there is more than one signatory to the orders given or to be given, the identity of at least two signatories should be verified initially and, when signatories change, care should be taken to ensure that the identity of at least two current signatories has been verified.

2.5 Accounts for unincorporated businesses

2.5.1 In the case of partnerships and other unincorporated businesses whose partners/directors are not known to the broker, the identity of at least two partners should be verified in line with the requirements for personal customers. Furthermore, in the case of partnerships, brokers should also obtain the original or copy of the certificate of registration.

2.5.2 In cases where a formal partnership arrangement exists, a mandate from the partnership authorising the opening of an account and conferring authority on those who will give orders for transactions, should be obtained.

2.6 Accounts for corporate customers

2.6.1 Because of the difficulties of identifying beneficial ownership, corporate accounts are one of the most likely vehicles for money laundering, particularly when fronted by a legitimate trading company.

2.6.2 Before a business relationship is established, measures should be taken by way of a company search and/or other commercial enquiries to ensure that the applicant company has not been, or is not in the process of being, dissolved, struck off, wound-up or terminated. In addition, if changes to the company structure or ownership occur subsequently, or suspicions are aroused by a change in the profile of payments through a company account, further checks should be made.

2.6.3 In the case of accounts to be opened for locally incorporated companies, identification should aim at verifying the identity of:

- (i) the company;
- (ii) at least one director;
- (iii) all those persons duly authorised to operate the account;
- (iv) in the case of private companies, the major beneficial shareholders.

The company's business profile in terms of the nature and scale of its activities must also be established.

Where the beneficial owners cannot be established, the broker should treat such cases in the same manner as if it was dealing with a proposal to enter into a business relationship in the names of trustees or nominees and shall apply the procedure prescribed in paragraph 2.8 below.

2.6.4 The following documents must be obtained:

- (i) the original or certified copy of the Certificate of Incorporation;
- (ii) memorandum and articles of association;

- (iii) a resolution of the Board of Directors to enter into transactions on the stock market and conferring authority to those who will act for the customer;
- (iv) where deemed appropriate under the circumstances, a search of the file at the Companies' Registry should be made;
- (v) in the case of locally incorporated International Business Companies or overseas companies registered in Cyprus, any individuals other than Cypriot residents who need to be identified in connection with such companies must be identified in accordance with the procedure for non-Cyprus resident customers.

2.7 Accounts in the names of companies whose shares are in the form of bearer

2.7.1 Brokers may accept as customers companies whose own shares or those of their holding companies (if any) have been issued or may be issued in the form of bearer shares **provided** that the prospective corporate customer fulfills one of the undermentioned prerequisites:

- (i) Its shares are traded on a recognised stock exchange;
- (ii) It is authorised as a collective investment scheme, under the laws of properly regulated and supervised jurisdictions;
- (iii) Its shares are beneficially owned or controlled by governments or governmental undertakings;
- (iv) Its shares are beneficially owned by multinational corporations with a good international reputation and a proven track record of financial stability.

2.7.2 Brokers may also establish business relationships with companies whose own shares or those of their holding companies (if any) have been issued or may be issued to bearer and do **not** meet the prerequisites mentioned in the previous paragraph **provided** that:

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- 1) The identity and background of the beneficial owner(s) / director(s) of the company is ascertained before entering into a business relationship.
- 2) During the stage of examining the application for entering into a business relationship, the director(s) or lawyer or accountant / auditor who has introduced the prospective customer is asked to provide an estimation of the likely turnover of transactions. The bigger the estimated turnover, the more reluctant the broker should be.
- 3) The broker concerned takes physical custody of the bearer share certificates while the relationship is maintained or obtains a confirmation from a bank in Cyprus that it has under its own custody the bearer share certificates and, in case of their release, shall inform it accordingly.
- 4) When the relationship is established, it should be closely monitored. At least twice a year, a review should be carried out and a note prepared summarising the results of the review which must be kept in the customer's file. At frequent intervals, the broker should compare the estimated against the actual turnover of transactions. Any serious deviation, should be investigated, not only for possible action by the broker in relation to the particular connection, but also to gauge the reliability of the lawyer or the accountant / auditor who has introduced the customer.
- 5) At least once every year, the lawyer or accountant/auditor who has introduced the customer confirms that the capital base and the shareholding structure of the company or that of its holding company (if any) has not been altered by the issue of new bearer shares or the cancellation of existing ones.
- 6) When the company's beneficial ownership changes, then the broker should consider whether it is advisable to allow the account to continue operating.

2.8 Companies with shares in the names of trustees or nominees

A broker, in addition, to establishing the identity of the beneficial owners/shareholders, must always establish the identity of a trustee or nominee acting on account of a third party in accordance with the identification procedures for personal or corporate customers as the case may be.

3. RECORD KEEPING PROCEDURES

3.1 Introduction

The Law requires, under section (66), brokers to retain records concerning customer identification and details of transactions for use as evidence in any possible investigation into money laundering. This is an essential constituent of the audit trail procedures that the Law seeks to establish.

3.2 Customer identification records

3.2.1 The Law specifies, under section (66), that, where evidence of a person's identity is required, the records retained must include the following:

- (i) A record that indicates the **nature of a person's identity** obtained in accordance with the procedures provided in the Law and which comprises either a copy of the evidence or which provides sufficient information to enable details as to a person's identity to be re-obtained.
- (ii) A record containing **details relating to all transactions** carried out by that person in the course of relevant financial business.

3.2.2 The prescribed period is **at least five years** commencing with the date on which the relevant business or all activities taking place in the course of transactions were completed.

3.2.3 In accordance with the Law, the date when the relationship with the customer has ended is the date of:

- (i) the carrying out of an one-off transaction or the last in the series of one-off transactions; or
- (ii) the ending of the business relationship; or
- (iii) if the business relationship has not formally ended, the date on which the last transaction was carried out.

3.2.4 The Unit needs to be able to compile a satisfactory audit trail for suspected laundered money and to be able to establish a financial profile of any suspect account. To satisfy this requirement, the following information may be sought as part of an investigation into money laundering:

- (i) the beneficial owner(s) of the account (it is reminded that where trustees or private companies registered with nominee shareholders are involved, the verification procedures prescribed in the Section of this Guidance Note dealing with “Customer Identification Procedures”, should be followed);
- (ii) details of all transactions carried out in the name of the customer;
- (iii) for selected transactions:
 - the origin of the funds;
 - the form in which the funds were placed or withdrawn i.e. cash, cheques, wire transfers etc.;
 - the identity of the person undertaking the transaction;
 - the destination of the funds;
 - the form of instructions and authority.

3.3 Format of Records

3.3.1 It is recognised that copies of all material cannot be retained indefinitely. Prioritisation is, therefore, a necessity. Although the Law prescribes a period of retention, where the records relate to on-going investigations, they should be retained until it is confirmed by the Unit that the case has been closed.

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3.3.2 The retention of hard-copy evidence creates excessive volume of records to be stored. Therefore, retention may be in other formats other than original documents, such as electronic or other form. The overriding objective is for the brokers to be able to retrieve the relevant information without undue delay and in a cost effective manner.

3.3.3 When setting a document retention policy, brokers are, therefore, advised to consider both the statutory requirements and the potential needs of the Unit.

3.3.4 Section (47) of the Law provides that where relevant information is contained in a computer, the information must be presented in a visible and legible form which can be taken away by the Unit.

4. RECOGNITION OF SUSPICIOUS TRANSACTIONS

4.1 Recognition of suspicious transactions

Although it is difficult to define a suspicious transaction, as the types of transactions which may be used by money launderers are almost unlimited, a suspicious transaction will often be one which is inconsistent with a customer's known, legitimate business or personal activities or with the normal business for that type of account. It is, therefore, imperative that brokers know enough about their customers' business in order to recognise that a transaction or a series of transactions is unusual.

4.2 Examples of suspicious transactions

A potential money launderer will attempt to use any service offered by a broker as a means of changing the nature of money from dirty to clean. This process could possibly range from a simple cash transaction to much more sophisticated and complex transactions. A list containing examples of what might constitute suspicious transactions, is attached as **Appendix 1** to this Guidance Note. This list is not all inclusive but can help brokers recognising the most basic ways through which money can be laundered. The possible identification of any of the types of transactions listed below should prompt further investigation by seeking additional information and/or explanations as to the source and origin of the funds and the nature of the underlying transaction.

4.3 Submission of prudential returns

4.3.1 Brokers are urged not to accept cash for the settlement of transactions on the stock market. In cases where the acceptance of cash cannot be avoided brokers must include on the return attached as Appendix 2, the number of all transactions in cash exceeding £10,000 each, as well as the total number of such transactions. This return must be submitted to the Cyprus Securities and Exchange Commission on a monthly basis.

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4.3.2 Brokers are required to proceed with the adjustment of their computerised accounting systems so as to be able to identify instantly all cash transactions in excess of the limit of £10.000 so as to enable the reporting of complete and accurate information in the monthly return and will also enhance the ability of brokers to identify and monitor transactions of a suspicious nature.

5. THE APPOINTMENT AND DUTIES OF MONEY LAUNDERING COMPLIANCE OFFICERS, INTERNAL REPORTING OF SUSPICIOUS TRANSACTIONS AND REPORTING OF SUSPICIOUS TRANSACTIONS TO THE UNIT FOR COMBATING MONEY LAUNDERING

5.1 Introduction

The Law requires (section 27) that any knowledge or suspicion of money laundering should be promptly reported to a Police Officer or to the Unit. The Law also provides, under section (26), that such a disclosure cannot be treated as a breach of the duty of confidentiality owed by brokers to their customers by virtue of the contractual relationship existing between them.

The Law also recognises, under section (26), that suspicions may only be aroused after the transaction has been completed and, therefore, allows subsequent disclosure provided that such disclosure is made on the person's concerned initiative and as soon as it is reasonable for him to make it.

The Law, in accordance with sections (58) and (67), requires that brokers institute internal reporting procedures and that they identify a person (hereinafter to be referred to as "the Money Laundering Compliance Officer") to whom the broker's employees should report their knowledge or suspicion of transactions involving money laundering. In case of broker employees, the Law recognises, under section (26), that internal reporting to the Money Laundering Compliance Officer will satisfy the reporting requirement imposed by virtue of section (27) i.e. once a bank employee has reported his/her suspicion to the Money Laundering Compliance Officer he or she is considered to have fully satisfied his/her statutory requirements, under section (27).

5.2 Appointment of a Money Laundering Compliance Officer

In accordance with the provisions of the Law, all brokers should proceed with the appointment of a Money Laundering Compliance Officer. The person so appointed should be sufficiently senior to command the necessary authority.

Brokers may also wish to appoint Assistant Money Laundering Compliance Officers by division, district or otherwise for the purpose of passing internal suspicion reports to the Chief Money Laundering Compliance Officer.

Brokers should communicate to the Cyprus Securities and Exchange Commission the names and positions of persons whom they appoint, from time to time, to act as Money Laundering Compliance Officers.

5.3 Duties of Money Laundering Compliance Officers

The role and responsibilities of Money Laundering Compliance Officers, including those of Chief and Assistants, should be clearly specified by brokers and documented in appropriate manuals and/or job descriptions.

As a minimum, the duties of a Money Laundering Compliance Officer should include the following:

- a) To receive information from the broker's employees which is considered by the latter to be knowledge of money laundering activities or which is cause for suspicion connected with money laundering. A specimen of such an internal report (hereinafter to be referred to as "Internal Money Laundering Suspicion Report") is attached, as **Appendix 3**, to this Guidance Note. All such reports should be kept on-file.
- b) To validate and consider the information received as per paragraph (a) above by reference to any other relevant information and discuss the circumstances of the case with the reporting employee concerned and, where appropriate, with the employee's superior(s). The evaluation of the information reported to the Money Laundering Compliance Officer should be recorded and retained on file. A specimen of such a report (hereinafter to be referred to as "Money Laundering Compliance Officer's Internal Evaluation Report") is attached, as **Appendix 4**, to this Guidance Note.
- c) If following the evaluation described in paragraph (b) above, the Money Laundering Compliance Officer decides to notify the Unit, then he should complete a written report and submit it to the Unit the soonest

possible. A specimen of such a report (hereinafter to be referred to as "Money Laundering Compliance Officer's Report to the Unit for Combating Money Laundering") is attached, as **Appendix 5**, to this Guidance Note. All such reports should be kept on file.

- d) If following the evaluation described in paragraph (b) above, the Money Laundering Compliance Officer decides **not** to notify the Unit then he should fully explain the reasons for such a decision on the "Money Laundering Compliance Officer's Internal Evaluation Report" which should, as already stated, be retained on file
- e) The Money Laundering Compliance Officer acts as a first point of contact with the Unit, upon commencement of and during an investigation as a result of filing a report to the Unit under (c) above
- f) The Money Laundering Compliance Officer responds to requests from the Unit and determines whether such requests are directly connected with the case reported and, if so, provides all the supplementary information requested and fully co-operates with the Unit.
- g) The Money Laundering Compliance Officer provides advice and guidance to other employees of the broker on money laundering matters.
- h) The Money Laundering Compliance Officer acquires the knowledge and skills required which should be used to improve the broker's internal procedures for recognising and reporting money laundering suspicions.
- i) The Money Laundering Compliance Officer determines whether the broker's employees need further training and/or knowledge for the purpose of learning to combat money laundering.
- j) The Money Laundering Compliance Officer is primarily responsible, in consultation with the broker's senior management and the broker's Internal Audit Department, towards the Cyprus Securities and Exchange Commission, which is specifically recognised by the Law to be the supervisory authority of brokers on money laundering matters, in implementing the various Guidance Notes issued by the Cyprus Securities and Exchange Commission under section 60(3) of the Law as

well as all other instructions/ recommendations issued by the Cyprus Securities and Exchange Commission, from time to time, on the prevention of the criminal use of the securities market for the purpose of money laundering. The Money Laundering Compliance Officer also maintains the overall responsibility for the timely and correct submission to the Cyprus Securities and Exchange Commission of the Monthly Statement of Large Cash Transactions, by explaining the relevant Cyprus Securities and Exchange Commission instructions for the completion of the above return to the broker's employees who are responsible for the preparation of the return. The Money Laundering Compliance Officer is also expected to be able to deal with all enquiries that the Cyprus Securities and Exchange Commission may wish to raise in connection with the information included in the above return.

- k) The Money Laundering Compliance Officer is expected to avoid errors and/or omissions in the course of discharging his duties and, most importantly, when validating the reports received on money laundering suspicions, as a result of which a report to the Unit may or may not be filed. He is also expected to act honestly and reasonably and to make his determination in good faith. In this connection, it should be emphasised that the Money Laundering Compliance Officer's decision may be subject to the subsequent review of the Cyprus Securities and Exchange Commission which, in the course of examining and evaluating the anti-money laundering procedures of brokers and their compliance with the provisions of the Law, is legally empowered to report to the Attorney General a broker which, in its opinion, does not comply with the provisions of the Law, or to the Unit where it forms the opinion that actual money laundering has been carried out. Provided that a Money Laundering Compliance Officer acts in good faith in deciding not to report a suspicion to the Unit, no report will be made by the Cyprus Securities and Exchange Commission to the Attorney General, if it is later found that his judgement in connection with the above suspicion was wrong.

5.4 Internal Organisational Procedures

Brokers should make the necessary arrangements in order to introduce measures designed to assist the functions of the Money Laundering Compliance Officer and the reporting of suspicious transactions by employees. Brokers have an obligation to ensure:

- that all their employees know to whom they should be reporting money laundering knowledge or suspicion; and
- that there is a clear reporting chain under which money laundering knowledge or suspicion is passed without delay to the Chief Money Laundering Compliance Officer either directly or through the Assistant Money Laundering Compliance Officer.

5.5 Disclosure procedures

All Money Laundering Compliance Officers' Reports to the Unit for Combating Money Laundering should be sent or delivered at the following address:

Unit for Combating Money Laundering,
Office of the Attorney General of the Republic,
1 Apelli Street,
CY-1403 Nicosia.

Tel.: 02-302123

Fax: 02-445080

Contact person:

Mrs Eva Rossidou – Papakyriakou, Head of the Unit for Combating Money Laundering.

The form attached to this Guidance Note, as Appendix 5, should be used and followed at all times when submitting a report to the Unit. Disclosures can be forwarded to the Unit by post or by facsimile message or by hand.

5.6 Co-operation with the Unit

Having made a disclosure report, a broker **may** subsequently wish to terminate its relationship with the customer concerned for commercial or risk avoidance reasons. In such an event, however, brokers should exercise particular caution, as per section (48) of the Law, not to alert the customer concerned that a disclosure report has been made. Close liaison with the Unit should, therefore, be maintained in an effort to avoid any frustration to the investigations conducted.

After making the disclosure, brokers are expected to adhere to any instructions given by the Unit and, in particular, as to whether or not to continue the relation with the suspected customer or other instructions as may be deemed necessary.

6. EDUCATION AND TRAINING

The Law requires, under section (58), that adequate training be provided to all broker employees in the recognition and handling of transactions suspected to be associated with money laundering. As a means of assistance for the discharge of the said legal obligation, brokers should refer to the section of this Guidance Note which deals with the “**Recognition of Suspicious Transactions**”. In this regard, brokers are expected to establish a program of continuous training for the various levels of their staff and to all their employees in general.

Also, under section (58) of the Law, brokers are required to take appropriate measures to **make their employees aware** of:

1. The policies and procedures put in place to prevent money laundering including those for identification, record keeping and internal reporting;
2. The legislation relating to money laundering.

The effectiveness of the procedures and recommendations contained in this Guidance Note and other relevant instructions issued by the Cyprus Securities and Exchange Commission on the subject of money laundering depends on the extent to which staff of brokers appreciate the serious nature of the background against which the Law has been enacted and are fully aware of their responsibilities. Staff must also be aware of their own personal statutory obligations. They can be personally liable for failure to report information in accordance with internal procedures. All staff must, therefore, be encouraged to co-operate and to provide a prompt report of any knowledge or suspicion of transactions involving money laundering. It is, therefore, important that brokers introduce comprehensive measures to ensure that staff are fully aware of their responsibilities.

APPENDIX 1

EXAMPLES OF SUSPICIOUS TRANSACTIONS

1. New customers

- (i) The establishment of the identity of a customer proves to be particularly difficult and he appears to be unwilling to provide information as to his/her identity.
- (ii) There are unusual difficulties or delays in the submission of financial statements or other documents for a corporate customer.
- (iii) There is no visible justification for a customer using the services of a particular broker. For example the customer is situated far away from the particular broker and in a place where he could be served by another broker.
- (iv) A customer has been introduced by a foreign bank or another customer, where both the introduced customer and the person or bank introducing him come from a jurisdiction where conditions of drug production and trafficking prevail.
- (v) Any transaction where the other party is unknown.

2. Unusual transactions

- (i) The customer engages in frequent transactions of a large number of titles and in numerous Exchanges worldwide.
- (ii) The transactions are not in conformity with the usual practice of the customer or his business activities.

The present English text has been prepared for information purposes only and is not binding

- (iii) There are frequent transactions in the same title without obvious reason and in conditions that appear unusual (churning).
- (iv) There are frequent small purchases of a particular title by a customer who settles in cash, and then the total number of titles is sold in one transaction with settlement in cash or with the proceeds being transferred, with the customer's instructions, in an account other than his usual account.
- (v) Any transaction the nature, size or frequency appear to be unusual, e.g. cancellation of an order, particularly after the deposit of the consideration.
- (vi) Transactions which are not in line with the conditions prevailing in the market, in relation, particularly, with the size of the order and the frequency.

3. Settlement

- (i) The settlement of any transaction in cash, but in particular large transactions.
- (ii) Settlement by cheque issued by a third party other than the person giving the order.
- (iii) Instructions for payment to a third party which has no obvious connection with the person giving the order.

APPENDIX 2

Statement of Large Cash Transactions

Month:, 200...

Reporting Broker:

- 1. This statement is to be presented to:
 Cyprus Securities and Exchange Commission,
 32 Stasicratous str,
 P.O. Box 24996,
CY-1306 Nicosia.

within **15 calendar days** from the end of each month.

- 2. Enter amounts in CY£ and to the nearest thousand.

FOR OFFICIAL USE ONLY		
ACTION	DATE	INITIALS
1. Received
2. Checked
3. Reviewed
4. Entered

PRIVATE AND CONFIDENTIAL

Statement of Large Cash Transactions

Month: , 200...

Reporting Broker:

1. Transactions in cash

- (a) Total number of transactions in cash in excess of £10.000 _____
- (b) Total number of customer accounts affected _____
- (c) Total value of transactions in cash in excess of £10.000 _____

£'000

2. Reporting of knowledge of suspicions connected with money laundering

- (a) Total number of Internal Money Laundering Suspicion Reports submitted by broker employees to the Money Laundering Compliance Officer _____
- (b) Total number of Money Laundering Compliance Officers' Reports submitted to the Unit for Combating Money Laundering _____

We confirm that the above is a true extract from our books and that this statement has been completed in accordance with the explanations and instructions of the Cyprus Securities and Exchange Commission and to the best of our knowledge.

.....
(Date)

.....
(Money Laundering
Compliance Officer)

EXPLANATIONS AND INSTRUCTIONS FOR COMPLETING THE MONTHLY STATEMENT OF LARGE CASH TRANSACTIONS

1. Transactions in Cash

The monthly Statement of Large Transactions in Cash must give an overall picture of all cash transactions in Cyprus pounds, that are undertaken by Members of the Stock Exchange on behalf of their customers (either resident or non resident) during the month under review.

In this statement should be reflected all transactions in excess of CY£10.000 each.

Sub-category 1(a) must include the total number of transactions in cash which, on an individual basis, were in excess of CY£10.000. Sub-category 1(b) should include the total number of customers that are affected by the transactions reported under 1(a). For example, if a customer gives three different purchase orders each for CY£12.000, then:

- (a) Total number of transactions (3)
- (b) Total number of customers affected by these transactions (1)
- (c) Total value of transactions in excess of £10.000 (£36.000)

2. Reporting of knowledge or suspicions connected with money laundering

Sub-category 2(a) must include the number of Internal Money Laundering Suspicion Reports submitted by Member employees to the Money Laundering Compliance Officer during the month under review.

Sub-category 2(b) must include the number of reports submitted by the Money Laundering Compliance Officer to the Unit for Combating Money Laundering during the month under review.

APPENDIX 3

INTERNAL MONEY LAUNDERING SUSPICION REPORT

REPORTER

Name: Tel.....
Branch/Dept..... Fax.....
Position

CUSTOMER

Name:
Address:
..... Date of birth
Contact/Tel/Fax Occupation/Employer
.....
Passport No..... Nationality
ID Card No..... Other ID

INFORMATION/SUSPICION

Information/Transaction
.....
.....
Reason(s) for suspicion
.....
.....

REPORTER'S SIGNATURE Date

FOR MONEY LAUNDERING COMPLIANCE OFFICER'S USE

Date received Time received Ref
Unit Advised Yes/No Date..... Ref

APPENDIX 4

**MONEY LAUNDERING COMPLIANCE OFFICER'S
INTERNAL EVALUATION REPORT**

Reference Customer.....

Reporter..... Branch/Dept.

ENQUIRIES UNDERTAKEN

.....
.....
.....

DOCUMENTS RESEARCHED/ATTACHED

.....
.....
.....

DETERMINATION/DECISION

.....
.....
.....

FILE REFERENCE

MONEY LAUNDERING
COMPLIANCE OFFICER'S Signature Date

APPENDIX 5

**MONEY LAUNDERING COMPLIANCE OFFICER'S REPORT TO
THE UNIT FOR COMBATING MONEY LAUNDERING**

I. GENERAL INFORMATION

Name of broker _____

Member's address where the transaction was initiated _____

Date when a business relationship started or one - off transaction was carried out _____

**II. DETAILS OF NATURAL PERSON(S) AND/OR LEGAL ENTITY(IES)
INVOLVED IN THE SUSPICIOUS TRANSACTION(S)**

(A) NATURAL PERSONS

	<u>Beneficial owner(s) of the account(s)</u>	<u>Authorised signatory(ies) to the account(s)</u>
Name(s)	_____	_____
	_____	_____
Residential address(es)	_____	_____
	_____	_____
	_____	_____
	_____	_____

Business address(es)

_____	_____
_____	_____
_____	_____
_____	_____

Occupation(s) and Employer(s)

_____	_____
_____	_____
_____	_____
_____	_____

Date and place of birth

_____	_____
_____	_____
_____	_____
_____	_____

Nationality and passport number(s)

_____	_____
_____	_____
_____	_____
_____	_____

(B) LEGAL ENTITIES

Company's name, country
and date of incorporation _____

Business address _____

Main activities _____

III. DETAILS OF SUSPICIOUS ACTIVITY

Give details of suspicious transactions.

1. _____

2. _____

3. _____

(4) KNOWLEDGE/SUSPICION OF
MONEY LAUNDERING
(please explain, as fully as possible,
the knowledge or suspicion
connected with money laundering)

IV OTHER INFORMATION

Other services used by the customer

MONEY LAUNDERING

COMPLIANCE OFFICER'S Signature Date

NB: The above report should be accompanied by photocopies of the following:

1. For natural persons, the relevant pages of customers' passports evidencing identity.
2. For legal entities, certificates of incorporation, directors and shareholders.
3. All documents relating to the suspicious transaction(s) (i.e. Swift messages, bank advice slips, correspondence etc.).