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The Wolfsberg AML Principles
Frequently Asked Questions with Regard to Intermediaries and Holders of Powers of Attorney / Authorised Signers in the Context of Private Banking

Questions sometimes arise with regard to Introducing Intermediaries (sometimes referred to as "finders" or prospectors"), Managing Intermediaries (sometimes referred to as "external asset managers"), and holders of powers of attorney/authorised signers, as those terms are used in paragraphs 1.2.4 and 1.2.5 of the Anti-Money Laundering (AML) Principles for Private Banking. Some of the questions, as well as the answers are, noted below.

Q.1. What is the role of an Introducing Intermediary?

A. The role of the Introducing Intermediary is limited to introducing a client to the bank. The Intermediary is not the accountholder, beneficial owner or signatory on the account. For example, Introducing Intermediaries may include lawyers, accountants, financial advisers, fund managers and financial institutions. An Introducing Intermediary, as the term is used in these FAQs, typically has an ongoing professional relationship with the bank that is subject to an agreement setting out the responsibilities of the bank and the Introducing Intermediary. An existing client or other person who occasionally refers clients to the bank on an informal basis would not be considered an Introducing Intermediary for purposes of these FAQs.

Q.2. What due diligence should be undertaken on an Introducing Intermediary?

A. The bank must be satisfied with the Intermediary's reputation and integrity based on publicly available information and as to such other matters regarding the Introducing Intermediary as it deems appropriate.

If the Introducing Intermediary is not an institution with a well-known and satisfactory reputation, then it would be appropriate for the bank to verify the Intermediary's reputation and integrity.

The bank should have a process in place to review and approve Introducing Intermediaries. If the bank relies on any due diligence conducted by the Intermediary on potential clients, the bank must be satisfied with the relevant due diligence procedures used by the Intermediary. Moreover, a record of the checks performed by the bank on the Intermediary's due diligence procedures should be maintained.

If the Introducing Intermediary also provides a reference for the client, the reference should document the nature and length of the relationship between the Intermediary and the client.

Q.3. If an Introducing Intermediary refers a client to the bank, what level of due diligence should be conducted by the bank with respect to the client?

A. Generally, even if an Introducing Intermediary is involved in the relationship, the bank must obtain the same type of information with respect to the accountholder (or, if different, beneficial owner) that would otherwise be obtained by the bank, absent such involvement by an Intermediary. For example, the bank would obtain the requisite information regarding the accountholder's (or beneficial owner's) source of wealth, the initial source of funding for the account and the anticipated account activity. The bank should also follow the guidance set forth in the Wolfsberg AML Principles for Private Banking and in the FAQs with Regard to Beneficial Ownership in the Context of Private Banking with respect to establishing identity by reference to official documents.

However, the bank may, under certain circumstances (see the next paragraph), rely on the Intermediary to assist in obtaining this information and may obtain copies of official documents through the Intermediary. Obtaining this type of information and documentation through the Intermediary could, if the Intermediary has met or will meet with the client, constitute reasonably sufficient measures that would render it unnecessary for the client to be met by an employee of the bank before the opening of the account (provided the Intermediary attests to the accountholder's (beneficial owner's) identity). See Paragraph 1.3 of the Wolfsberg Principles for Private Banking.

The bank should consider under what circumstances it may place such reliance on the Introducing Intermediary.

Q.4. What is the role of a Managing Intermediary?

A. The role of the Managing Intermediary is to manage assets on behalf of one or more clients. In a typical situation, the Managing Intermediary arranges for the opening of accounts for its clients with the bank. The bank has a direct account relationship with such clients and typically also has a direct contractual relationship with the Intermediary setting out the responsibilities of the bank and the Intermediary regarding due diligence. This type of Intermediary will hereafter be referred to as a Type 1 Managing Intermediary.

There may also be situations in which the Managing Intermediary becomes the accountholder with the bank. The Intermediary's clients, in this situation, remain clients of the Intermediary and do not become the clients of the bank and should not somehow be deemed to be clients of the bank. This type of Intermediary will hereafter be referred to as a Type 2 Managing Intermediary.

Managing Intermediaries may include lawyers, fund managers, financial advisors or financial institutions.

Q.5. What due diligence should be undertaken on a Managing Intermediary?

A. The bank should satisfy itself as to the Managing Intermediary's reputation and integrity based on publicly available information and as to such other matters regarding the Managing Intermediary as it deems appropriate, including, as appropriate: the nature of the Managing Intermediary's business and markets; the relationship between the Managing Intermediary and its clients; the type, purpose and anticipated activity of the account and the nature and duration of the bank's relationship with the Managing Intermediary. The bank should also determine the jurisdiction in which the Intermediary is located and any applicable regulatory and supervisory framework including that relating to AML. In addition, in the case of a Type 2 Managing Intermediary, a bank must determine that the AML due diligence procedures the Intermediary applies to clients are of an acceptable standard. Generally, a bank is in a position to conclude that the Type 2 Managing Intermediary's AML procedures are of an acceptable standard if it can determine, based on the level of regulatory supervision to which the Intermediary is subject and on the jurisdiction in which it is located, that the Intermediary is itself subject to adequate AML regulation in the context of its dealings with clients and is supervised for compliance with such regulation.[1]

A bank may ascertain (i) whether a Managing Intermediary is subject to AML legislation and regulation and (ii) whether it has implemented an AML programme designed to comply with such legislation and regulation, on the basis of (A) the bank's familiarity with the reputation of the Managing Intermediary and/or (B) representations furnished by such Intermediary. For purposes of clause (A), the Intermediary's membership in a self-regulatory organisation may provide a basis for, or be taken into account in, concluding that the Intermediary's reputation is satisfactory. For purposes of clause (B), the representations may be limited to the matters set forth in clauses (i) and (ii).

Since the situation involving a Type 2 Managing Intermediary is to be distinguished from that of a Type 1 Managing Intermediary or an Introducing Intermediary, the bank need not obtain client specific data from such (Type 2) Intermediary, nor undertakings to provide such information, unless applicable regulation otherwise requires.

However, if a Type 2 Managing Intermediary cannot be determined to be subject to adequate AML regulation and supervision as set forth above, then the bank should consider – and different banks may develop different approaches in this regard – what steps it might take to

[1] Such a determination may be based on a bank's general risk assessment methodology, which may take into account the regulatory supervision of Managing Intermediaries in particular jurisdictions and would not necessarily entail discrete inquiries into the level of regulation of particular Managing Intermediaries on a case-by-case basis.

mitigate money laundering risk. Such steps might include (i) considering whether the Intermediary applies AML client due diligence that is equivalent to that of Managing Intermediaries subject to AML regulation that is deemed adequate (for example, the Intermediary's parent is subject to AML regulation and applies global procedures) or (ii) otherwise satisfying itself as to the adequacy of the Managing Intermediary's AML procedures. The bank may make appropriate determinations in this regard on the basis of the bank's familiarity with the reputation of the Intermediary and/or on this basis of representations furnished by such Intermediary.

Q.6. Should the bank conduct due diligence with respect to the Managing Intermediary's clients?

A. The answer differs depending on the role of the Intermediary, the type of account involved, the jurisdiction in which the Intermediary is located and the regulatory and supervisory framework to which the Intermediary is subject.

If the Intermediary's client has a direct account relationship with the bank (i.e., the Intermediary is a Type 1 Managing Intermediary), then the due diligence conducted by the bank with regard to that client would generally be comparable to that described in the answer to Question 3.

However, if the Intermediary is a Type 2 Managing Intermediary and if the bank can make the determination as to the adequacy of the applicable AML regulation contemplated by the answer to the prior question, it should not generally be necessary to conduct "client" due diligence with respect to the Intermediary's clients in that the Intermediary's clients in this situation should generally not be viewed as the bank's clients.[2] However, if the determination referred to above cannot be made, the bank should consider whether to conduct due diligence on an Intermediary's clients.

The cases below may be representative of situations faced by a financial institution concerning an Intermediary that is the accountholder with the bank (i.e., the Type 2 Managing Intermediary situation).

Case # 1: The Intermediary is a financial institution subject to similar AML laws, due diligence standards and regulatory supervision as the bank. In such a case, it would generally not be necessary for a bank to perform due diligence on the Intermediary's clients.

Case # 2: The Intermediary is a financial institution that is not regulated and not subject to AML legislation. The bank would not generally be able to make the determination referred to

[2] The mere fact that there is a notional connection between the funds a client entrusts with a Type 2 Managing Intermediary and transactions that the Intermediary enters into with the bank, should not, from the bank's perspective, somehow result in the Intermediary's clients being treated as the clients of the bank; it is the Intermediary that should be viewed as the client of the bank, and the bank's "know you client" obligation accordingly extends only to the Intermediary. In keeping with this principle, it would be inappropriate to view the bank as having an obligation, albeit one that may be delegated, to conduct client due diligence with regard to the intermediary's clients, because, as noted, the Intermediary's clients are not to be viewed as clients of the bank, and because, by definition, the obligation to conduct client due diligence extends only to clients, not to clients of clients. Consequently, the bank should not be viewed as "relying" on the Intermediary to conduct due diligence on the Intermediary's clients, given that the bank has no underlying obligation to conduct such due diligence and that "reliance," in a strict sense, presupposes such an underlying obligation.

above unless it determines that the Intermediary is of good reputation and has satisfactory client due diligence procedures (e.g. it is based in a non-FATF country but is part of a Group that applies acceptable global AML control policies and procedures). If the bank is not able to make this determination, then the bank should perform its own due diligence on the underlying clients.

Case #3: The Intermediary is a financial institution that is not regulated and not subject to AML legislation. The bank determines that the Intermediary is of good reputation and has satisfactory client due diligence procedures. However, regulation applicable to the bank requires the bank to conduct due diligence with respect to the Intermediary's clients. The bank may rely on the Intermediary to assist in obtaining relevant due diligence information with regard to the Intermediary's clients.

Q.7. How is a holder of a power of attorney or an authorised signer ("Authorised Signer") different from a Managing Intermediary?

A. An Authorised Signer has signatory authority over an account but does not act on a professional basis as a manager of funds (see Question 4). The Authorised Signer is neither the accountholder nor the beneficial owner of an account. Authorised Signers may include lawyers, accountants, family members, or friends (i) of the accountholder or, if different, (ii) of the beneficial owner of the account. The beneficial owner of an account may also be an Authorised Signer.

Q.8. What due diligence should be undertaken on an Authorised Signer?

A. It is not usual to perform "client" due diligence on an Authorised Signer. Nevertheless, the relationship between the Authorised Signer, the accountholder and, if different, the beneficial owner, of the account must be understood.

The nature of the relationship between the accountholder and beneficial owner of the account and the Authorised Signer may require the private banker to conduct further due diligence on the Authorised Signer. For example, if the relationship between the Authorised Signer and the accountholder or beneficial owner is not evident, further information should be obtained from the Authorised Signer concerning the relationship. If the Authorised Signer's response to the private banker's questions concerning the relationship between the Authorised Signer and the accountholder or, if different, the beneficial owner, is not satisfactory, then the account should not be opened.

The private banker must obtain the necessary documentation establishing the Authorised Signer's authority to act on behalf of the accountholder or beneficial owner (e.g. the Power of Attorney**).**

The due diligence performed on the accountholder and, if different, the beneficial owner, is the same as it would be in the situation where there is no Authorised Signer. In this regard, the situation is generally the same as that discussed in the response to Question 3.