# Anti-Money Laundering Bulletin on Discontinuance of Business Relationship

Section 33(8) (a) CJA prohibits a firm that is unable to identify and verify a customer due to the failure of that customer to provide the necessary customer due diligence documentation or information, from providing any service or carrying out any transactions sought by that customer while the documentation or information required remains outstanding. Section 33(8) (b) of the CJA provides that firms must separately and distinctly take action to discontinue the business relationship with the customer in such circumstances.

Section 33(8) is quite broadly framed and, in practice, has given rise to practical challenges around the nature of the steps to be taken to discontinue a customer relationship.

The CBI Bulletin sets out the expectations of the CBI relating to Section 33(8) CJA and also provides welcome guidance around the steps that might be taken by designated persons in the context of both new customers and existing customers.

## New Customers

- The preferred position of the CBI set out in the Bulletin is that for new customers firms should seek to carry out CDD prior to the establishment of the business relationship. The CBI acknowledges that while Section 33(5) CJA allows CDD to be conducted during the establishment of the business relationship where there is no real risk of ML/TF, firms should be in a position to demonstrate this risk analysis to the CBI. It further states where CDD is completed during the establishment of the business relationship, policies and procedures should outline a clear timeframe in which CDD must be completed. The purpose of this is to minimise the risk of being unable to contact the customer or return the funds to the original source in the event of a requirement to discontinue the business relationship.
- Firms should ensure that contractual arrangements for new customers address the requirements of Section 33(8) (a) and (b). Customer on-boarding procedures should address the need for customer consent in relation to the circumstances that would result in the discontinuance of the business relationship and the subsequent effect of such discontinuance.
- Firms should have processes in place that allow firms to return funds directly to the source from which they came. The CBI mentions the need for caution when considering this option because of the risks of facilitating money laundering. Firms may also need to consider whether failure to produce CDD requires the filing of an STR.

## Existing Customers

- A review of all customer records should be undertaken to ascertain the extent of any deficiencies in CDD
- Develop a remediation plan to address failure of customers to provide the required CDD and/or address circumstances in which there is insufficient information in respect of the customer for the firm to show that the CDD requirements are satisfied. Such remediation plans should apply a risk based approach prioritising customers that would present a higher ML/TF risk.
- Explore all options to obtain CDD information and apply a risk based approach in deciding on which information may be acceptable for this purpose. The Bulletin encourages proactivity and rigour on the part of firms. For example, where customers appear to be non-contactable it might be useful to engage with the customer's intermediary.

- Where CDD is not forthcoming from customers with whom the firm has been able to successfully correspond, firms must ensure that firm's documented policies and procedures address the steps required to discontinue the business relationship. The Bulletin emphasises that it is important that firms act in the best interests of the customer and exhaust all possible avenues before taking action to discontinue.
- Where notwithstanding efforts to make customer contact there remains a cohort of customers for whom it has not been possible to obtain CDD, firms should have in place policies and procedures to ensure that relevant ML/TF risks are appropriately managed. For example, ensuring that measures are in place clearly flagging such accounts as "discontinued" and ring-fencing such accounts from normal accounts. In the event that the relevant customer re-present then robust CDD procedures should be applied at that point.
- Where CDD is not forthcoming, consider whether there is a need to make an STIR.

## Comment

Firms should review their contractual arrangements with new customers to ensure that on-boarding requirements address the requirements of Section 33(8) (a) and (b). For existing customers firms should have remediation plans in place to address CDD failures and deficiencies, prioritising customers that would present a higher ML/TF risk. Where robust efforts have been made to close any CDD deficiencies and CDD failure continues, the CBI Bulletin helpfully states that firms may put in places measures to manage relevant ML/TF risks by marking such accounts as "discontinued" and ring-fencing them from normal accounts.

## CONTACT US

**Paula Reid**
*Partner*
+353 1 649 2348
preid@algoodbody.com

**Brian McDermott**
*Partner and Head of Asset Management & Investment Funds*
+353 1 649 2307
bmcdermott@algoodbody.com

**Dario Dagostino**
*Partner*
+353 1 649 2308
ddagostino@algoodbody.com

**Kenan Furlong**
*Partner*
+353 1 649 2260
kfurlong@algoodbody.com

**Kevin Allen**
*Partner*
+353 1 649 2338
kallen@algoodbody.com