

## What you need to know as the Fund MLRO

Since the enactment of the Criminal Justice Act (“CJA”) in 1994, the legislation and regulation in Ireland concerning the prevention of money laundering has come a long way. Following on from two previous EU money laundering directives, (91/308/EEC) and (2001/97/EC), Ireland now awaits the implementation of the 3<sup>rd</sup> EU Money Laundering Directive (2005/60/EC) (the “Directive”) into national law in 2009. The Directive consolidates the previous directives and aims to strengthen the EU’s financial system for the prevention of money laundering and terrorist financing.

This article focuses on the role of the Money Laundering Reporting Officer (“MLRO”) within the Irish funds industry amid impending changes to Anti-Money Laundering (AML) legislation. The Fund MLRO is an individual appointed by the fund’s board of directors, primarily responsible for reporting suspicions of money laundering in the fund. The board of directors of the fund, while having overall responsibility for ensuring the fund complies with AML legislation, must rely on the Fund MLRO to assist them in this regard.

### The Role of the Fund MLRO

Within the framework of an Irish investment fund, a MLRO must be appointed to each of the designated bodies providing services to the fund. Designated bodies include administrators, custodians/trustees and investment managers. Additionally there is the regulatory requirement to appoint a MLRO to the fund legal entity itself. While a fund has no employees, it does have an investor or shareholder base. Shareholders may include individuals, trusts, corporations, nominee accounts and other financial institutions. The Fund MLRO must ensure that the fund and its shareholders are compliant with the requirements of the CJA but in order to do so, he/she relies heavily on a key service provider; the administrator.

### Delegation of AML Duties to the Administrator

The fund can delegate certain duties to the administrator such as measures to establish the actual identification and verification of shareholders in the fund. As part of its AML policy, the administrator will also collect and retain all shareholder identity documentation and transaction records to understand each shareholder’s profile and monitor for unusual or suspicious shareholder transactions. Depending on their profile and domicile, shareholders may be asked to provide a variety of detailed documentation to verify their identity. This can be a lengthy process depending on the type of documentation required and how proactive the shareholder and administrator are in following up. Notwithstanding that the above functions are delegated to the administrator, ultimate responsibility for ensuring the fund complies with the CJA rests with the board of directors of the fund and the Fund MLRO. It is therefore necessary that the Fund MLRO closely monitors the performance of AML functions by the administrator as part of his/her duties.

### The Duties of the Fund MLRO

The Fund MLRO will perform regular reviews of the administrator’s AML policies, procedures and controls. The review covers an inspection of the adequacy of shareholder documentation held by the administrator to determine whether the fund is compliant with the CJA requirements. An assessment of AML education at the administrator should also be undertaken to ensure that staff members have training in AML procedures and are aware of their legal obligations under the CJA. Most importantly, however, the Fund MLRO is primarily responsible for evaluating suspicious transactions by shareholders in the fund and determining whether a Suspicious

Transaction Report (“STR”) should be filed with the Garda Síochána and the Revenue Commissioners. It is a key requirement that the Fund MLRO develop competency in this area and understand the monitoring procedures used by the administrator to capture potential suspicious transactions.

### A Pragmatic Approach for the Fund MLRO

Bearing the above duties in mind and given the increased focus on good fund governance, boards of directors are beginning to look to the Fund MLRO for more information. Reasonable monitoring of the administrator and reporting by the Fund MLRO to the board of directors should factor in the shareholder dealing cycle of the fund and whether daily, monthly or quarterly dealing is facilitated. This will assist the Fund MLRO to:

- ensure that AML documentation for new shareholders and outstanding documentation for existing shareholders is monitored and actively pursued;
- monitor shareholder subscriptions/redemptions for a pattern of unusual or suspicious transactions which have no apparent economic rationale and give rise for concern;
- capture changes to a shareholder’s profile such as a change in corporate ownership structure, authorised signatories, residential status or bank account details;
- generate management information to ensure that money laundering prevention stays on the agenda at board meetings and all directors are aware of any issues raised by the Fund MLRO.

## Challenges Facing the Fund MLRO

A Fund MLRO will acknowledge that examples of Suspicious Transactions Reports (“STRs”) have moved on from examples in previous guidance notes. Today’s Fund MLRO and staff of administrators need to be well informed on the current trends in placement, layering and integration techniques used by money launderers. These can range from organised identity theft and impersonation fraud, dealing with Politically Exposed Persons (PEPs) and/or their associates, market abuse transactions, recognising forged AML documentation, to bogus and terrorist financing transactions. Indeed as shareholders choose to increasingly use complex trusts and company service structures for tax neutrality purposes or anonymity, the Fund MLRO must be vigilant, inquisitive and undertake investigative measures to carefully examine the identity and veracity of shareholder information provided.

## Who Should Perform the Role of the Fund MLRO

In its Fit and Proper Requirements Instruction Paper 2008, the Irish Financial Services Regulatory Authority clearly states that post holders such as MLROs, compliance officers and risk managers should be vetted by executive management to ensure they have the required skill set and personal qualities.

In recent months, the Irish funds industry has seen a noticeable trend in administrators resigning as the Fund MLRO and boards of directors appointing individuals to perform this role. When appointed as the Fund MLRO, the individual must be mindful of the position he/she holds and indeed their exposure to civil and criminal liability. Failure to ensure identification of shareholders, the retention of shareholder documents and transaction records in

addition to a failure to report STRs to the Garda Síochána is a contravention of the CJA and carries a term of imprisonment and/or a monetary fine.

## Ireland’s Changing Money Laundering Environment

As the Irish funds industry prepares to celebrate its 20<sup>th</sup> anniversary in 2009, some important money laundering prevention changes lie in the year ahead.

The 3<sup>rd</sup> EU Money Laundering Directive (2005/60/EC) (the “Directive”) requires financial institutions to conduct ongoing monitoring of their client relationships and scrutinise client transactions. This is meant to assist financial institutions identify activity which is inconsistent with a client’s known profile and which could be grounds for suspicion of a money laundering or terrorist financing offence. The provision requires continuous assessment of high risk clients by ensuring that ‘documents, data or information held are kept up to date’. The Directive has not yet been transposed into Irish Law, therefore it remains to be seen how administrators and Fund MLROs within the Irish funds industry will assess and apply such enhanced and potentially onerous monitoring of shareholders and their transactions.

The implementation of the Directive will also see the issuance of new guidance notes and regulatory changes for the funds industry. The numerous features of the Directive such as determining the identification of beneficial ownership structures, oversight of third parties and screening for PEPs will require the implementation of risk-sensitive systems and procedural changes for designated bodies.

It is against this background that designated bodies are assessing their overall exposure to business and reputational risk and

the AML functions they carry out for the fund. It places further onus on the board of directors of the fund to identify and carefully select a suitable MLRO to assist them with AML compliance on the fund. The Fund MLRO must also become sufficiently knowledgeable and informed to ensure that where AML duties are delegated to administrators, that their AML policy and procedure is not “a one size fits all” approach, but is reflective of the shareholder risk matrix and fund product type.

In summarising, the role of the Fund MLRO should be a proactive approach, assisting the board of the directors to ensure that the fund is compliant with AML legislation. The individual must be aware of his/her increased responsibilities. Negligent oversight of administrators and the fund itself by the Fund MLRO and the board of the directors carries reputational risk and statutory liabilities. Whoever the appointed person is, it is clear that greater consideration must be given to the professional skills and expertise needed to fulfill this role going forward.

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