13 *FUND* AND SECURITY SERVICES ACTIVITIES

13.1 Overview of section

1. This section is supplemental to and should be read in conjunction with the sections of *this Handbook* referenced in the text below.

2. The purpose of this section is to assist with the application of *CDD*, the conduct of risk assessments and additional *AML/CFT/CPF* requirements by funds, securities issuers and their service providers. The definition of *financial services business* in the *Proceeds of Crime Law* means that:

   a. **regulated** and **prudentially supervised** funds and fund service providers under the *CIF(J) Law* and the *FS(J) Law*;

   b. funds that are not regulated (such as unregulated funds under the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008 and private funds) and their service providers; and

   c. other securities issuers and their service providers,

   are subject to the same statutory requirements in the *Money Laundering Order*. Further guidance is available in sections 3.1, 3.2, 3.3 and 3.12 of the *Guidelines.*

3. The types of funds, securities issuers and their service providers to which this section applies are described in the *Guidelines*. For the purposes of this section references to a fund include all sub funds and constituent parts of the fund.

4. It should also be noted that funds, securities issuers and their service providers might be conducting other types of *financial services business,* e.g., a service provider that is a trustee to a fund will also be a *TCSP* for **the** purposes of Schedule 2 of the *Proceeds of Crime Law.*

5. Every *supervised person* has obligations pursuant to the *Money Laundering Order*. Where there are several different service providers involved in a fund or securities issuer structure their respective *CDD* obligations and subsequent *CDD* measures applied may differ. The differences may be attributable to different roles, risk appetites and risk assessments, which will determine how they fulfil their *AML/CFT/CPF obligations*.

6. The service providers of funds or securities issuers can include all those entities and activities listed in Schedule 2, Part 2, paragraph 9 of the *Proceeds of Crime Law*. The list below provides some examples of roles that *supervised persons* may hold with a fund or securities issuer as their *customer*. As noted in paragraph 5 above, different *supervised persons* may have varying *CDD* obligations based on the type of service they provide to a Fund:

- Auditor;
- Administrator/Registrar;
- Manager;
- Investment Adviser;
- Lender;
- Class G Director;

- Asset Manager;
- Distributor;
- Custodian;
- Legal Adviser.

7. Natural Persons such as Class G Directors regulated under the *FS(J) Law* are *supervised persons* and will also have *AML/CFT/CPF obligations*. The *JFSC* has produced the *Guidance note* Natural persons carrying on a single class of trust company business for these individuals.

8. An entity that is a **Managed Entity** (meaning an entity that is managed by a Manager of a Managed Entity registered to carry on class ZK of fund services business under the *FS(J) Law* has the same *AML/CFT/CPF obligations* as any other Fund Operator. The *JFSC* has produced a *Guidance note*: Manager of managed entity (MoME) and certain managed entities.

9. Funds, securities issuers, and their service providers may have different *AML/CFT/CPF obligations*. For example, any one of the service providers in the list above may be neither a Jersey legal person or arrangement nor carrying on business in or from within Jersey and so will not be a *supervised person* and will not be subject to Jersey *AML/CFT/CPF obligations*. A fund, securities issuer and/or their service provider that is not a *supervised person* may have *AML/CFT/CPF obligations* in another jurisdiction. A non-Jersey service provider that is not subject to Jersey *AML/CFT/CPF obligations* may act for a Jersey fund, such as a Jersey fund company, that **does** have Jersey *AML/CFT/CPF obligations*. For the remainder of this section the term "securities issuer" will be used, which includes both "funds" and "securities issuers".

13.2 *AML/CFT/CPF* risk assessments

13.2.1 Overview – Obligation to conduct risk assessments

10. To meet its *AML/CFT/CPF obligations*, a *supervised person* is required to prepare a *BRA*, along with a *CRA* for each of its *customers*. These obligations are covered in sections 2.3 and 3.3.2 of *this Handbook* respectively. The *BRA* and *CRA* may be completed differently based on what the *supervised person* is/does, for example:

Supervised person	***BRA***	***CRA***
Administrator as service provider.	Administrator's business.	Securities issuers for which the administrator acts.
Securities issuer.	Securities issuer itself.	Investors.

11. All the *financial services businesses* defined by the *Proceeds of Crime Law* that are *supervised persons* under the *Money Laundering Order* must conduct a *BRA* and individual *CRAs*. Where the conducting of a *BRA*/*CRA* is outsourced to an external party, the *supervised person* must take adequate steps to ensure the *BRA* and *CRA* are properly conducted and documented.

Guidance notes

12. For *supervised persons* who are subject to one or more of the *Codes of Practice* published by the *JFSC* (such as the Trust Company Business Code of Practice) there is also an obligation for a wider, operational *BRA* to be conducted. When preparing a *BRA* or *CRA*, factors in this operational *Business Risk Assessment* may be relevant. Therefore, a combined *BRA* and operational *Business Risk Assessment* may be appropriate.

13. Risks that are not normally considered to be *AML/CFT/CPF*-specific may also be relevant to a *BRA*, for example, credit risk, tax risk, investor eligibility risk, cyber security related risk etc.

14. It is common practice for a securities issuer to outsource the conduct of its *BRA* to an administrator. In such circumstances, the administrator will also need to conduct a *CRA* on the securities issuer (its *customer*) as it has two separate roles - acting both for itself (conducting a *BRA* on itself and *CRA* on the securities issuer) and as delegate for the securities issuer (conducting a *BRA* and *CRA* on behalf of the securities issuer). Although there may be similar factors considered in the *BRA* and the *CRA*, separate assessments will need to be conducted and documented.

13.2.2 BRA

Overview

15. This section is supplemental to and should be read in conjunction with section 2.3 of *this Handbook* regarding *BRAs*.

Guidance notes

16. When conducting a *BRA* there may be several parties involved in the creation of a securities issuer and the conduct of the securities issuance business – in such circumstances, the *AML/CFT/CPF* risks arising from the involvement of all parties will need to be considered.

17. *Supervised persons* should satisfy themselves that sufficient information has been obtained in relation to a securities issuance structure to fully understand the structure and manage the risk of being involved with the proceeds of criminal conduct (or property used in or intended to be used in criminal conduct). This may include the securities issuer itself being set up for a fraudulent purpose or the securities issuer being used to facilitate *money laundering*. Not all these potential factors will be applicable in every case, e.g., there may be no external finance.

18. Potential factors to consider when conducting a securities issuer's *BRA* may include but are not limited to those set out in the table below. This list is not exhaustive, and the *supervised person* will need to consider the risks relevant to them:

Securities issuer (including a fund)	
Type of securities issuer	• Open/closed • Public/private • Regulated/unregulated • Listed/unlisted • Asset Class - Private equity/venture capital/property/hedge fund/fund of funds.

Securities issuer (including a fund)	
Rationale for securities issuer	• Does fund/securities issuer proposal make sense in light of the objective? • Capital accumulation/income producing/both.
Jurisdiction/Domicile of securities issuer	• Local/non-domiciled.
Securities issuer's structure	• Legal Structure: Limited partnership/ company/unit trust/*ICC*/*PCC*/incorporated limited partnership /separate limited partnership • Separate *Governing body*, i.e., general partner/trustee • Complex/Simple • *SPVs* to hold assets • Part of platform of the manager of the securities issuer • Umbrella.
Conflict(s) of interest	• Promoter v securities issuer investors • Securities issuer service providers v Securities issuer investors • Related parties v securities issuer investors • Between Investors (evidenced in some cases by side letters) • Between securities Issuer service providers.
Unusual features	• Lock ins • Asset holding arrangements • In specie contributions.
Influential persons	• The entities named in the list at paragraph 6 above • Promoter • Investment Committee – powers, composition, independence • Consultants – value for money, related? • Valuers – independent? • Suppliers • *SPV* level suppliers • Letting agents • Asset managers • Developers • Legal advisers • Tax advisers • Auditors • Co-investors • Key investors/Seed investors.
Risk indicators	• *PEPs* • High risk jurisdictions • Sanctions- check Sanctions designations lists.

Securities issuer (including a fund)	
Cash flow	• In specie payments/redemptions permitted? • Third party payments permitted? • Early redemptions permitted? • Budgetary and payment controls of monies flowing out of securities issuer.

19.

Investors/Target market	
Type	• Retail • Professional / financially sophisticated • Institutional • Co-investors at issuer level or at investment level (see paragraph 26 below).
Method of distribution/Solicitation	• Word of mouth /club arrangement/reverse solicitation/ private distribution / public distribution • Control of raising money and distribution of securities • Distributor employed • Promoter distributes • In house securities issuer (i.e., bank for high-net-worth clients) • Investment adviser distributes • Subject to local marketing requirements, e.g., Alternative Investment Fund Managers Directive?
Investor's holding method	• Via intermediaries • Via nominee • Directly/indirectly • Complexity of holding structure • Rationale for holding structure.
Investor information	• *Source of funds* • *Source of wealth* • Rationale.

20.

Investments	
Type/Asset class	• Property/private equity/hedge fund/fund of funds/ infrastructure etc. • Liquid/illiquid assets.
Listed/Unlisted	• Recognised market?

Investments	
Risks associated with that asset class	• Diamonds/ gold /luxury goods – higher *AML/CFT/CPF* risk • Have securities issuer and securities issuer service providers sufficient knowledge and competence to deal with the asset class?
Valuation	• Listed assets easier to value • Specialist assets may be difficult to value • Independent valuer - Experts linked already to the fund?
In specie receipt/payment	• Valuation • Title transfer effective? • Liquid/illiquid • Related party transferring the asset?
Sanctions	• Check the Sanctions designations lists.

21.

Factors common to securities issuer service providers, *Governing body*, finance provider, Investors/target market, instigator/promoter/creator	
Stature	• Public/Private • Newly established/long established • Listed/unlisted • Global/local/number of jurisdictions/number of offices.
Legal form	• Legal person/legal arrangement.
Ownership and control	• Wide spread of ownership/control or sole ownership • Dominant directors/shareholders.
Regulatory status	• Regulated/unregulated.
Reputation	• Subject to regulatory or other disciplinary actions • Subject to legal action • International/National reputation • Held in high regard in business community.
Track record	• Relevant experience particularly in the case of specialist securities issuers or those perceived to be high risk, for example, futures and options funds.
Jurisdiction	• Local/non-domiciled • Multiple jurisdictional operations • Multiple branches/regional office.

Factors common to securities issuer service providers, *Governing body*, finance provider, Investors/target market, instigator/promoter/creator	
Solvency	• Insolvency proceedings • Judgements • Issues with accounts (audit) • Lack of liquidity.
Risk indicators	• *PEPs* - Are there are any? • Sanctions - Have they been checked? • High risk jurisdictions – are there links?

22.

Instigator/Promoter/Creator	
Control of securities issuer	• Participation in structure – owns management shares, owns *Governing body*, is investment manager/adviser/directors on board of *Governing body*.

23.

Securities issuer service providers (including **fund operators**)	
General	• Risks in relation to fund operator role or that particular securities issuer • Sub outsourcing.

24.

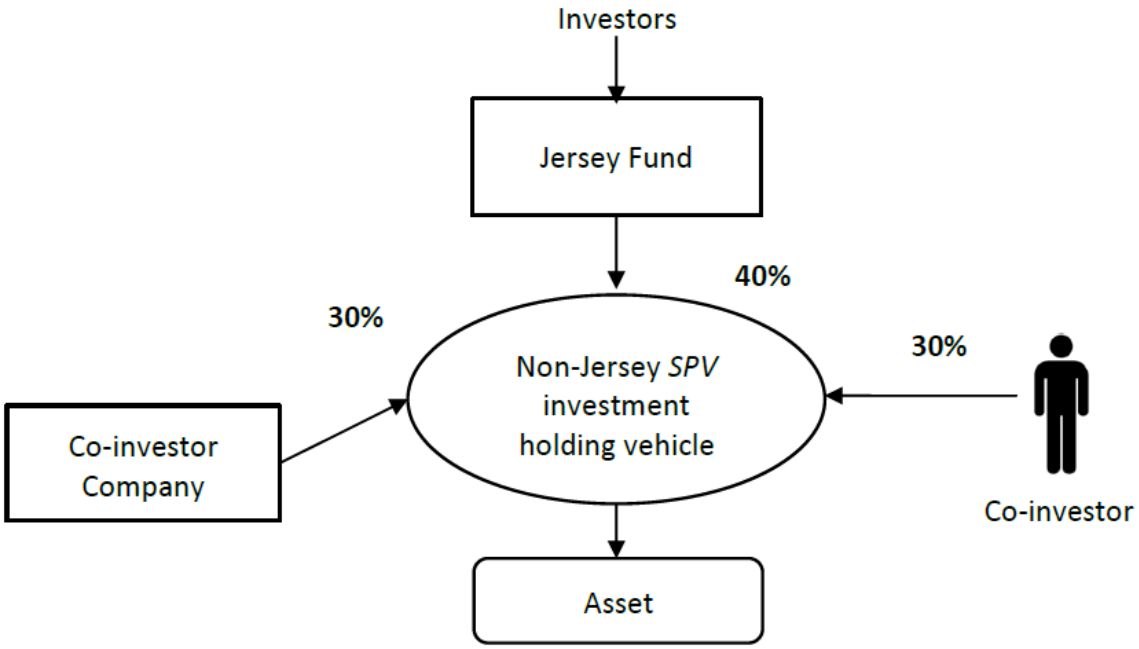
Governing body	
Control	• Independent/equal/proportionate dominant individuals • Bank account mandates.
Corporate governance	• Compliance culture, compliance monitoring policy • Frequency that *policies and procedures* are updated.

25.

Finance	
Source of borrowing	• Regulated bank/credit institution • Private finance – where are funds from? • Layers of borrowing- how many lenders? • Related party?
Structure	• Loan • Bond

Finance	
	• Ring fencing • Priority.
Security	• Secured/unsecured • Collateral • Limited recourse • Guarantor • Take title • Can lender deal with the asset it is holding as security?
Level of borrowing	• Securities issuer • *SPV.*
Rationale	• Make sense? • Normal commercial terms? • Unusual features?
Onward lending	• Why? • Who to? • Benefit to the securities issuer?

26. An example of a factor to consider in a securities issuer *BRA* is the existence of co-investors – see the diagram below:



27. The non-Jersey *SPV* investment holding vehicle is not a *supervised person* so has no Jersey *AML/CFT/CPF obligations*.

28. The securities issuer's *BRA* should consider the *AML/CFT/CPF* risks arising from the existence of the co-investors in the structure. These risks may include (but are not limited to) connections to a jurisdiction listed in **Appendix D2** of *this Handbook* or whether the co-investor or the ultimate *beneficial owner* of the co-investor company is a *PEP*. Sufficient information should be obtained to assess the *AML/CFT/CPF* risks in this aspect of the business.

13.2.3 *CRA* – risk indicators

29. This section is supplemental to and should be read in conjunction with section 3.3.4 of *this Handbook*.

30. The lists below provide examples of potential risk indicators and are not exhaustive. The results of any national risk assessment or similar must also be considered. The presence of one or more low or high-risk indicators does not necessarily mean a *customer* is low or high risk, and their rating needs to be assessed on a **case-by-case basis**. Risk will be assessed at initial take-on of a *customer* but will also need to be reviewed on a regular basis and at trigger events, to ensure the risk rating remains appropriate.

31. Consideration should also be given to whether it is appropriate to on-board a *customer* at all, and whether a *SAR* should be submitted.

32. Potential higher risk indicators at take-on of a *customer* (securities issuer or investor).

Where the *customer*:

- has provided information/documentation that cannot be verified;
- has links to a *PEP*;
- has links to a higher risk country or territory;
- is evasive/inconsistent when additional information is requested such as regarding identity of *Beneficial owners and/or controllers*/*source of funds*/purpose and expected transactions;
- has a complex structure, for example, operates via layers of representatives making identification difficult;
- is revealed to have money problems (i.e., debt judgements);
- is the subject of regulatory or criminal actions or has associates with these characteristics;
- acts as a nominee and there is an unwillingness to identify the underlying third party;
- is an *NPO*/Charity that might be susceptible to abuse regarding terrorist activities such as medical and emergency relief charities with an unlimited global scope. Or where an *NPO*/Charity operates in a specific geographical area but then transfers monies to a country/territory/jurisdiction not within the specific geographical area;
- is a securities issuer and:
  - is aiming to invest in products that may be susceptible to *money laundering*, for example diamonds and gold;
  - has a one-off minimum investment amount so that it operates below *AML* reporting threshold amounts;

- is a highly liquid open-ended fund (the *customer*) with the possibility of frequent subscriptions and redemptions;
- uses unregulated securities issuer service providers;
- outsources functions without any valid reasons provided;
- has a complex structure so it is difficult to ascertain who the underlying beneficiary is, for example using many *SPV*s and intermediaries.

33. Potential higher risk Indicators that may be flagged during ongoing monitoring of the *customer* (securities issuer or investor).

Where the securities issuer:

- has entered or intends to enter into finance arrangements that are either at a higher rate or lower rate than usual with no rationale provided;
- has or intends to purchase assets without independent valuations (particularly from connected persons);
- receives or sends monies to related or unrelated third parties that do not fit the pattern of transactions expected for the securities issuer and no acceptable rationale is provided;
- transfers monies to *SPV*s which the securities issuer's *customer* appears to have no control over;
- purchases assets without proof of title from the seller and title to the assets is not clearly transferred to the securities issuer's *customer*;
- engages consultants who add little benefit and receive high fees (particularly in countries associated with a higher risk of corruption);
- enters into a promise to purchase agreements for which monies are paid where transactions are regularly aborted, resulting in forfeiture of the monies;
- is investing with no obvious commercial rationale and is inconsistent with the securities issuer's *customer* profile;
- regularly pays fees, commissions and costs to source and investigate transactions, but no transactions are executed;
- exhibits transaction activity that does not follow the expected pattern or changes substantively with no rational explanation;
- displays endemic conflicts of interest;
- regularly changes bank accounts and uses different securities issuer service providers in different jurisdictions.

Where the investor:

- requires a high level of liquidity and indicates funds may need to be withdrawn/moved at short notice;
- is proposing an investment of an unexpected large amount.

13.2.4 Risk assessments for SPV Governing bodies

34. Issuer service provider to conduct a *CRA* on each of its *customers*, i.e., the investors. Securities issuer ***SPV Governing body*** is a vehicle established for the specific purpose of acting as the *Governing body* of a securities issuer. Common examples are a company established to act as the general partner of a limited partnership which is a securities issuer or a trustee of a unit trust which is a securities issuer.

35. A unit trust or a limited partnership has no separate legal personality, so the *SPV Governing body* is the *customer* of the securities issuer service provider (see Article 3(2)(a) and (c) of the *Money Laundering Order*). However, trustees and general partners are also securities issuer service providers. Effectively they have two capacities - they are both a securities issuer service provider and a securities issuer *Governing body*. For the purposes of this section if a trustee or general partner provides services to **more than one** securities issuer it will not be regarded as an *SPV* but will be regarded as a securities issuer service provider.

36. In these circumstances, its *BRA* and *CRA* conducted as securities issuer service provider and the *BRA* it conducts in its capacity as *SPV Governing body* of the securities issuer are likely to significantly overlap. To avoid duplication of effort, it may be appropriate to consolidate these 3 Risk Assessments, provided that all relevant risks (i.e., of all 3 risk assessments) are appropriately considered. This has no effect on the separate obligation of the securities.

Entity	***BRA***	***CRA***	**Entity**	***BRA***	***CRA***
Non *SPV* trustee of unit trust as securities issuers.	Self.	Securities issuer.	*SPV* trustee of one unit trust as securities issuer.	Consolidated risk assessment combined *BRA*/*CRA* for trustee and securities issuer *BRA* as *SPV* trustee is intrinsically part of the securities issuer.	
Unit trust.	Self.	Investors.	Unit trust.	See above.	Investors.

37. Left intentionally blank.

13.2.5 Documenting risk assessments

Securities issuers

Overview

38. This section is supplemental to and should be read in conjunction with section 3 and section 2 of *this Handbook*.

39. *Supervised persons* are required to ensure their *BRAs* and *CRAs* are properly documented.

Guidance notes

40. Comprehensive subscription agreements/investor questionnaires may assist in obtaining information on a securities issuer's investors and provide sufficient detail to enable the securities issuer to carry out a *CRA*. However, a subscription agreement/investor questionnaire **is not** a replacement for a *CRA*.

41. For certain types of products or services, standard *customer* profiles may assist the *CRA* process. In such cases, the *supervised person* will need documented procedures which consider:

- whether the intention is to only accept investors who fit the standard *customer* profile.
- if not, how will exceptions to the standard *customer* profile be managed, either at the outset or subsequently?
- whether (for instance) individual *CRAs* will be conducted with respect to any *customers* that do not fit the standard *customer* profile.

42. The *supervised person* always remains ultimately responsible for its risk assessments regardless of whether they outsource the conduct of them to another party.

13.3 *Customer identification measures*

Overview

43. Section 3 of *this Handbook* describes the stages of the identification process and provides guidance in relation to each stage. *CDD* is not limited to finding out the identity of the *customer* and obtaining verification (e.g., taking their personal details and copies of their passport and driving licence). The table below (explained in further detail at section 3.3 of *this Handbook*) summarises *CDD* requirements:

<table>
<tr><th>CDD element</th><th colspan="2">Activity</th></tr>
<tr><td rowspan="6">Identification measures</td><td colspan="2">Risk assessment.</td></tr>
<tr><td colspan="2">Identify customer.</td></tr>
<tr><td colspan="2">Identify third parties.</td></tr>
<tr><td>Identify person acting for customer.</td><td>Verify authority to act.</td></tr>
<tr><td rowspan="2">Where customer not individual:</td><td>Understand ownership/control structure.</td></tr>
<tr><td>Identify Beneficial owners and/or controllers.</td></tr>
<tr><td colspan="2">Obtain information on purpose/nature.</td></tr>
<tr><td rowspan="2">Ongoing monitoring</td><td colspan="2">Scrutinising transactions/activity.</td></tr>
<tr><td colspan="2">Keep documents/information up to date.</td></tr>
</table>

44. The following sections provide guidance on the identification of *customer*s, ultimate Beneficial owners and third parties. These sections must be read in conjunction with the referenced sections of *this Handbook*.

13.3.1 Obligation to apply *identification measures*

Overview

45. Section 3.1 of *this Handbook* states that a *customer* may be an individual (or a group of individuals) or a legal person. Further guidance on finding out identity and obtaining evidence of identity is provided at the following sections:

***AML/CFT/CPF Handbook* Section**	**Type of *customer***	**Securities issuer structure**
4.3	Individual/group of individuals.	

4.5	Legal person.	• Company. • Limited liability partnership. • Separate limited partnership. • Incorporated cell.
4.4	Individual or legal person acting for a legal arrangement.	• Trustee on behalf of a unit trust. • General partner on behalf of a limited partnership.

46. For the purposes of this section, companies, limited partnerships, and unit trusts will be used as practical examples as these are the most common security issuer structures.

47. Each of the security issuer's investors are its *customers*. The investors may take a variety of legal forms and Article 3 of the *Money Laundering Order* specifies how *identification measures* are applied to each.

Securities issuer structure	***Supervised person* re each security issuer structure**	***Customer*/Investor**
Company.	Company.	• Article 3(2)(a) of the *Money Laundering Order* - individual. • Article 3(2)(aa) of the *Money Laundering Order* - any person acting on behalf of the *customer.* • Article 3(2)(b) of the *Money Laundering Order* - acting for a third party (legal arrangement). • Article 3(2)(c) of the *Money Laundering Order* - not an individual but legal person. Legal persons/arrangements apply the Three Tier Test.
Limited partnership.	General partner on behalf of the limited partnership.	
Unit trust.	Trustee on behalf of the unit trust.	

48. The Three Tier Test refers to the process by which a *supervised person* may determine each individual who is a *Beneficial owner and/or controller* and is covered in detail at Section 4 of *this Handbook*. However, it can be summarised as determining the individuals who exercise control through:

- ownership means; and
- other means; or
- through positions held.

When applying the Three Tier Test, if no one is present at Tiers 1 and/or 2, then consider Tier 3. There may be more than one individual at Tiers 1 and/or 2.

49. Section 3.3 of *this Handbook* lists the various steps of the identification process, of which identifying the *customer* is only a part. A *supervised person* must also understand the ownership and control of the *customer* and identify:

- any Beneficial owners and/or controllers of the *customer*;
- those third parties for whom the *customer* acts indirectly/directly (e.g., legal arrangements); and
- others listed in Article 3(2) of the *Money Laundering Order* (which links to Article 3(7) of the *Money Laundering Order* e.g., settlor/protector).

50. The starting point is that the *supervised person* has to determine who everyone detailed in paragraph 49 above is, as part of its *identification measures*.

Guidance notes

51. Responsibility for applying *CDD* measures (which includes *identification measures* and ongoing monitoring) rests with the ***Governing body*** of the securities issuer, as detailed in the table below:

Type of security issuer entity	Responsibility
Company.	Directors.
Limited partnership/Unit trust.	Directors of the general partner/trustee of the limited partnership/unit trust where the general partner/trustee is a company.
Protected cell.	Directors of the *PCC*, not each of the protected cells, although the directors of the protected cells may assist with compliance.
Incorporated cell.	Directors of each of the incorporated cells.

13.3.2 *Identification Measures* - Securities issuer service provider

Guidance notes

52. Several securities issuer service providers are likely to provide services to the securities issuer. Each will be a *supervised person*, with the securities issuer as their *customer*. Each will have their own *CDD* obligations pursuant to the *Money Laundering Order*.

53. Even where a securities issuer service provider is not providing investor-facing services and only provides services to the securities issuer, they should ensure when conducting their *CRA* (of their *customer* – the securities issuer) that they obtain sufficient information on the investors (e.g., *source of funds*) and *Beneficial owners and/or controllers* of the securities issuer. Rather than gathering this information themselves, in a low-risk scenario the securities issuer may be able to provide a list of its investors with holdings of 25% or more and *source of funds* information provided to the securities issuer by investors via subscription agreements/investor questionnaires (see also paragraph 135 below).

54. The first step for a *supervised person* is to determine the nature of their *customer* and determine the *customer's* potential *Beneficial owners and/or controllers*, any third parties on whose behalf the *customer* acts (and any third party's *Beneficial owners and/or controllers*) and others listed in Article 3(2) of the *Money Laundering Order*. It may not always be necessary to verify all of them.

55. The application of Article 3 of the *Money Laundering Order* differs depending on the legal form of the securities issuer. For the examples in the two tables below it is assumed that both the general partner and trustee are companies.

Application of Article 3 where the securities issuer service provider's *customer* is a:

Legal person, i.e., a company			
Customer	Third party	Owners/Investors of the securities issuer	*Governing body*
Company Article 3(2)(a), (aa) and (c) of the *Money Laundering Order.*	N/A.	Shareholder(s) (owns *customer*) Article 3(2)(c)(iii) of the *Money Laundering Order.*	Directors of company Re *customer.* Article 3(2)(aa), c(ii) and c(iii) of the *Money Laundering Order.*
Legal arrangement, i.e., a limited partnership/unit trust			
General partner/Trustee (company) Article 3(2)(a),(aa) and (c) of the *Money Laundering Order.*	Limited partnership/Unit trust Article 3(2)(b)(iii) of the *Money Laundering Order.*	Limited partner(s)/ Unit holder(s) (owns third party) Article 3(2)(b)(iii)(A), (B) and (C) of the *Money Laundering Order.* (Note: the requirements of Article 3(7) of the *Money Laundering Order*).	Directors/ Shareholders of general partner/ trustee • Re *customer* Article 3(2)(aa), c(ii) and c(iii) of the *Money Laundering Order.* • Re third party Article 3(2)(aa), (b)(iii)(A), (B) and (C) of the *Money Laundering Order.*

56. Once a *supervised person* fully understands the ownership and control structure of a *customer* the *supervised person* can determine the *beneficial owners and controllers* pursuant to the Three Tier Test and then apply the necessary *identification measures*.

57. The Three Tier Test is applied on a case-by-case basis and the table below indicates potential *Beneficial owners and/or controllers* in different scenarios where the ***supervised person* is a** securities issuer service provider, **and the securities issuer is a**:

Legal person, i.e., a company		
Customer	Third party	*Beneficial Owners and/or controllers*
Company. Article 3(2)(a), (aa) and (c) of the *Money Laundering Order.*	N/A.	Apply the Three Tier Test (see above) Shareholder(s) Article 3(2)(c)(iii) of the *Money Laundering Order* - Potentially Tier 1 Promoters/Instigators Article 3(c)(ii) of the *Money Laundering Order* - Potentially Tier 2 Directors of Company - Potentially Tier 3 Article 3(2)(aa), (c)(ii) and (c)(iii) of the *Money Laundering Order.*
Legal arrangement, i.e., unit trust/limited partnership		
General partner for limited partnership/trustee for unit trust (company) Article 3(2)(a), (aa) and (c) of the *Money Laundering Order.*	Limited partnership/unit trust Article 3(2)(b)(iii) of the *Money Laundering Order.*	Apply the Three Tier Test to the *customer* and the third party: *customer* – general partner/trustee Article 3(2)(aa) and (c) of the *Money Laundering Order.* Third Party - limited partnership/trust Articles 3(2)(b) and 3(7) of the *Money Laundering Order.*

58. More detailed guidance on how to determine and identify *Beneficial owners and/or controllers* is contained in the following sections of *this Handbook*:

Entity	**Finding out identity**	**Obtaining evidence**
Limited partnership	4.3.3	4.3.4
Trust (not unit trust)	4.3.1	4.3.2

Company	4.5.1	4.5.2

13.3.3 Identification Measures - unit trusts

Securities issuers

Guidance notes

59. Unit trusts differ from traditional private trusts. For example, with a private family trust there is normally a settlor who not only establishes the trust but also provides the initial funds and ongoing funding to the trust. Beneficiaries may be expressly referred to or may form part of a class and may not have a vested right to the trust assets.

60. In a unit trust the promoter or instigator may fund the establishment of the unit trust and may fund the initial investment, thus being considered a settlor. While the individual investors are not considered to be settlors for the purposes of Article 3(7)(a) of the *Money Laundering Order*, each of the unit holders will be *customers* of the securities issuer (unit trust) investing their money into the unit trust. This may include the promoter as an investor.

61. Statutory requirements relating to *identification measures* that apply to unit trusts are set out at Article 3(7) of the *Money Laundering Order*.

13.3.4 Securities issuer service provider – passive investors

Securities issuers

Guidance notes

62. Identification of investors in a securities issuer will be approached differently by the securities issuer and the securities issuer service provider.

63. The securities issuer has an obligation to identify each of its investors, as they are the securities issuer's *customers*. This obligation exists regardless of whether they are passive investors who do not exercise control over the securities issuer.

64. The securities issuer service provider, however, has an obligation to identify the *Beneficial owners and/or controllers* of their *customer* (the securities issuer) and should apply the Three Tier Test to ascertain who the *Beneficial owners and/or controllers* are. Where ownership of a securities issuer is distributed widely, it may be that none of the investors control the securities issuer through their ownership. In such a case, these "passive" investors are not *Beneficial owners* at Tier 1 and, assuming they are not controllers via Tier 2 or 3, a securities issuer service provider need not apply *identification measures* to them.

65. It should be noted, however, that to demonstrate that sufficient information has been collected on *source of funds* for a *customer* relationship, it may still be necessary to consider the provenance of investors who have a **material interest** in a *customer*, but who do not also **exercise control**. The effect of this may still be to require information to be obtained on such passive investors (though it may not be necessary to also obtain evidence of identity).

66. For example, an investment advisor giving advice directly to a regulated fund with passive investors will still need to obtain *source of funds* information in relation to those investors to understand the *AML/CFT/CPF* risk posed by its *customer*.

67. The extent of *source of funds* information collected will be proportionate to the risks identified and determined on a case-by-case basis. In a lower risk relationship, *source of funds* information should be obtained for all passive investors with a holding of **25% or more**. Where there are no 25%+ holders, generic investor information on *source of funds* such as a generic profile could be obtained. In a higher risk relationship, more stringent measures should be applied. These measures should be determined on a case-by-case basis with reference to the *supervised person's CRA* of the relationship.

68. Similarly, to demonstrate that sufficient information has been collected to assess the *AML/CFT/CPF* risks posed by a *customer*, it may be necessary to consider the identity, nature, structure and location of investors who have a **material interest** in a *customer*, but who do not also **exercise control**. See sections 3.3.2 and 3.3.4 of *this Handbook* for further detail.

13.3.5 Securities issuer service providers - promoters

Securities issuers

Guidance notes

69. A *supervised person* may need to consider whether the promoter of a securities issuer is a *Beneficial owner and/or controller*. For example, the promoter/instigator of the securities issuer may have direct control by owning the *Governing body* (i.e., the general partner or the trustee) or by owning management shares of a securities issuer company.

70. In addition, a promoter may also be a *Beneficial owner and/or controller* where the board of a securities issuer does not exercise sufficient effective control. For example, a promoter may be the investment adviser/investment manager or may have a significant presence on the investment committee, which may indicate **control by other means** (see Tier 2 of the Three Tier Test).

13.3.6 Multiple layers

Overview

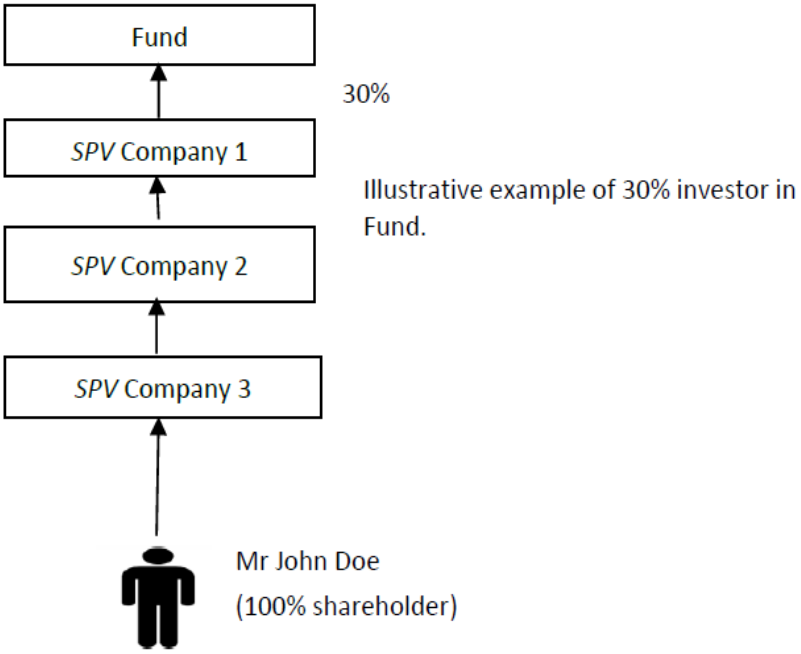
71. Securities issuers' structures are often complicated by ultimate *Beneficial owners* not entering into transactions directly and there may be multiple entities, such as holding companies, trusts, nominees, and intermediaries between the investment in the securities issuer and the individual who is the ultimate *Beneficial owner*. The more complex the structure, the more difficult it may be to determine the *Beneficial owner and/or controller* (see *Complex Customer Structures section 7.8)*

72. A *supervised person's* approach to a complex ownership and control structure will be informed by the risk rating allocated to that *customer*. However, as set out in section 4 of *this Handbook*, the following are always required to be identified:

- the *customer*;
- the ultimate Beneficial owners and/or controllers of the *customer* (the Three Tier Test can assist *supervised person*s in working out which persons fall within this category); and
- any third parties on whose behalf the *customer* acts.

Guidance notes

73. In the example below the securities issuer (in this case a fund) is the *supervised person*. The general rule is that you are trying to ascertain the ultimate individual(s) who control(s) the structure.



Customer

74. *SPV* company 1 is the *customer* of the fund.

75. The fund is obliged to find out the identity of its *customer* and obtain evidence of identity. *This Handbook* provides guidance on *identification measures* to be applied to a legal person that is a company:

- section 4.5.1 - Finding out the identity of a legal person that is a company, and
- section 4.5.2 - Obtaining evidence of identity of a legal person that is company.

Beneficial Owner and/or controller

76. *SPV* company 1 is a legal person, and the *supervised person* must understand the ownership and control structure of the *customer*. The fund is obliged to find out the identity and obtain evidence of identity of its *Beneficial owners and/or controllers*. The Three Tier Test is applied to ascertain who controls the *customer*:

- control via ownership; and
- control via other means; or
- control through positions held (if no-one at Tiers 1 and/or 2).

77. Understanding a *customer*'s ownership and control structure will allow a *supervised person* to determine the ultimate Beneficial owner and/or controller. Article 2(2) of the *Money Laundering Order* states "…. it is immaterial whether an individual's ultimate ownership or control is direct or indirect".

78. In this example the structure is in place for the purpose of facilitating the investment of John Doe and he is exercising effective control. Therefore, regardless of the holding companies, John Doe is the Beneficial owner and/or controller of the *customer*.

79. *This Handbook* provides guidance for individuals (in this example John Doe):

- section 4.2.2 of *this Handbook* - Finding out the identity of an individual;
- section 4.3.2 of *this Handbook* - Obtaining evidence of identity of an individual.

80. If none of the individuals with ownership interests **exercise control,** then they may not need to be identified (section 13.2.4 of *this Handbook* regarding passive investors).

Multi-layered structure

81. In the above scenario understanding the ownership and control structure of the *customer* is likely to require some effort, but it may not be necessary to obtain detailed identity information and evidence in relation to each entity in the structure.

82. Verification of identity may not be necessary in relation to *SPV* company 2 and *SPV* company 3 – they are not *customers* or *Beneficial owners and/or controllers* or third parties on whose behalf the *customer* is acting (see paragraph 72 above). The reason they are not controllers is because they are acting on the instructions of the **ultimate controller** Mr John Doe and are therefore merely links in the control chain.

83. Whilst obtaining evidence of identity may not be necessary, sufficient information will still need to be obtained in relation to these two entities to understand the wider ownership and control structure. The information required will depend on the complexity of the structure and the overall risk of the *customer* relationship. However, as a minimum for a low-risk *customer* the following should be obtained:

- name of the entity;
- evidence the entity exists;
- names of the directors;
- names of the shareholders or those with other interests;
- details of ownership and control of the entity (proportion of holdings, voting rights, decision-making authority, etc.).

13.3.7 Nominees/investment managers

Guidance notes

84. This section is supplemental to and should be read in conjunction with section 8.2 of *this Handbook* regarding *Designated relationships* and *pooled relationship*s.

85. There may be scenarios where the securities issuer's *customer* is representing other parties, for example as a nominee/investment manager. In this scenario the normal obligations apply, and the *supervised person* still has to identify:

- the *customer*;
- the ultimate Beneficial owner and/or controller of the *customer* (as per the Three Tier Test);
- any third parties for whom the *customer* acts.

86. If the *customer* is a company, then the *supervised person* would apply the guidance in paragraph 75 above.

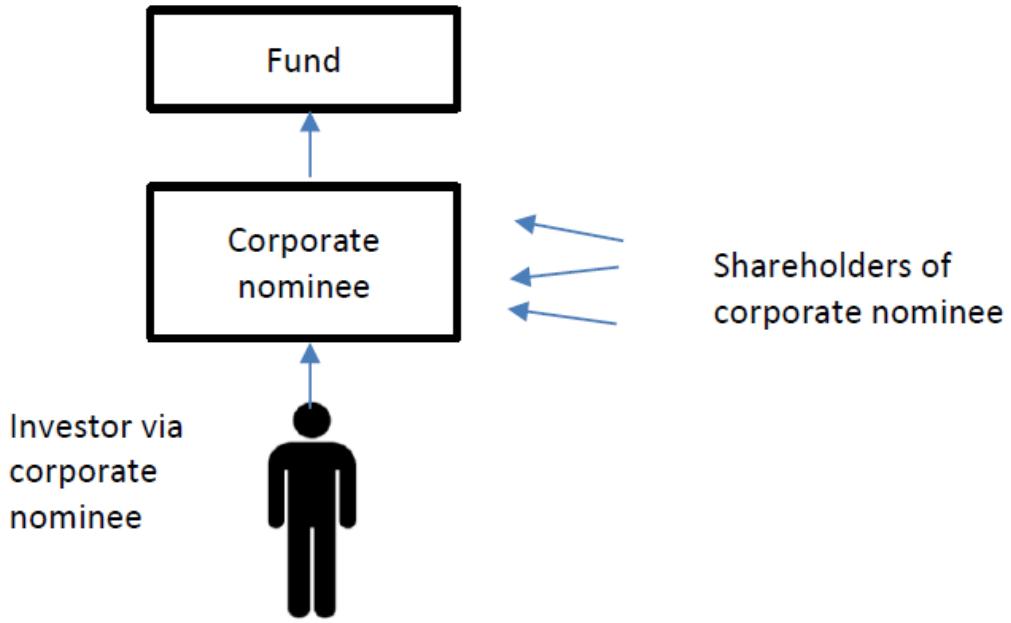
87. In the scenario below the securities issuer (in this case a Fund) is the *supervised person*, the corporate nominee is the *customer,* and the individual is the third party for whom the *customer* is acting.

88. The corporate nominee is the *customer,* and it will be necessary to identify its *Beneficial owners and/or controllers*. The Three Tier Test will need to be applied to determine the potential *Beneficial owners and/or controllers* of the corporate nominee. In this scenario it will also be necessary to identify the third party for whom the corporate nominee is acting and determine the *Beneficial ownership and/or control* of that third party as per Article 3(2)(b) of the *Money Laundering Order*.

Illustrative example of application of the Three Tier Test to

A corporate nominee - *(Article 3(2)(c)* of the *Money Laundering Order*		
No.	Control through ownership.	There are several owners and there is no majority shareholder.
No.	Control through other means.	There are no entities/persons that fall into this tier.
Yes.	Control through positions held.	The board of directors control the corporate nominee.

An individual whose interest is through the corporate nominee - Article 3(2)(b) of the *Money Laundering Order*		
Yes.	Control through ownership.	Here the principal is an individual.
No.	Control through other means.	Tier 1 applies so no further need to determine potential persons in other tiers.
No.	Control through positions held.	



89. The *supervised person* is required to identify and verify its *customer* – here the corporate nominee – as set out at paragraph 75 above. Control and ownership of the *customer* must be ascertained applying the Three Tier Test (paragraph 88 above).

90. The third party for whom the *customer* is acting must also be identified and verified. In the diagram above this will be the individual who is investing via the nominee. If the third party in the example above was not an individual, then its *Beneficial owners and/or controllers* would also need to be identified and verified.

13.3.8 Securities issuer service providers – residual assets

Securities issuers

Guidance notes

91. On some occasions when a securities issuer is wound up the securities issuer service provider may hold residual and/or illiquid assets of the securities issuer for the benefit of the investors. In this scenario care has to be taken and the following matters should be considered:

- Have the investors now become the securities issuer service provider's *customers*?
- Does the securities issuer service provider hold sufficient *CDD* on its *customers*? For example, the securities issuer service provider may have taken comfort from the *identification measures* applied **by the** securities issuer, but the securities issuer no longer exists;
- Has the securities issuer service provider updated its *CRA* and *BRA* to take into consideration its new role (regardless of whether the investors are its *customers*)?

13.4 Timing of *identification measures*

Securities issuers

Overview

92. This section is supplemental to and should be read in conjunction with sections 4.1 and 4.7 of *this Handbook*.

93. Article 13(4) of the *Money Laundering Order* provides a concession in relation to the timing of *identification measures*, permitting a delay in obtaining evidence in specific circumstances. However, **in no circumstances** can the obtaining of information be delayed.

Guidance notes

94. Delaying the obtaining of evidence is permitted in certain circumstances but should not be common or standard practice. It **should not** be common practice that verification is deferred until after the first close of a securities issuer. Where the provisions of Article 13(4) of the *Money Laundering Order* are relied upon to delay the obtaining of evidence of identity, additional measures are required, including the effective management of the associated risk through appropriate authorisation, monitoring, and reporting.

95. The obtaining of evidence of identity "as soon as reasonably practicable" should in most cases be a matter of days rather than weeks or months.

13.5 Failure to complete *identification measures*

Securities issuers

Overview

96. This section is supplemental to and should be read in conjunction with section 4.8 of *this Handbook*.

97. Under Article 14 of the *Money Laundering Order*, if a *supervised person* is unable to apply *identification measures* when required to do so then it must terminate that relationship and consider whether to make a *SAR* to the *FIU*.

98. This requirement may cause conflicts in the case of a *supervised person* that is a securities issuer where its *customer* is an investor and where:

- the relationship between the securities issuer and its investor is governed by other legislation or regulatory requirements, e.g., the *CIF(J) Law* and Code of Practice for Certified Funds; and
- the termination of a relationship with an investor may have a prejudicial effect on the interests of other investor, e.g., a closed-ended illiquid property fund.

Guidance notes

99. To address these potential issues, termination of a *business relationship* may be **delayed** until such time as compliance with Article 14 of the *Money Laundering Order* does not conflict with another statutory or regulatory requirement, and/or does not have any prejudicial effect on the interests of other *customers* (investors), so long as the risk of *money laundering,* the *financing of terrorism,* or the *financing of proliferation* is effectively managed.

13.6 Updating identification information

Securities issuers

100. This section is supplemental to and should be read in conjunction with sections 3.4 and 4.1 of *this Handbook*.

Guidance notes

101. The *BRA* will enable a *supervised person* to establish procedures to undertake reviews of its *customers* on a risk sensitive basis. In addition to the established pattern of reviews there will be "trigger events" when it may be appropriate to consider whether the identity information and evidence held on a *customer* is relevant and up to date. These should include (in addition to those circumstances set out in section 3.3 of *this Handbook*):

- receipt of significant additional funds to be invested where the delay between contributions is material (including drawdowns);
- when distributions are being made;
- economic merger of two securities issuers which results in the admission of new investors;

The guidance set out at section 3.4 of *this Handbook* regarding the taking on of a new book of business should also be considered, where relevant.

102. It may well be that when a *customer's* information and evidence of identity is reviewed upon a trigger event, the information and evidence previously obtained is sufficient and no further updated information is needed. This may be the case when, for example, a regularly scheduled review has recently been undertaken, and updated information has been received as a result.

13.7 Ongoing monitoring: scrutinising of transactions & activity

103. This section is supplemental to and should be read in conjunction with section 6 of *this Handbook*.

Guidance notes

104. The information about a *customer* obtained at the outset of the relationship as part of *identification measures* should allow a *supervised person* to monitor activity against an expected pattern of activity and transactions. For securities issuers this will include generic profiles of the expected target investors and the expected target investments. For example, if the securities issuer's prospectus/offer document indicates that it is going to invest in UK real estate and then invests in oil exploration and extraction businesses, this is not expected activity. Similarly, if the securities issuer is aiming for investment from European Banks and then receives investment from a *NPO* based in Sub-Saharan Africa, this would not be expected activity.

105. It is not sufficient for an administrator/manager who has been delegated the responsibility for monitoring the securities issuer to simply facilitate the transaction - they are also required to monitor each transaction to determine whether it is inconsistent, unusually complex/large, high risk or follows an unusual pattern. If a transaction does not match the expected profile, then the rationale for the transaction should be obtained and documented.

106. Expected activity may change over time if the target market or target investments change. This may also impact on the securities issuer's *BRA* and *CRAs* which may need to be updated.

13.8 Collation of *CDD*

Overview

107. Every securities issuer and securities issuer service provider are obliged to comply with the *CDD* requirements placed upon it. However, there may be statutory or contractual provisions operating so that, should one entity in a securities issuer structure undertake sufficient *CDD*, others in the structure may not need to duplicate certain aspects of *CDD* themselves.

108. The following sections of *this Handbook* deal with specific provisions regarding scenarios where a *supervised person* may not undertake all the *CDD* process themselves:

Exemptions from *identification measures*	• Section 8
Reliance on *obliged persons*	• Section 5
Outsourcing	• Section 2.4.4 • Section 5.1, paragraph 14

109. Where a *supervised person* **is not** undertaking aspects of *CDD*, including through the application of exemptions, it needs to:

- document who **is** doing so and on what basis; and
- ensure that the risks have been properly assessed, considered, and documented.

13.8.1 Exemptions from *identification measures*

Overview

110. This section is supplemental to and should be read in conjunction with sections 7 and 8 of *this Handbook*.

111. An assessment as to whether exemptions from *identification measures* are appropriate for *customers* and/or in relation to third parties must be conducted and documented. When doing so the statutory prohibitions, stating where exemptions cannot be applied, must be carefully considered in each case:

Circumstances in which exemptions under Part 3A of the *Money Laundering Order* do not apply (Article 17A of the *Money Laundering Order*)	
Exemptions under Articles 17 B-D of the *Money Laundering Order*	**Exemptions under Article 18 of the *Money Laundering Order***
• the *supervised person* suspects *money laundering.*	• the *supervised person* suspects *money laundering.*
• the *supervised person* considers that there is a higher risk of *money laundering*, including the risk of *money laundering* if fail to apply appropriate *identification measures* or keep records.	• the *supervised person* considers that there is a higher risk of *money laundering.*

• the *customer* is resident in a country that is not compliant with the *FATF Recommendations.*	• the *customer* is resident in a country that is not compliant with the *FATF Recommendations.*
• the *customer* is a person in respect of whom Article 15(1)(c) of the *Money Laundering Order* applies [specified persons having a *relevant connection* to country/territory in relation to which *FATF* has called for *enhanced customer due diligence*].	• the *customer* is a person in respect of whom Article 15(1)(c) of the *Money Laundering Order* applies [specified persons having a *relevant connection* to country/territory in relation to which *FATF* has called *for enhanced customer due diligence*].
• the *customer* is a person in respect of whom Article 15B(1) of the *Money Laundering Order* applies [certain *cross border correspondent banking and other similar relationships* with a banking or similar relationship with an institution whose address for that purpose is outside Jersey].	

112. Exemptions from *identification measures* may only be applied in appropriate circumstances. Where specified, this will require an assessment of the risk of applying the exemption, in addition to a *CRA*.

Guidance notes

113. As noted at Section 8 of *this Handbook*, Articles 18 and 17B-D of the *Money Laundering Order* can be applied to the same *customer* relationship, as they apply to separate identification requirements.

114. Refer to the table set out at section 8.1.3, 8.2.2 and 0 of *this Handbook* for detail on which aspects of *CDD* must always be undertaken by the *supervised person*.

115. Article 18 of the *Money Laundering Order* applies only to the *customer* and does not extend to third parties. From a securities issuer service provider's perspective this means, for example, that Article 18 only applies to the general partner or the trustee and not to the limited partnerships or unit trust. Articles 17B-D of the *Money Laundering Order* **do apply** to third parties which would encompass the investors in a limited partnership or a unit trust.

116. Article 18(4)(b) of the *Money Laundering Order* refers to a *customer* that is a body corporate or *limited liability company* whose securities are listed on an *IOSCO* compliant exchange or on a *regulated market*. As part of the assessment whether simplified *CDD* may be applied, the *supervised person* should consider whether the exchange on which the securities are listed is an *IOSCO* compliant exchange or a *regulated market*. The fact that the exchange is listed in a product guide (e.g., Listed Fund Guide) or in an Order (e.g., the Collective Investment Funds (Unregulated Funds) (Jersey) Order 2008) does not necessarily mean it qualifies. Further guidance is provided on this point in section 0, and specifically, 8.3.4 of *this Handbook*.

13.8.2 Reliance on obliged persons

117. This section is supplemental to and should be read in conjunction with section 5 of *this Handbook*.

Guidance notes

118. Care should be taken when placing reliance on an administrator. An administrator may be acting in two capacities when undertaking *CDD*;

- for itself as securities issuer service provider and
- as a delegate on behalf of the securities issuer. In such a case, a *supervised person* seeking to rely on *CDD* undertaken by the administrator needs to be clear whether it is the administrator or the securities issuer that is the *obliged person.*

119. Set out below are some key questions for a *supervised person* to ask themselves:

- what *identification measures* do you need to apply?
- who are you intending to rely upon?
- what identification information and evidence has the *obliged person* obtained?
- does the information and evidence obtained by the *obliged person* being relied upon match your requirements?

120. Each securities issuer service provider will have its own risk appetite and its own *CRA* of the securities issuer and the risk ratings allocated by different securities issuer service providers may not be the same. Where a securities issuer service provider assesses the securities issuer as higher risk it may be insufficient to rely on information and evidence obtained by a securities issuer service provider rating the securities issuer as lower risk and additional information is likely to be required.

121. Importantly, chains of reliance are not permitted. A *supervised person* cannot rely on an *obliged person* who is in turn relying on someone else.

122. Reliance may be used where the securities issuer structure has higher *AML/CFT/CPF* risks, or the securities issuer structure and securities issuer service providers are unregulated (where the securities issuer service provider cannot apply exemptions from *identification measures*).

123. There are aspects of *CDD* that, in the absence of other provisions, the *supervised person* is required to undertake itself. These are set out in the table at section 5.1 of *this Handbook*.

13.8.3 Obtaining copy documentation from a *CD regulated TCSP*

Overview

124. This section is supplemental to and should be read in conjunction with sections 4.3.5 and 4.5.7 of *this Handbook*.

125. In certain circumstances, it may be appropriate to obtain information from a *CD regulated TCSP* to identify certain individuals.

126. It should be noted that such practice is restricted to a very narrow set of circumstances (e.g., only certain individuals and only certain documents) and is dependent on several conditions being met (e.g., a specific risk assessment is carried out and specific confirmations are obtained from the *TCSP*).

13.8.4 Outsourcing

Overview

127. This section is supplemental to and should be read in conjunction with sections 2.4.4 and 5 (paragraph 14) *of this Handbook*, along with the *JFSC's* Outsourcing policy.

128. Contractual arrangements may be put in place where another entity undertakes *CDD* for the *supervised person* as a delegate. This is likely to be the case where an administrator and/or manager is appointed to the securities issuer or where the *Governing body* of the securities issuer such as a trustee or general partner is a managed entity and reliant on a manager of a managed entity. The *supervised person* always remains responsible for fulfilling its statutory obligations regardless of the activities it outsources to delegates.

129. Procedures and processes must be put in place so that the delegating party retains oversight of the outsourced activities. The *supervised person* needs to be provided with sufficient information by the delegate to adequately review and monitor the outsourced activities.

Guidance notes

130. Outsourcing of specific functions to a securities issuer service provider may form part of the securities issuer service provider's service level agreement with the securities issuer. The *supervised person* would be expected to ensure that the terms are adequate to ensure a clear understanding of what activity the delegate is undertaking.

131. Given that the delegate carrying out the outsourced function is likely to have its own *CDD* obligations it will be important to distinguish between measures applied on behalf of the delegating party and measures applied for itself. This will ensure the respective (and potentially differing) obligations are met and will assist if the delegating party moves to another securities issuer service provider and wishes to take its information/documentation/records with it.

132. Section 2.4.4 of *this Handbook* provides a table of activities which may be outsourced but also states that *CDD* is always the responsibility of the *supervised person*.

133. Where *CDD* functions are outsourced, consideration will need to be given to the contractual arrangements between the securities issuer and its investors (*customers*), the securities issuer and its securities issuer service providers and any other entities. Below are some important matters to consider (this list is not exhaustive):

- which party has "ownership" of the investor information;

- permissions required from the investor for obtaining, holding and using the information for other purposes (data protection);
- the nature and scope of the obligations outsourced and provisions for monitoring, updating, retention and termination.

134. Where a securities issuer service provider assesses the *AML/CFT/CPF* risk regarding a securities issuer to be higher or the securities issuer/securities issuer service providers are not regulated, the application of exemptions from *identification measures* is prohibited. Therefore, a securities issuer service provider providing services to a securities issuer where it has no direct relationship with the investors may need to apply *identification measures* to the investors. This may be in relation to the control of the securities issuer or its *source of funds*. Rather than gathering this information themselves they will instead seek access to this information which will normally already have been provided to the securities issuer by investors via subscription agreements/investor questionnaires.

135. Note that specific provisions may be necessary in subscription agreements/investor questionnaires to enable the securities issuer to pass on information and evidence that it obtains to meet its own *AML/CFT/CPF obligations*, to assist securities issuer service providers (present and future) involved in the securities issuer/securities issuer structure to meet their own *AML/CFT/CPF obligations* (subject to any data protection requirements).

13.8.5 AMLSP

136. Section 15 of *this Handbook* provides guidance where an eligible *supervised person* appoints an *AMLSP* to fulfil its *AML/CFT/CPF obligations*. Where a securities issuer and their service providers are eligible, an *AMLSP* may be used. The section also provides guidance in certain circumstances where the securities issuer is a legal arrangement represented by its legal person *Governing body* and the legal person can use the *AMLSP* to provide services both to itself in its own capacity and in its capacity as *Governing body*, e.g., a Jersey private fund which is a limited partnership with an *SPV* general partner.

13.9 *Enhanced CDD measures* – non-Jersey investors

Overview

137. This section is supplemental to and should be read in conjunction with sections 7, 7.4 and 7.7 of *this Handbook*.

138. Securities issuers with overseas investors will need to undertake *enhanced CDD measures to* those investors (see Article 15 of the *Money Laundering Order*) as the investors will normally be:

- non-resident *customers*; and/or
- not physically present for identification purposes.

139. *Enhanced CDD measures* must be applied to address the risk associated with these types of *customers*. Sections 7.4 and 7.7 of *this Handbook* provide guidance on the same.

Guidance notes

140. A requirement to apply *enhanced CDD measures* does not automatically mean that the *customer* is higher risk. Some enhanced measures are required regardless of risk.

141. It may be possible for investor profiles/subscription agreements to address *enhanced CDD measures* requirements by obtaining additional information if the investor meets certain criteria. For example, a question might read “Are you Jersey resident? If the answer is no, provide the following additional information…”.

On some occasions the rationale for a non-Jersey investor looking to invest in Jersey may be determined without necessarily needing to ask the *customer* (e.g., it may be obvious if, say, the securities issuer is a Jersey securities issuer).