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8th October 2014

Re: Customer due diligence requirements under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended

Dear *Industry Representative Body*,

I refer to your letter of 10th September 2014 and your queries contained therein.

The Central Bank of Ireland ["the Central Bank"] cannot comment on the issues affecting a specific designated person where such person has not been in direct contact with the Central Bank. However, the Central Bank highlights certain provisions of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 as amended ("the 2010 Act") which may clarify some of the issues that have been raised in your correspondence.

As you are aware, the Central Bank is the competent authority responsible for effectively monitoring credit and financial institutions' compliance with their AML-CFT obligations. The statutory AML framework in Ireland consists of the 2010 Act as amended by the Criminal Justice Act 2013. The domestic statutory framework implements the EU's Third Anti-Money Laundering Directive that in turn reflects international AML standards as set out by the Financial Action Task Force [FATF]. The legislative framework is supplemented by official guidance ["core guidelines"] published by the Department of Finance, the purpose of which is to further explain the legislation, and it should be noted that the core guidance does not have any legal effect.

It is for designated persons to interpret the legislation and the competent authority to assess whether compliance has occurred and take any necessary steps in the event of non-compliance. In this regard, the Central Bank is charged with the responsibility of ensuring that designated persons comply with the legislation and is not mandated to prescribe how a designated person carries out its obligations. However, there are a number of statutory provisions that the Central Bank draws your attention to:

- A designated person must carry out customer due diligence ("CDD") measures as set out in Part 4. Section 33 provides, inter alia, that CDD must be carried out where there are reasonable grounds to doubt the veracity or adequacy of documents or information previously obtained for CDD purposes (section 33(1)(d)). CDD obligations under the 2010 Act are not applied on a risk based approach in circumstances where no adequate documentation or information exists in respect of a customer nor is the amount of a transaction relevant. In this way, the requirement

to have adequate CDD documentation or information is not based on the risk of money laundering or terrorist financing occurring but rather on the basis that the designated person has a legal obligation to ensure that it has a means to identify and verify the identity of its customers.

- The provisions of section 54(3)(c) of the 2010 Act (as inserted by the 2013 Act) provides that designated persons must establish policies and procedures to ensure that documents and information relating to the designated persons' customers are kept up to date. This legislative provision was inserted to reflect the FATF requirements that designated persons be obliged to have up to date CDD documentation or information to identify and verify the identity of their customers.

- The keeping of records is explicitly provided for in section 55 of the 2010 Act. A designated person must keep the original or copies of all documentation relied upon for CDD purposes. It is obliged to keep such records during the course of the business relationship and for a period of not less than five years after the business relationship has ceased. It should be noted that a failure to comply with section 55 is a criminal offence. Furthermore, the Central Bank also draws your attention to the requirements set out in provision 11.6 of the Consumer Protection Code 2012.

Yours sincerely,

Domhnall Cullinan
Head of Anti-Money Laundering Division