



Revised Implementing Procedures Part I Ongoing Monitoring

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Legal Affairs

The Revised FIAU Implementing Procedures Part I – 18 October 2019

Requirement under PMLFTR



Regulation 7(1)(d) sets the requirement to conduct ongoing monitoring



Regulation 7(2) breaks down ongoing monitoring:

- (a) the **scrutiny of transactions** undertaken throughout the course of the relationship to ensure that the transactions being undertaken are **consistent** with the subject person's knowledge of the customer and of his business and risk profile, including, where necessary, the source of funds; and*

- (b) ensuring that the documents, data or information held by the subject person are **kept up-to-date**.*

Scrutiny of transactions



Using your **knowledge** of the customer

- Information on the **purpose and intended nature** of the business relationship
- Customer's business and risk profile

To **identify** unusual transactions/patterns

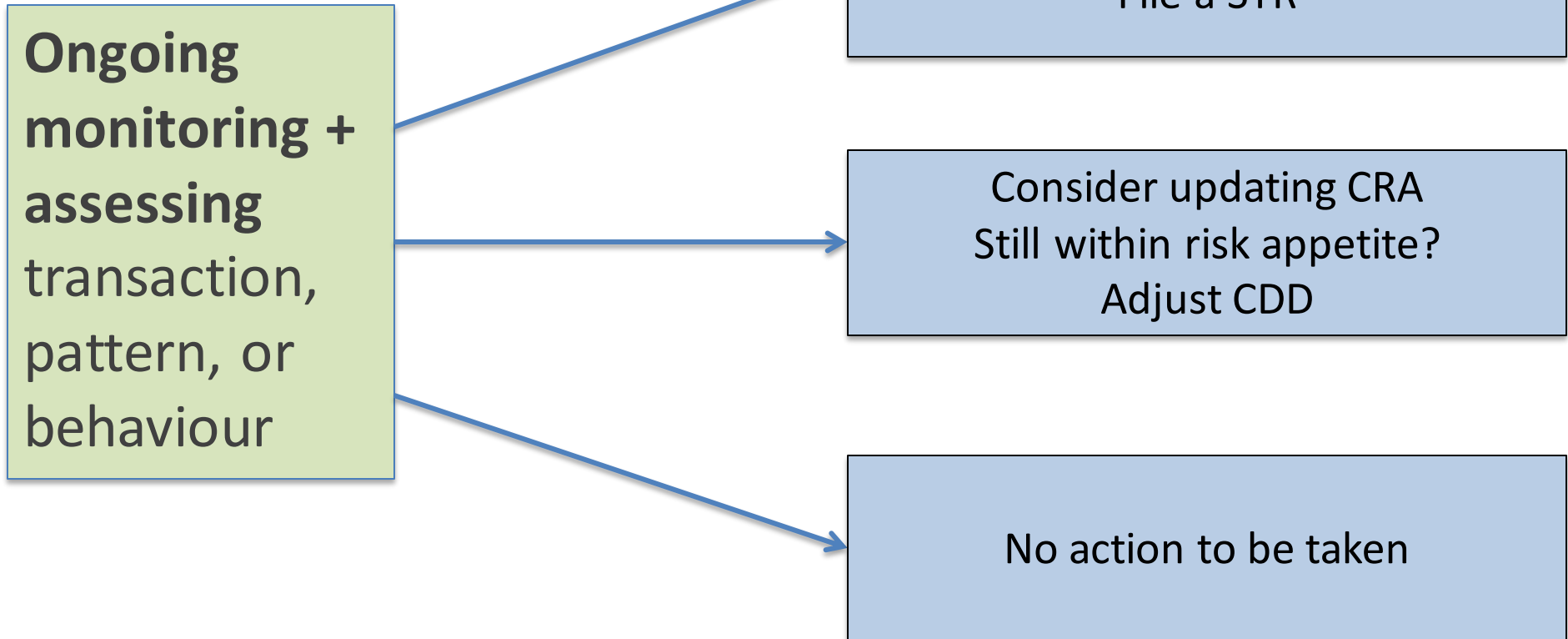
- Unusual by nature: suspicious, illogical, unnecessarily complex, unreasonable
- Inconsistent with customer's profile
- Significantly different to customer's usual transactions or requests

Examine purpose and background of all **complex and unusually large transactions** and **unusual patterns of transactions** with **no apparent economic or lawful purpose**

(Reg 11(9))

Purpose of ongoing monitoring

Possible outcomes



Identifying unusual transactions



- Significant change in the **value** of individual transactions
- Significant change in the **overall volume or frequency** of transactions (*pattern*)
- A number of transactions in **rapid succession**
 - Purchase and immediate resale of securities
 - Deposit and immediate withdrawal of funds
- A change in the geographical destination or origin
- A change in the source of funds of the customer

Remember: Reg 11(9): examine purpose and background of complex and unusually large transactions, and unusual patterns of transactions, which do not have any apparent or economic lawful purpose

Assessing unusual transactions

Determining legitimacy



Is there a legitimate reason?

Obtain information on:

- Source of funds of that transaction
- Any new operational activities
- Significant relevant changes on the customer
 - e.g.: change in occupation
- Any other information you may consider necessary to be satisfied of the legitimacy of the source of funds

Level of data:

- *Enough to come to a reasonable conclusion on the legitimacy of the transaction*
- ***Should not be excessive, disproportionate or irrelevant***
- ***Requests should make sense in the context of the transaction and the customer***

Assessing unusual transactions

Doubts or reluctance – next steps?



- Are you satisfied with the information/documents?
- Do you think your customer may be lying?
- Do you have doubts on the authenticity of the documents?
- Is your customer being unreasonably uncooperative?

CONSIDER FILING A STR

How to conduct transaction monitoring



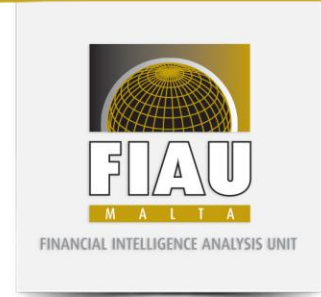
Real time (**pre-transaction**)

- Face-to-face scenarios
- Non-face-to-face where transactions are not executed immediately
- More control and reassurance
- **Requires awareness** of relevant trigger events and red flags
- **Requires understanding** of the expected behaviour/use of the relationship
- EDD measure for **high-risk customers** and transactions
- Best combined with post-transaction monitoring to **detect patterns**

After the event (**post-transaction**)

- Not all relationships/services permit real-time monitoring and flagging of transactions
- Must still file STR, even after the event
- Permits **detection of patterns**

Transaction monitoring methods



- **On the basis of a customer's specific profile**
 - A **set of parameters** within which transactions are considered normal
 - Question behaviour outside the parameters

- **By comparing against peer group information**
 - **Group** customers with similar characteristics and risk ratings
 - Extract information and create an **average profile**
 - **Compare** customers against that profile, question diverging behaviour
 - Requires sufficient statistics from a wide customer-base
 - May use official economic indicators such as average national income, from reputable sources
 - Not targeted – not ideal in high-risk situations

Transaction monitoring methods



- **On the basis of detection rules**

- Analysis of transactions (individual and series) against set of thresholds, scenarios and parameters
- Alert is triggered when a pre-defined detection rule is met
- Detection rules must be relevant to be effective
- Must be periodically tested and fine-tuned
- Must strike balance between effective detection and not too many false positives
- Updated to reflect trends and typologies

Relevant factors to be taken into account:

- Specific product or service
- Customer risk rating
- Anticipated level and value of transactions as determined through profile
- Anticipated value of transactions when taking into account the customer's background, occupation and claimed source of wealth
- Anticipated jurisdictional connections
- Distribution channels
- New activity in formerly dormant account

Transaction monitoring methods



Manual vs automated monitoring systems

- Depends on size of subject person, number of clients and transactions, level of risk
- System must yield the desired results, including relevant alerts within adequate timeframes
- Large transactions are better monitored through automated systems

Automated system

- Does system generate a report showing showing reasons, rules and parameters?
- Can system be easily adapted to cater for changes?
- Can the system learn from previous false positive? (fine-tuning)

Assess effectiveness of alerts
Demonstrate good understanding of how the system operates

Ongoing monitoring of high-risk scenarios



Stricter ongoing monitoring to mitigate the higher ML/FT risk

Increasing **frequency** and **nature** of monitoring

- Regular reviews of transactions to detect warning signs
- Stricter detection rules
- Lower transaction value thresholds
- More weighting to factors such as high value transactions/other jurisdictions
- Adjusted thresholds for different products and services in same relationship

Consider applying **pre-transaction monitoring** where possible

Occasional Transactions: Source of Funds



Reg 7(8) 'The extent of customer due diligence measures shall be **commensurate** to the risks of ML/FT identified through the risk assessment carried out in terms of regulation 5(1) and may vary from case to case.'

'Subject persons shall ensure that the enhanced due diligence measures applied [...] are **appropriate to manage and mitigate the high risk** of ML/FT.'

Reg 11(2)

Obtain source of funds where necessary!

Source of Funds as a Mitigating Measure for Occasional Transactions



Useful

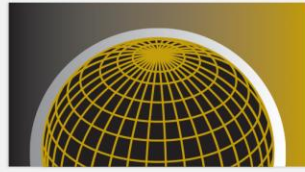
- ✓ High value cash purchase
- ✓ High value purchase using own funds
- ✓ High value remittance
- ✓ Company formation with initial share capital coming from shareholder/BO loan

Less Relevant

- Company formation with low initial share capital
- End-finance through bank loan
- As part of CDD of vendor
- As part of CDD of lessor

(assess each case accordingly)

***Scrutinize occasional transactions
Carry out appropriate mitigating measures!***



FIAU

M A L T A

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