July 2011

TO CHIEF EXECUTIVES OF COMMERCIAL BANKS, NON-BANK FINANCIAL INSTITUTIONS AND MORTGAGE FINANCE COMPANIES

GUIDANCE NOTE NO.1 of 2011 – SUSPICIOUS TRANSACTION REPORTING

1. Background

Reporting of suspicious transactions to designated authorities is an essential element of a financial institution's anti-money laundering framework. Section 44 (2) of the Proceeds of Crime and Anti-Money Laundering Act, 2009 ("the Act") requires Reporting Institutions to monitor and report suspicious transaction reports to the Financial Reporting Centre (FRC).

As you may be aware, the FRC is still in the process of being set up and towards this end, on June 24, 2011, the Deputy Prime Minister and Minster for Finance launched the Anti-Money Laundering Advisory Board established under section 49 of the Act with the immediate mandate of establishing the FRC and appointing its Chief Executive Officer (FRC Director). In August 2010, following the coming into operation of the Act, the Central Bank of Kenya issued Guidance Note No. 1 of 2010 which amongst others required financial institutions licensed under the Banking Act to continue to file Suspicious Transaction Reports (STRs) with the Central Bank of Kenya (CBK) pending the establishment of the Financial Reporting Centre.

Institutions continue to file STRs with the Central Bank as required by the Guideline on Proceeds of Crime and Money Laundering (Prevention) (CBK/PG/08) and Guidance Note No. 1 of 2010. CBK has however observed that the number of STRs filed with it is low and some of the reports are not in the prescribed format. As a result, the Central Bank of Kenya has seen it fit to issue this guidance to institutions with regard to the reporting of suspicious transactions so as to guide institutions on the importance of filing STRs in the correct manner.

2. What is a Suspicious Transaction?

Suspicious transactions have many broad characteristics. However, as a general rule, a suspicious transaction is one that departs from the normal patterns of account activity that has been noted on a customer's account. Any complex, unusually large transaction(s), or, any unusual pattern of transaction(s) absent of any apparent economic, commercial, or lawful purpose may be considered to be a suspicious transaction.

A Suspicious Transaction Report (STR) provides an avenue for an institution to alert authorities to the possibility that a particular transaction could involve money laundering and should therefore be investigated. In most cases, the reporting financial institution will not have evidence that the transaction(s) in question represents proceeds of crime and is therefore less likely to know of what, if any, specific crime might be involved. The financial institution will simply be aware that the transaction is unusual and not consistent with the normal type of transaction on the account.

To be able to identify transactions that appear to be suspicious, financial institutions are accordingly urged to undertake measures to ensure that they 'know their customers' (KYC): These include

- Customer identification and verification;
- Conducting ongoing monitoring of accounts;
- Reviewing transaction patterns and volumes so as to be able to assess whether the activity on the accounts are consistent with the line of business or occupation of the customer;
- Considering any additional risks, e.g. type of business the customer engages in, the origin of transactions.

3. Which institutions are required to report suspicious transactions?

The obligation to report suspicious or unusual transactions under the Act applies to a wide category of persons and entities. The Act defines a financial institution as any person or entity that carries out any of the 13 listed activities including, accepting deposits, lending and trading in foreign exchange. These institutions include commercial banks, deposit taking microfinance institutions and foreign exchange bureaus. Such persons or entities are required to report suspicious transactions to the Financial Reporting Centre, however, as indicated above, pending the establishment of the FRC, banks will in the meantime continue to report STRs to the CBK.

4. When to file a report

Once an institution has established that reasonable grounds exist to suspect that a transaction could be linked to money laundering, it should file a suspicious transaction report with the Central Bank of Kenya within 7 days of the date of the transaction. This applies not only when a financial transaction has been completed, but also, when it is incomplete or, where it may have been attempted but has not been completed.

5. How to file a suspicious transaction report

A physical copy of the duly completed suspicious transaction form is to be submitted to the Bank Supervision Department of the Central Bank of Kenya. The Suspicious Activities or Transaction Report (SATR) form (CBK/IF/8) can be accessed on the CBK website at:
http://www.centralbank.go.ke/downloads/acts_regulations/prudential_guidelines_2006.pdf

Details to be included in the SATR report include the following:

i. The details of the reporting institution and reporting officer;
ii. Account number affected, if any;

iii. The name of person(s) attempting to conduct the said transaction;
iv. The nature of the transaction or series of transactions that led to the reporting of the suspicious transaction;
v. General description of the nature of transactions and summary of circumstances which led to the suspicion; and
vi. Supporting documentation such as account opening details, bank statements or any other relevant information.

6. Tipping Off

In the course of reporting suspicious transactions, institutions should ensure that they do not inform or alert the concerned customer that a suspicious transaction report has been forwarded to the CBK or that details of the customer's transaction(s) or activities have been reported to the authorities or, that they are being investigated by the authorities. This would amount to tipping off and is prohibited by the Act.

Financial institutions are further advised that when making a determination as to whether or not a particular transaction is suspicious, they are to ensure that their staff exercise prudence and caution when making enquiries on the background or details of the transaction so as not to tip off the customer. For example, enquiries to the customer should not give rise to issuing of threats by staff to report the customer to the Central Bank of Kenya, nor should they unnecessarily lead to the closure of the customer's account.

7. Internal Reporting Procedures

All financial institutions should maintain internal reporting procedures which ensure that employees report suspicious activity to the Central Bank of Kenya. These procedures could include:

a) Designation of an officer who will be responsible for relaying suspicious reports to the Central Bank of Kenya (or Financial Reporting Centre when established). Such officers are often referred to as the Money Laundering Reporting Officer (MLRO);
b) Outline procedures for reporting suspicious transactions to the designated officer;
c) Ensure that the designated officer has access to all the customer's relevant records when making an assessment of whether to file a suspicious transaction report.

8. Training

Financial institutions should take appropriate measures to ensure that their employees are appropriately trained on AML so that they are aware of the relevant provisions of the Act and all other guidelines relating to the reporting of suspicious transactions. At a minimum, the training should ensure that employees receive appropriate guidance to enable them recognise operations which may be related to money laundering as well as instructing them on how to proceed in such cases. The training also needs to be conducted at regular intervals so as to ensure that employees are regularly updated on the changing trends in money laundering.

9. Immunity where actions are exercised in good faith

Under the Act, no suit, prosecution or any other legal proceedings may be brought against the institution or its employee for making a report in good faith in the course of reporting a suspicious transaction.

10. Feedback

The CBK will endeavour to provide feedback as appropriate on the STRs filed with it. At a minimum, the Bank will every year in its Bank Supervision Annual Report or other equivalent publication, indicate the number of STRs filed with it in the course of the year.

This Guidance Note is issued with the purpose of apprising institutions on their obligations with regards to the reporting of suspicious transactions. In the event of any query or clarification, please contact:

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