MONEY LAUNDERING

GUIDANCE NOTES FOR STOCKBROKERS

Issued with the Approval of the

Money Laundering Steering Committee

February 2004

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Section 1 - Background

What is Money Laundering?

1. The Irish law relating to money laundering is principally contained in the Criminal Justice Act, 1994, as amended, ("the Act"). Money laundering is the process by which criminals attempt to conceal the true origin and ownership of the proceeds of drug trafficking or other criminal activities. If undertaken successfully, it also allows them to legitimise "dirty" money by mingling it with "clean" money and to maintain control over those proceeds and, ultimately, to provide a legitimate cover for their source of income.

2. In recent years there has been a growing recognition that it is essential in the fight against crime that criminals be prevented from legitimising the proceeds of their activities by converting funds from "dirty" to "clean". No one knows exactly how much "dirty" money flows through the world's financial system every year, but the amounts involved are undoubtedly huge. It is estimated that about half of the laundered money arises from the illegal trade in drugs, the rest from other forms of organised crime and terrorism. The ability to launder the proceeds of criminal activity through the financial system is vital to the success of criminal operations. Those involved need to exploit the facilities of the world's financial institutions if they are to benefit from the proceeds of their activities. The increased integration of the world's financial systems and the removal of barriers to the free movement of capital have enhanced the ease with which criminal money can be laundered and have complicated the tracing process. Stockbroking is one potential route that illicit funds may follow and the increasing integration of Europe's capital markets heightens the risk. Any firm implicated in money laundering will risk prosecution and the loss of their good market reputation.

3. It is generally recognised that effective efforts to combat money laundering cannot be carried out without the co-operation of stockbrokers, their supervisory authorities and the law enforcement agencies. Accordingly, in order to address the concerns and obligations of these three parties, these Guidance Notes were drawn up by the Exchange in close collaboration with representatives of stockbrokers, their regulatory authorities and also and drew upon the experience and advice of the Gardaí Síochána and Revenue Commissioners where appropriate.

Scope

4. These Guidance Notes apply to stockbrokers insofar as they provide, within the State, any of the services set out in Appendix A. These Guidance Notes have been issued with the approval of the Money Laundering Steering Committee, which was established under the aegis of the Department of Finance to oversee the issue of Guidance Notes to facilitate the implementation of the Criminal Justice Act, 1994, as amended, EU Directive 91/308/EEC, Directive 2001/97/EC of the European Parliament and of the Council of 4 December, 2001 and of recommendations and guidance from the Financial Action Task Force (FATF). The Steering Committee includes representatives from relevant Government Departments, the Revenue Commissioners, IFSRA, the Garda Síochána and various market participants' representative bodies in the financial sector.

5. The Act provides that in determining whether a person or institution has complied with the reporting and disclosure requirements of the Act, a court may take account of these Guidance Notes. These Guidance Notes are recommendations as to good practice but do not constitute a legal interpretation of the Act. Stockbrokers are

recommended to consult their own legal advisors if in any doubt about the application and interpretation of the Criminal Justice Act, 1994, as amended, and in relation to particular cases or circumstances that may arise.

Stages of Money Laundering

6. There is no one method of laundering money. Methods can range from the purchase and resale of securities to passing money through a complex international web of legitimate business and "shell" companies. Despite the variety of methods employed, generally three stages are identified as forming part of the laundering process:

Placement - the physical disposal of cash proceeds derived from illegal activity.

Layering - separating illicit proceeds from their source by creating complex layers of financial transactions designed to disguise the audit trail and provide anonymity. For example, the purchase of securities or other financial products.

Integration - the provision of apparent legitimacy to criminally derived wealth. If the layering process has succeeded, integration schemes place the laundering proceeds back into the economy in such a way that they appear to the financial system to be legitimately sourced funds.

7. The three basic steps may occur as separate and distinct phases. They may occur simultaneously or, more commonly, they may overlap. The way in which these basic steps are used will depend on the available laundering mechanisms and the requirements of the criminal organisations. The table below provides some typical examples:-

Placement stage	**Layering stage**	**Integration stage**
Cash paid into bank (sometimes with staff complicity or mixed with proceeds of legitimate business).	Wire transfers abroad (often using shell companies or funds disguised as proceeds of legitimate business).	False loan repayments or forged invoices used as cover for laundered money.
Trading account opened with an initial cash deposit.	Cash deposited in overseas banking system.	Complex web of transfers (both domestic and international) makes tracing original source of funds virtually impossible.
Cash used to buy high value goods, property or business assets.	Resale of goods/assets.	Income from property or legitimate business assets appears “clean”

Vulnerability of the Investment Industry to Money Laundering

8. Supervisory authorities have indicated that increasingly the services of financial institutions and professional advisors, such as stockbrokers, are being used by money launderers to facilitate their laundering operations. It is important to remember that institutions and advisors may be used at advanced stages of the money laundering chain where the cash has been converted into another form of

property such as shares, securities or other financial products. This is reflected in the money laundering legislation which impacts on those who may not necessarily handle cash at all.

9. Stockbrokers are more likely to find themselves being used at the layering and integration stages. The liquidity of many investment products particularly attracts sophisticated money launderers since it allows them quickly and easily to move their money from one product to another, mixing lawful and illicit proceeds and integrating them into the legitimate economy. Hence, procedures and records maintained by stockbrokers constitute an important audit trail and play a particularly important part in combating money laundering.

How Stockbrokers can combat Money Laundering

10. In complying with the requirements of the Act and in following these Guidance Notes, stockbrokers should at all times pay particular attention to the fundamental principle of good business practice - **'know your client'.** Having a sound knowledge of a client's business and pattern of stockbroking transactions and commitments is one of the best methods by which stockbrokers and their staff will recognise attempts at money laundering. This aspect is referred to in Section 6 of these Guidance Notes – Recognition, Reporting and Execution of Suspicious Transactions. It should also be dealt with in staff training programmes which are a fundamental part of the procedures designed to recognise and combat money laundering and which are referred to in Section 7 - Education and Training.

Section 2 - What Irish Law Requires

11. **The Criminal Justice Act, 1994,** as amended, provides, inter alia, for the offence in Irish law of money laundering and includes measures to counteract money laundering in line with:

    (i) **EU Council Directive (91/308/EEC)** on prevention of the use of the financial system for the purpose of money laundering as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December, 2001; and

    (ii) **Forty Recommendations** of the **Financial Action Task Force** (FATF), an OECD sponsored body, set up to counteract money laundering on a global basis.

12. The **Criminal Justice Act, 1994** has been amended by the following legislation:

    - The Disclosure of Certain Information for Taxation and Other Purposes Act, 1996,
    - The Criminal Justice (Miscellaneous Provisions) Act, 1997,
    - The Criminal Justice (Theft and Fraud Offences) Act, 2001,
    - The Central Bank and Financial Services Authority of Ireland Act, 2003,

    The Criminal Justice (Terrorist Offences) Bill, 2002, the purpose of which is to give effect to the 2000 United Nations Convention for the Suppression of the Financing of Terrorism, has not yet been enacted.

13. The provisions of the Act of particular relevance to stockbrokers, which are designated bodies as set out in Appendix A, and their employees are as follows:

    (a) Section 31, as amended by Section 21 of the Criminal Justice (Theft and Fraud Offences) Act 2001, provides for the offence of money laundering which is broadly defined as *"knowing or believing* that property is or represents the proceeds of criminal conduct or being *reckless* as to whether it is or represents such proceeds" the person without lawful authority or excuse converts, transfers or handles the property or removes it from the State with the intention of concealing or disguising the nature, source, location, disposition or ownership or any rights with respect to that property, or assisting another person to avoid prosecution or the making or enforcement of a confiscation order. A person is deemed to be *reckless* if "he or she disregards a substantial risk that the property handled is stolen and for those purposes". *"Substantial risk"* means a risk of such a nature and degree that, having regard to the circumstances in which the person acquired the property and the extent of the information then available to him or her, its disregard involves culpability of a high degree.`

    The revised section 31(1) also places the onus on a person who relies on the defence of "lawful authority or excuse" to prove that defence.

    The inclusion of the concept of recklessness into the new offence of money laundering addresses the state of mind of the defendant, and while broadening the 1994 provision, still requires a high level of intent.

    Section 31(4) provides for an objective test in assessing the intention of a person who converts, transfers or handles property which is the proceeds of crime or removes it from the State or conceals or disguises its true nature, or its source, location, disposition, movement, ownership or rights relating to it, or acquires, possesses or uses the property. Where a person does any of these things in such

circumstances that it is reasonable to conclude that he or she knew or believed or was reckless about whether the property constituted criminal proceeds, he or she will be taken to have known or believed or been reckless unless the court or jury is satisfied otherwise.

Section 31(5) exempts a person carrying out any function in relation to such proceeds of crime, within the context of the enforcement of any law, from the provisions of this section.

Section 31(6) sets out a transition provision providing that Part IV of the Criminal Justice Act, 1994 applies whether or not the conduct outlined by the provisions of section 21 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 occurred before or after the section's commencement and whether or not the conduct was attributable to the person in question.

(b) Section 32 imposes obligations on a wide range of persons and bodies providing financial services (designated bodies) to take certain measures (e.g. establishment of identity of clients and retention of documents and records of transactions) to prevent and assist in the detection of money laundering.

(c) Section 57, as amended, imposes obligations on designated bodies and their employees to report to the Garda Síochána and the Revenue Commissioners suspicions that an offence under Section 31 (the offence of money laundering itself) or Section 32 (dealing with client identification and record retention) has been, or is being committed. Any such report will not be treated as a breach of client confidentiality as long as it complies with subsection 8 of the Act which states that where:

- a report is made by a person or body to the Garda Síochána under section 57 of this Act in relation to property referred to in this section, or
- a person or body (other than a person or body suspected of committing an offence under this section) is informed by the Garda Síochána that property in the possession of the person or body is property referred to in this section,
- the person or body shall not commit an offence under this section or section 58 of this Act if and for as long as the person or body complies with the directions of the Garda Síochána in relation to the property.".

At the time of drafting of these Notes, the Gardai are awaiting legal advice on the interpretation of the requirements under this section with regard to complying with "the directions of the Garda Síochána" and have confirmed that a designated body who makes a suspicious transaction report should take no further action in the absence of specific Garda instruction.

(d) Section 57(a) of the Act (as inserted by section 32 of the Criminal Justice (Theft and Fraud Offences) Act, 2001) imposes an obligation on designated bodies to report to the Gardai Siochana any transaction connected with a state or territorial unit within a state, that stands designated by the Minister as not having in place adequate procedures for the detection of money laundering.

(e) Section 57(6) of the Act provides that, in the event of a prosecution, in determining whether a designated body or a member of its staff has failed to make a report to the Gardaí and the Revenue Commissioners as required by the Act, a court may take account of such Guidance Notes.

(f) Section 58 provides for various offences of prejudicing investigations under the Act including an offence of *"tipping off"* a client about whom a report has been made.

The Act envisages that guidance on its application may be given by supervisory, regulatory or representative bodies and it is for this purpose that these Guidance Notes have been drawn up.

14. The Criminal Justice Act, 1994, as amended, imposes certain money laundering preventative and deterrent obligations on "designated bodies" when carrying out certain services, including the following obligations to:

- verify client identity,
- maintain certain client identification and transaction records,
- establish internal reporting procedures, report suspicious transactions to the Garda Síochána and the Revenue Commissioners,
- educate and train all staff on how to identify suspicious transactions and how to proceed once their suspicions have been aroused.
- adopt measures to prevent and detect the occurrence of money laundering.
- These are covered in more detail in the following sections. A breach of these obligations is a criminal offence for which penal sanctions are prescribed. These sanctions are explained below.

15. The Act also gives the Garda Síochána the power to apply to court for orders requiring production of material and for search warrants in particular circumstances.

Summary of Offences

Money Laundering Offence

16. The money laundering offence in Irish law is broadly defined and covers the proceeds of all criminal activity, for example, theft, fraud, robbery and tax evasion, among others. The law covers laundering of proceeds of criminal activity whether this activity took place in Ireland or in another country or territory, provided that if it did not take place in Ireland, the activity corresponded to an offence both in Ireland and in such other country or territory, and whether or not it occurred before or after the law came into effect. Section 57(1) of the Criminal Justice Act, 1994 requires stockbrokers to report to the Gardaí and the Revenue Commissioners where they suspect that an offence under Section 31, as amended, in relation to the business of the stockbroker has been or is being committed.

17. There is also an obligation to report suspicions of offences under Section 32 of the Act. Under Section 57(1) stockbrokers should report to the Gardaí and the Revenue Commissioners where they suspect that an offence in relation to drug trafficking or other criminal activity has been or is being committed and that the services offered by the stockbroker have been used to launder the proceeds of that offence. It is not necessary for a stockbroker or its employees, in fulfilling their obligation to report a suspicious transaction, to determine the specific criminal offence underlying the suspicious transaction. However, criminal activities frequently associated with money laundering include drug trafficking, terrorist activity, thefts, fraud, robbery, forgery and counterfeiting, tax evasion, blackmail and extortion. (Examples of suspicious transactions are set out in Appendix C to these Guidance Notes).

18. It is also an offence for a person to provide false or misleading information when required to give evidence of identity, or when acting for a third party, or in relation to the sum involved in a transaction (section 32(12) of the Act).

19. Tax offences are not in a special category: the proceeds of a tax offence, like the proceeds of the other examples of criminal activity referred to above, may be the subject of money laundering offences under the Act. Consequently, where the suspicion is that a transaction or a series of transactions involves the proceeds of tax evasion, it should be reported. The nature of the transactions used to launder the proceeds of tax evasion are likely to be similar to, and in many instances identical to, those used to launder the proceeds of other criminal activity. Therefore, a claim by a client that a particular transaction or series of transactions, which were regarded as suspicious, was/were being undertaken only for tax purposes, would not remove the reporting obligation. However, in fulfilling the reporting requirements a stockbroker may, unless there are suspicious transactions indicating the contrary, reasonably assume that a client has discharged his/her tax liabilities. There is no positive obligation on the stockbroker to establish whether the client has or has not done so.

Provision of Assistance to Money Launderers

20. A person is guilty of the offence of money laundering where he knowing or believing that property is or represents the proceeds of criminal activity or being reckless as to whether it is or represents such proceeds, the person converts, transfers, handles or removes such proceeds from the State with the intention of concealing or disguising any property, which in whole or in part, directly or indirectly, represents the proceeds of criminal conduct, or with the intention of avoiding the making of a *confiscation* or *confiscation co-operation* order or frustrating its enforcement.

    A person *"handles"* property if he, without a claim of right made in good faith, receives it or undertakes or assists in its retention, removal, disposal or realisation by, or for the benefit of, another person or arranges to do any of these things.

    The provision of assistance to a person to avoid prosecution for the criminal conduct concerned is also an offence. *"Concealing" or "disguising"* include concealing or disguising the nature, source, location, disposition, movement or ownership or any right with respect to the proceeds of crime.

    An offence is committed where a person does the relevant acts knowing or believing they represent the proceeds of criminal conduct or where the person is deemed to be reckless as to whether the property represented proceeds of the criminal conduct. "*Believing"* includes thinking that the property is probably tainted.

    The offence of money laundering is punishable by terms of imprisonment of up to fourteen years or a fine, or both.

Failure to Verify Identity

21. It is an offence to fail to comply with the requirements for verification of identity and for the retention of documentation set out in the Act. Such an offence is punishable by a maximum of five years imprisonment or a fine or both.

Failure to Report

22. It is also an offence for those who acquire knowledge or a suspicion of money laundering in the course of their trade, profession, business or employment or who suspect that the requirements of the Act regarding money laundering are not being complied with, not to report the knowledge or suspicion (i) to the Garda Síochána and to the Revenue Commissioners or (ii) in accordance with the internal reporting procedure established by an organisation.

    Failure to report in these circumstances is punishable on conviction by a maximum of five years imprisonment or a fine, or both. It is a defence that the person concerned reported his knowledge or suspicion to another person in accordance with his organisation's internal reporting procedures. The Act provides that disclosure in good faith of information in the course of making a report to the Gardaí and the Revenue Commissioners of a suspicion of a money laundering offence is not to be treated as a breach of client confidentiality and is not to involve the person making the disclosure in liability of any kind (Section 57(7)(a)).

Tipping Off

23. It is also an offence for a person, knowing or suspecting that a report of the type detailed above has been made or that an investigation is taking place to make any disclosure which is likely to prejudice any investigation arising from that report. The punishment on conviction for this "tipping off" offence is a maximum of five years imprisonment or a fine or both. The Act provides limited defences of "lawful authority or reasonable excuse". For the avoidance of doubt no disclosure of any nature should be made without prior clearance from the Money Laundering Reporting Officer, referred to later.

Responsibilities of the Supervisory Authorities

24. In recognition that stockbrokers may be vulnerable to being used by money launderers, the Irish Stock Exchange (“the Exchange”), as part of the obligation to supervise stockbrokers, which is delegated to the Exchange by IFSRA, assesses the adequacy of and procedures adopted by stockbrokers to counter money laundering and the degree of compliance with such procedures. The Exchange uses these Guidance Notes as criteria against which it assesses the adequacy of a stockbroker’s internal controls, policies and procedures to counter money laundering. The Exchange conducts inspections of stockbrokers to assess their compliance with these Guidance Notes, with any suspicions of offences under Section 31 or 32 of the Act, as amended, being notified to IFSRA.

25. IFSRA is obliged by the Act to report to the Garda Síochána and the Revenue Commissioners where it suspects that an offence under Section 31 or 32 of the Act, as amended, has been, or is being, committed by an institution under its supervision, which includes stockbrokers (Section 57(2) of the Act). Failure of IFSRA to comply with this requirement is also an offence (Section 57(5)).

Section 3 - Prevention and Detection

Statutory Requirements

26. The Act requires firms to adopt measures to prevent and detect money laundering. The Act goes on to state that the measures adopted shall include:

    (a) the establishment of procedures to be followed by staff (including directors and officers) in the conduct of the business of the firm.

    (b) the giving of instructions to these staff on the application of the EU Directive on Money Laundering and of the Act.

    (c) the training of these staff for the purpose of enabling them to identify transactions which may relate to the commission of an offence of a type referred to in Section 2 of these Guidance Notes.

    (d) the training of these staff on how to proceed once a suspicious transaction has been identified.

    Where a stockbroker has branches, subsidiaries or representative offices outside the State it is recommended that a group policy be established to ensure that such overseas operations comply, at a minimum, with the standards set out in these Guidance Notes.

27. The Act does not specify the actual measures and procedures to be employed for the prevention and detection of money laundering. However, the following are recommended and will be indicative of best practice:

    (a) Implementation of an adequate system of procedures and internal controls, appropriately documented, which should be regularly monitored and, updated as required,

    (b) adequate arrangements and procedures to prevent and detect the commission of a money laundering offence, including the establishment of procedures to be followed by relevant staff in conducting the business of the designated body and the training of relevant staff in such procedures.

    (c) provision of adequate education and training to all levels of staff (to include directors and other officers of the company).

    (d) appointment of a Money Laundering Reporting Officer at management level.

    (e) provision to all staff (to include directors and other officers of the company) of up to date and relevant compliance and procedures' manuals.

    (f) having procedures in place for prompt validation and notification of suspicions both internally and externally.

    (g) provision to the Money Laundering Reporting Officer of the appropriate access to internal records to meet the requirement of his role.

    (h) streamlining of the internal reporting procedures so there is only a minimum number of people or layers between the person with the suspicion and the Money Laundering Reporting Officer.

(i) maintenance of close co-operation and liaison with the Garda Síochána and the Revenue Commissioners.

(j) provision for the testing of arrangements and procedures in place by the firm's compliance and/or internal audit function.

(k) provision for screening of potential employees when recruiting.

These procedures should be periodically reviewed to ensure that they keep pace with industry and market developments and provide firms with the best systems possible to safeguard against money laundering.

Section 4 - Identification Procedures

Statutory Requirements

28. The Act requires firms to seek reasonable evidence of identity of those with whom it proposes to provide a service. The Act does not state what may or may not represent reasonable measures. This section of the Guidance Notes therefore sets out, as good industry practice, the measures to establish identity that might reasonably be expected of stockbrokers.

29. A stockbroker is not expected to retrospectively establish the identity of persons who were already clients on 2 May 1995.

30. The verification procedures should not be viewed as a "box ticking" exercise whereby a prospective client simply produces the relevant documentary evidence such as a passport.

31. One of the most important means by which stockbrokers can prevent their businesses from being used by money launderers is by establishing a policy of knowing their clients. By developing a profile of their clients, stockbrokers will be better placed to predict the types of transactions in which a client is likely to be engaged and will thus alert them to any suspicious activity.

32. The "know your client" rule is established in the Exchange's Conduct of Business Rules and is an ongoing obligation and not merely a once-off process. Even after the preliminary checks have been carried out stockbroking firms must remain vigilant and have monitoring procedures to monitor any changes that might fundamentally affect their existing knowledge of the client.

When must Identity be Verified?

33. Client identification is required in the following circumstances:

- on a continuing basis (includes entering into a business relationship and opening an account),
- in respect of an individual transaction or linked transactions which are a series of transactions which are, or appear to be linked and which amount in aggregate to at least €13,000[1],
- regardless of the amount involved where there is a suspicion of money laundering,
- if, at the time of the transaction, the sum involved is not known, then the obligation to establish identity applies as soon as it becomes known that the sums involved amount to at least €13,000 (Section 32(4)).
- where the firm is dealing with a client whom it knows or has reason to believe is acting for a third party, the identity of that third party should generally be established.

Timing of Verification Requirements

34. Where there is a requirement to establish the identity of a prospective client, business should not be undertaken for the client until satisfactory evidence of identity has been established. In exceptional cases, a stockbroker may accept the application for account opening and a payment from the client immediately subject to satisfactory establishment of identity as soon as is reasonably practicable. What constitutes an 'exceptional case' and 'reasonably practicable' must be determined by each stockbroker at an appropriately senior level in the light of all the circumstances including what is known about the prospective client, the nature of the business, the geographical location of the parties and whether it is practical to obtain the identification evidence before the account is opened. The advance clearance of the Money Laundering Reporting Officer should be obtained for any proposed departure from the normal procedures. In no circumstances should any further transactions be permitted on an account before the client's identity has been established and this should be made clear to the client.

    In cases where adequate documents are not supplied and suspicion arises during the identification procedure which results in the stockbroker refusing to do business with the client, the matter should be reported to the Gardaí, and the Revenue Commissioners.

35. A stockbroker is not expected to retrospectively establish the identity of persons for whom it is already providing services on a continuing basis on or before 2nd May 1995. It is necessary that a stockbroker is aware of those persons it is providing a service to, if it is to effectively carry out its anti-money laundering obligations. Regardless of the amount of the transaction, a stockbroker is required to establish the identity of an existing client who was a client on or before 2nd May, 1995 where there is a suspicion that the service being provided is connected with the commission of a money laundering offence. In such a situation, involving an existing client, the stockbroker should report the suspicion to the Gardaí and the Revenue Commissioners in accordance with Section 57 of the Act (see Section 6 of these Guidance Notes) and obtain their advice before seeking to establish the client's identity, particularly if this would involve an approach to the client or an approach which would be likely to come to the attention of the client.

Exemptions from the Requirements for Identification Procedures

36. There is no requirement to verify identity in the following circumstances:-

    (a) ***Designated Bodies***

    Establishment of identity is not required for transactions with Irish designated bodies and EU equivalent designated bodies or any designated bodies in another state or country prescribed by statutory order (Irish designated bodies and the countries prescribed for the purposes of the Act are listed in Appendix A). However, the stockbroker should ensure that the designated body does exist (e.g. by independently checking the address and telephone number and that it does have "designated body" status.

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[1] **€ substitution amount, as specified in the Euro Changeover (Amounts) Act, 2001-Schedules 3 and 4 effective from 1 January 2002, for references to £10,000 in Section32(b) of the Criminal Justice Act, 1994.**

The principles which should be applied in establishing whether a body in another EU Member State or prescribed country corresponds to a designated body are as follows:

- such bodies should be authorised and supervised by a regulatory body. This may be checked by ensuring that the institution is included in the relevant regulator's list of regulated institutions

- such bodies should be covered by money laundering legislation which is at least equivalent to the standards required by the EU Money Laundering Directive and the FATF 40 Recommendations;

- such bodies should establish identity and retain records to a standard which is at least equivalent to the requirements set out in the Act and these Guidance Notes;

For non-EU, non-prescribed bodies, the confirmation of the existence of a credit or financial institution and its regulated status may be checked and maintained on file by one or more of the following means:

- Checking with the home country financial regulator,

- Checking with another office, subsidiary, branch of the firm or with a correspondent bank in the same country,

- Checking with an EU regulated correspondent bank of the overseas institution,

- By obtaining from the relevant institution evidence of its licence or authorisation to conduct financial and/or investment business,

- By referring to the Bankers Almanac.

(b) ***Once-Off and Linked Transactions***

Establishment of identity is not normally needed in the case of once-off or occasional transactions when payment by, or to, the applicant is less than €13,000 (single or total of a series of transactions that are or appear to be linked).

In respect of two or more transactions the Act requires consideration to be given to whether these are connected. For the purpose of these Guidance Notes transactions which are separated by an interval of three months or more need not, in the absence of specific evidence to the contrary, be treated as linked. The requirement to aggregate linked transactions is designed to identify those who might structure their dealings to avoid the identification procedures and is not meant to cause inconvenience to genuine business transactions. It is not required to count both ends of the same transaction, e.g. a purchase and subsequent sale.

The Act does not require firms to establish additional computer and administrative systems specifically to identify linked transactions. However, if a firm's systems recognise that two or more transactions appear to be linked and have totalled at least €13,000 then the firm must act upon that information. In addition firms

should work towards developing systems to provide them with the functionality they require to be able to identify linked transactions.

(c) ***Intergroup Client Introductions***

Where an existing client as at 2 May 1995, of a part of a stockbroking group, became a client of another part of such group after 2 May 1995, then it is not necessary for such other part to establish identity provided that identification procedures are followed where there is any suspicion of money laundering.

Where one part (i.e. a parent, subsidiary or sister company established in Ireland) of a stockbroking group, has established the identity of a client in accordance with the relevant Guidance Notes and that client subsequently becomes a client of another part or parts of such group, then, provided the materials used to establish identity are freely available on request to such other part or parts of the group, it is not necessary to re-establish identity or for the materials to be duplicated. Such other part or parts of the group should retain, as materials used to establish identity, a record confirming that the identity has been established by another member of the group. Where appropriate, an Irish firm that is part of an international group should determine whether there is any bank secrecy or data protection legislation in place that would restrict access to the materials used to establish identity by that Group company either by the Irish firm itself on request or by the Garda Síochána under court order or relevant mutual assistance procedures, which would require such records pursuant to an investigation. If it is found that such restrictions apply, copies of the underlying records should be sought and retained within the Irish firm. To avoid any difficulties, firms should consider seeking agreement from the client at the outset that the underlying records of identity will be made available on request. Where the Group Company holding these materials is located in a country outside the EU or is not one of the countries listed in Appendix A, the Irish firm should seek written assurance that it can have access to all information evidencing identity. Where the Irish firm is not satisfied that the information evidencing identity will be made available, it must itself establish identity. Where the Group company holding the identification materials acts as an intermediary for the Irish firm, the procedures in Appendix B3 may also be relevant.

(d) ***Introduction of Clients by Other Designated Bodies***

In the case of a single transaction (even where the amount involved is at least €13,000) to be effected by a stockbroker for a person introduced to it by another designated body or a body corresponding to a designated body in a member state of the European Union or in any of the other countries as set out in Appendix A, it is regarded as reasonable for the stockbroker, in establishing identity, to rely on the written undertaking of the designated body or corresponding body that it has established the person's identity and holds evidence of the identity. The name and address of the client must also be provided in writing by the introducing body. In such a case the written undertaking and the introduction constitutes material used to establish identity and must be retained in accordance with the procedures set out in Section 5 - Record Keeping.

The procedure set-out above applies only to single transactions. If the person being introduced forms any continuing relationship with the stockbroker, e.g. by opening an account, then the stockbroker concerned must itself obtain separate evidence of identity. However, due recognition may be given to the fact that the person

introduced has already been identified in accordance with the provisions of the relevant Guidance Notes, by the introducing designated body. In this regard, it will often be convenient to obtain copies of the evidence of identity held by the body which made the original introduction. The stockbroker will not thereby be relieved of the need to independently verify the permanent address of the person being introduced.

(e) ***Acquisition of a Designated Body***

Where a stockbroker acquires a designated body or the business of a designated body, provided that the underlying client records are provided to the acquiring stockbroker, it will not be necessary for the identity of the clients to be re-established. In these circumstances stockbrokers may rely on the designated body's confirmation that it had complied with the local relevant legislation for the designated body. In cases where such confirmation or relevant underlying records cannot be obtained it will be necessary for the acquiring stockbroker to establish client identity in accordance with these Guidance Notes.

Redemptions/Encashment

37. When the investor finally cashes in an investment (wholly or partially), if the amount payable is at least €13,000, then identity must be established or recorded if this has not been done previously. This requirement will not apply retrospectively i.e. where the original investment was made prior to the coming into effect of the Criminal Justice Act, 1994.

38. In the case of a redemption or encashment of an investment (wholly or partially), a stockbroker will be considered to have taken reasonable measures to establish the identity of the investor where payment is made either:

(a) to the legal owner of the investment by means of a cheque crossed "account payee", or

(b) to a bank account held (solely or jointly) in the name of the legal owner of the investment by any electronic means effective to transfer funds, or

(c) to a bank account held in the name of an EU financial institution or financial institution in one of the other countries listed in Appendix A at the request of the legal owner of the investment.

Participation in Share Issues

39. In the case of a stockbroking firm being involved in a share issue whether by placement, an initial public offering (IPOs) or other flotation the normal requirements to verify identity and address, as outlined in paragraph 33, apply.

40. It is recommended that the prospectus and application form for such participations should clearly state that the establishment of identity is a requirement of the Criminal Justice Act, 1994, as amended, and that failure by the applicant to provide the necessary evidence of identity may result in delays in providing the entitlement documents or in returning the application monies.

Procedures to Verify Identity

41. Appendix B describes recommended procedures for verifying identity. A firm adopting these procedures can draw comfort from the knowledge that it is following generally accepted standards. There may also be circumstances where a prospective client has produced the appropriate verification documents but the stockbroker is still not satisfied as to identity. Here the stockbroker should carry out such additional checks as are necessary to confirm identity.

42. The procedures vary according to the type of client, hence Appendix B covers the following types of clients:

    (i) Irish Resident Personal Applicants for Business (Appendix B1)

    (ii) Non Resident Personal Applicants for Business (Appendix B2)

    (iii) Intermediaries: As Agents or Clients of Stockbrokers (Appendix B3)

    (iv) Minors (Appendix B4)

    (v) Partnerships (Appendix B5)

    (vi) Corporate Applicants for Business (Appendix B6)

    (vii) Pension Funds (Appendix B7)

    (viii) Central Banks/State Owned Bodies and Local Authorities (Appendix B8)

    (ix) Trusts and Nominee Accounts (Appendix B9)

    (x) Clubs and Societies (Appendix B10)

    (xi) Deceased Estates (Appendix B11)

    (xii) Charities and Approved Bodies (Appendix B12)

    (xiii) Hedge Funds (Appendix B13).

43. Where an employee or respected client, including intermediaries of long standing, introduces an applicant for business, this may assist in the establishment of the personal identity of the applicant but a firm will also be required to independently verify identify and address by one of the methods referred to in Appendix B.

Section 5 - Record Keeping

Statutory Requirements

44. Section 32(9) of the Act requires stockbrokers to retain two classes of records: (i) a copy of all materials relating to the establishment of a client's identity and (ii) transaction records. This obligation applies even if the person identified does not in fact become a client or the proposed transaction is not actually effected. This would include a situation where a potential investor does not open an account or proceed with a purchase or sale of shares etc.

45. The type of material retained will vary according to the type of client but the firm should be mindful that corroborative documentary evidence is an essential constituent of the audit trail required in order to investigate and prosecute money laundering or any other related offence.

Period for Retention

46. Client identification records must be kept for a period of five years after the relationship with the client has ended. Transaction documentation must similarly be retained for at least five years following execution of the transaction. The original documents or copies admissible in legal proceedings, relating to the relevant transaction should be maintained.

47. For practical purposes the date when the relationship with the client has ended can be taken to be the date of:

    (i) the carrying out of an individual transaction or the last in the series of transactions; or

    (ii) the closing of the last account held for that client; or

    (iii) the commencement of proceedings to recover debts payable on insolvency.

    Where formalities to end a relationship have not been undertaken, but a period of five years has elapsed since the date when the last transaction was carried out, then the five year retention period commences on the date of the completion of the last transaction.

48. Where a firm knows that a client or transaction is under investigation, it should not destroy any relevant records without the agreement of the authorities even though the five-year limit may have been reached. The transaction details as specified by the Irish Stock Exchange or relevant regulatory authority together with settlement details (such as origin of funds for receipts or form and destination of payments) should be sufficient for the record keeping requirements of the Act.

Format of records

49. It is recognised that stockbrokers may find it necessary to rationalise their hard copy filing requirements. Some firms will have standard procedures which seek to reduce the volume and density of records which have to be stored, while complying with statutory and Exchange requirements. Retention may therefore be by way of original documents, stored on microfiche, computerised or in electronic form. To satisfy the legal requirements, it is important that records be capable of retrieval without undue delay. Stockbrokers subject to these Guidance Notes must satisfy themselves that the records they maintain are admissible in court proceedings.

Wire Transfers

50. Investigations of major money laundering cases over the last few years have shown that criminals make extensive use of electronic payment and messaging systems. The rapid movement of funds between accounts in different jurisdictions increases the complexity of investigations. In addition, investigations become even more difficult to pursue if the identity of the original ordering client or the ultimate beneficiary is not clearly shown in an electronic payment message instruction. In the case of wire transfer transactions, stockbroking firms should ensure that when they are sending client transfer messages, for example, SWIFT MT 100 messages, the fields for the ordering and beneficiary client should be completed including the names and addresses of each. This should be completed for all messages, both domestic and international, regardless of the payment or message system used. In the case where this information is not contained in the message, full records of the name and address of both the ordering and beneficiary client should be retained by the firm. These records must be treated in the same way as any other records in support of entries in an account and kept for a period of at least five years.

Bearer Securities

51. Firms should take particular care to record details (including the beneficial owners) of bearer securities received or delivered by the firm other than through a recognised clearing or safe custody system.

Section 6 - Recognition, Reporting and Execution of Suspicious Transactions

Statutory Requirements

52. Section 57 of the Criminal Justice Act, 1994, as amended, by Section 21(8) of the Criminal Justice (Theft and Fraud Offences) Act, 2001 and Part 17 of the Central Bank and Financial Services Authority of Ireland Act 2003 requires designated bodies, including their directors, employees and officers to make a report to the Garda Síochána and the Revenue Commissioners where they suspect an offence under Section 31 (money laundering) or Section 32 of the Act (failure to check identity and maintain records) has been or is being committed in relation to their business. The requirement to report to the Revenue Commissioners is effective from 1st May, 2003.

53. It is an offence to fail to report a suspicious transaction as set out in paragraph 22. The reporting obligation is tied in with the money laundering offence in Section 31 of the Act and thus is very broad extending to reporting suspicions in respect of the proceeds of all criminal conduct such as fraud, robbery, tax evasion, drug trafficking, etc.

What is a Suspicious Transaction?

54. From a compliance perspective the best way to explain a suspicious transaction is to see it as a behaviour which is unusual or out of context in the circumstances. A suspicious transaction will often be one which is inconsistent with a client's known legitimate business or personal activities or with the normal business for that type of account. Therefore, the first key to recognition is knowing enough about the client's business to recognise that a transaction, or series of transactions, is unusual.

    Examples of suspicious transactions are included in Appendix C.

Reporting of Suspicious Transactions

55. As there is a statutory obligation on all staff to report suspicions of money laundering to the relevant authorities each firm has a clear obligation to ensure that all staff:

    (a) are aware of their obligation to report suspicious transactions;

    (b) know the identity of the Money Laundering Reporting Officer ("MLRO") or other appropriate senior person, to whom they should report suspicious transactions. Some stockbrokers may choose to require that unusual or suspicious transactions be drawn initially to the attention of supervisory management to ensure that there are no known facts that will negate the suspicion before further reporting to the MLRO.

    (c) have direct access to the MRLO on a confidential basis.

56. The Act provides that a report may be made to the Garda Síochána and the Revenue Commissioners under the Act in accordance with an internal reporting procedure to be established by a stockbroker for the purpose of facilitating the operation of the reporting obligation.

Once an employee has reported his/her suspicion to another person in accordance with an established internal reporting procedure he or she has satisfied the statutory obligation (Sections 57(3) and 57(4)).

The legislation protects those reporting suspicions of money laundering from claims in respect of any alleged breach of client confidentiality.

Execution of Suspicious Transactions

57. Stockbrokers must refrain from carrying out transactions which they know or suspect to be related to money laundering until they have made the necessary report in accordance with their organisation's reporting procedures. Where it is impossible in the circumstances to refrain from executing a suspicious transaction before reporting to the Gardaí and the Revenue Commissioners or where reporting it is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering operation, the stockbroker concerned shall apprise the Gardaí and the Revenue Commissioners immediately afterwards. While it is impossible to spell out in advance how to deal with every possible contingency in most cases common sense will suggest what course of action is most appropriate. Where there is doubt it will be possible to seek the advice of the MLRO.

Role of the Money Laundering Reporting Officer (MLRO)

58. The MLRO essentially functions as a liaison point between the firm and the Garda Síochána and the Revenue Commissioners. The type of person appointed as MLRO will vary according to the size of the stockbrokers and the nature of its business, but he or she should be sufficiently senior to command the necessary authority. Each stockbroker should prepare a detailed specification of the role and obligations of the MLRO. Larger stockbrokers may choose to appoint a senior member of their compliance, internal audit or fraud departments. In small organisations it may be appropriate to designate the Chief Executive. When several subsidiaries operate closely together within a group there is much to be said for designating a single MLRO at group level.

59. The MLRO has a significant degree of responsibility and should be familiar with all aspects of the legislation. It is the MLRO who is responsible for deciding whether any internal money laundering transaction report received should be communicated to the Garda Síochána and the Revenue Commissioners because they give rise to a knowledge or suspicion that a money laundering offence in relation to the business of the stockbroker has been or is being committed.

    In making this judgement, the MLRO should consider all other relevant information available within the stockbroker concerning the person or business to whom the initial report relates. This may include a review of other transaction patterns and volumes through the account or accounts in the same name, the length of the relationship, and referral to identification records held.

60. Validation requires a critical review of the basis of suspicions identified from information already available. The MLRO should have all necessary access to information that will enable him to undertake his responsibilities. Written details of suspicions should be submitted to the MLRO and the MLRO should record his determination in writing and keep detailed documentation and records covering the notifications which have been made to him and how these notifications were processed by him. These records should also indicate the reasons for his decision to notify or not as the case may be. Employees who make notifications to the MLRO

should not pass the information around to any of their colleagues or acquaintances. Employees should be mindful of the tipping off offence and thus the reporting procedures should be as streamlined as possible involving the minimum number of people or layers between the person with the suspicion and the MLRO.

61. In cases of doubt the MLRO should make a notification to the Money Laundering Investigation Units which have been established by the Garda Síochána and by the Revenue Commissioners in order to receive disclosures from designated bodies all over Ireland. A standard format for making such reports has been prescribed and this is set out in Appendix F as well as details of the Units in Appendix E.

    However, judgement and discretion are required if the Garda Síochána and the Revenue Commissioners are not to be swamped with thousands of insufficiently substantiated reports. Firms with a regular flow of potentially suspicious transactions are strongly encouraged to develop their own contact with the Garda Síochána and the Revenue Commissioners and periodically to seek from the Garda Síochána advice in general terms as to the nature of transactions that should or should not be reported.

62. Where information is disclosed in good faith in the course of making a report of a suspected offence under the Act or in good faith to a member of the Garda Síochána and the Revenue Commissioners investigating an offence, then the disclosure is not to be treated as a breach of any restriction upon the disclosure of information such as, for example, client confidentiality.

    The origins of financial disclosures are not revealed because of the need to protect the disclosing institution and to maintain confidence in the disclosure system. When a case is prepared for court, if a disclosure exists then it is classified as sensitive material.

63. The provision of feedback by the Garda Síochána and the Revenue Commissioners to the stockbroker by whom suspicions are reported is recognised as an important element of the system. Feedback on 'paper' disclosures will be provided on a six monthly basis by the Gardai or where there are developments to report. At the time of drafting these Guidance Notes, the practical operation of feedback from the Revenue Commissioners is not finalised as the Revenue Commissioners are prohibited by legal confidentiality requirements from providing feedback on its investigations.

Tipping Off

64. The proper functioning of the reporting system would be diluted if financial institutions were free to alert their clients to the fact that a report had been made to the Gardai and the Revenue Commissioners about them. See paragraph 23 for more information on tipping off.

Powers used by the Revenue Commissioners in conjunction with suspicious transaction reports

65. The powers that will be used by the Revenue Commissioners when conducting a review or investigation of a taxpayer as a consequence of a suspicious transaction report are as follows:

    - Section 906A Taxes Consolidation Act, 1997

- Section 907 Taxes Consolidation Act, 1997
- Section 908 Taxes Consolidation Act, 1997
- Section 908A Taxes Consolidation Act, 1997.

Normally a Revenue Officer will advise the firm's MLRO when it is intended to use a power to obtain information from the firm in respect of a taxpayer who has been identified in a suspicious transaction report.

Section 7 - Education and Training

Statutory Requirements

66. The Act, as amended by Section 14 of the Criminal Justice (Miscellaneous Provisions) Act, 1997, requires stockbrokers to adopt measures to prevent and detect money laundering. These measures include the training of employees for the purpose of enabling them to identify transactions which may be related to money laundering and, the procedures to be followed in such cases. These Guidance Notes include some recommendations of what steps member firms should take to fulfil the education and training requirements of the Act.

Timing and Content of Training Programmes

67. The timing and content of training of all directors, officers and employees involved in the day-to-day business of activities identified in Section 32(2) of the Act will need to be adapted by individual stockbrokers depending on the nature of their business.

    The following is recommended:

    (a) Each stockbroker should provide education and training programmes tailored to its own needs.

    (b) Both existing staff members and any new staff members entering the stockbroking firm from time to time who deal directly with or are involved with administration of the provision to new clients of any of the services set out in Appendix A or the carrying out of any transactions should be given appropriate training on the need to establish the identity of such clients. Such training should include account opening procedures and record keeping standards.

    (c) All relevant staff should be given training on how to identify factors which may give rise to suspicions of money laundering and on the internal procedures to be followed once they suspect that a money laundering offence in relation to the business of the stockbroker has been or is being committed.

    (d) Any such training programmes should set out clearly that as well as the reporting requirements on the part of the stockbroker in relation to suspicious transactions, each staff member has a personal responsibility.

    (e) In depth training concerning all aspects of the legislation and internal policies will be required for the Money Laundering Reporting Officer (MLRO). In addition, the MLRO will require extensive initial and on-going instruction on the reporting of suspicious transactions to the Gardaí and the Revenue Commissioners and on the feedback arrangements.

68. In addition to the above relatively standard requirements, training may have to be tailored to the needs of specialised areas of stockbroking. It will also be necessary to keep the content of training programmes under review and to make arrangements for refresher training at regular intervals i.e. at least annually to ensure that staff do not forget their responsibilities. The following is a high level approach to training by relevant employee/staff group for stockbroking firms:

(a) ***New Employees***

A general appreciation of the background to and nature of money laundering, and the subsequent need for reporting of any suspicious transactions to the Money Laundering Reporting Officer should be provided to all new employees who will be dealing with clients or their transactions, irrespective of the level of seniority. They should be made aware of the importance placed on the reporting of suspicions by the organisation, that there is a legal requirement to report, and that there is a personal statutory obligation in this respect.

(b) ***Dealers and Sales Persons/Advisory Staff***

Members of staff who are dealing directly with the public are the first point of contact with potential money launderers, and their efforts are therefore vital to the organisation's reporting system for such transactions. Training should be provided on factors that may give rise to suspicions and on the procedures to be adopted when a transaction is deemed to be suspicious.

All front-line staff should be made aware of the firm's policy for dealing with occasional clients, particularly where large cash transactions or bearer securities are involved, and of the need for extra vigilance in these cases. Such staff should be aware that the offer of suspicious funds or the request to undertake a suspicious transaction may need to be reported to the MLRO (or alternatively a line supervisor), whether or not the funds are accepted or the transactions proceeded with, and must know what procedures to follow in these circumstances.

(c) ***Account Opening/New Client Personnel***

Those members of staff who are in a position to deal with account opening or to accept new clients must receive the training given to front-line staff in the handling of cash and bearer securities. In addition, the need to verify the identity of the client must be understood, and training should be given in the organisation's account opening and client verification procedures.

(d) ***Settlement Staff***

Those members of staff who process the settlement of transactions should receive appropriate training in the processing and verification procedures, and in the recognition of abnormal settlement, payment or delivery instructions. The identity of the investor and cross matching of the investor's name against the cheque received in settlement is, for instance, a key process. Such staff should be made aware that the offer of suspicious funds accompanying a request to undertake investment business may need to be reported to the relevant authorities, whether or not the funds are accepted or the transaction actually proceeds. Staff must know the correct procedures to follow.

(e) ***Supervisors and Managers***

A higher level of instruction covering all aspects of money laundering procedures should be provided to those with responsibility for supervising or managing staff. These will include: the offences and penalties arising from the Act for non-reporting and for assisting money launderers; procedures relating to the service of production and restraint orders; internal reporting procedures; and the requirements for verification of identity and the retention of records.

(f) ***Money Laundering Reporting Officers***

In depth training concerning all aspects of the primary legislation, Guidelines and internal policies will be required for the MLRO. In addition, the MLRO will require extensive initial and on-going instruction on the validation and reporting of suspicious transactions, on the feedback arrangements, and on new trends and patterns of criminal activity.

Refresher Training

69. It will also be necessary to make arrangements for refresher training at regular intervals to ensure that staff do not forget their responsibilities. It is recommended that firms provide such training on an annual basis; others may choose a shorter period or wish to take a more flexible approach to reflect individual circumstances, possibly in conjunction with compliance monitoring.

Methods of Providing Training

70. There is no standard preferred way to conduct staff training for money laundering purposes. The training should be tailored to meet the needs of the particular firm, depending on the size and nature of the organisation and the available time and resources. For those firms without an in-house training facility, assistance can be provided by many of the big accountancy or law firms and/or by specialised training agencies.

The Act does not require firms to purchase specific training materials for the purpose of educating relevant staff in money laundering prevention and the recognition and reporting of suspicious transactions.

Appendix A - Designated Bodies, Prescribed Activities and Countries.

Designated Bodies

71. The following are the relevant designated bodies specified in the Act, as amended:

- a body licensed to carry on banking business under the Central Bank Act 1971 or authorised to carry on such business under regulations made under the European Communities Act, 1972,
- a building society incorporated or deemed to be incorporated under Section 10 of the Building Societies Act, 1989,
- a person authorised to carry on a money broking business under Section 110 of the Central Bank Act, 1989,
- a society licensed to carry on the business of a trustee savings bank under Section 10 of the Trustee Savings Banks Act, 1989,
- a life assurance undertaking which is the holder of an authorisation under the Insurance Acts, 1909 to 1990 or under regulations made under the European Communities Act, 1972,
- a person providing a service in financial futures and options exchanges within the meaning of Section 97 of the Central Bank Act, 1989,
- An Post,
- a society which is registered as a credit union under the Credit Union Act, 1997,
- a person providing a service in relation to buying and selling stocks, shares and other securities,
- a person providing foreign currency exchange services, and
- any other person or body prescribed in regulations made under subsection (10) [a] of Section 32 to the Act.

72. The following have also been prescribed as designated bodies for the purposes of Section 32 of the Criminal Justice Act, 1994:-

(a) Any person in the state, who, as a principal activity, carries out one or more of the operations which are included in numbers 2 to 9 and numbers 11, 12 and 14 of the list annexed to Council Directive 89/646/EEC,

(b) An investment company authorised to act under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989),

(c) A management company of a unit trust scheme authorised under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No 78 of 1989),

(d) A management company of a unit trust scheme authorised under the Unit Trusts Act 1990,

(e) An investment company authorised under Part XIII of the Companies Act, 1990,

(f) A general partner of an investment limited partnership authorised under the Investment Limited Partnership Act 1994, and

(g) Any person who is an insurance broker or an insurance agent for the purposes of the Insurance Act, 1989.

(h) In order to comply with Directive 2001/97/EC of the European Parliament and of the Council of 4 December, 2001 the Minister in June 2003 extended the list of designated bodies under S32 of the Act to include additional professional bodies. The relevant Regulations are the Criminal Justice Act 1994 (Section 32) Regulations 2003 (comprising S.I. No 242 and S.I. No 416 of 2003). In order to reflect the recommendations set by the Financial Action Task Force on Money Laundering (FATF), IFSRA requested that two additional categories be included (numbers 3 and 4 in the following list). The list of additional prescribed bodies is as follows:

1. Any person in the State who practises as:

    - an accountant on his or her own account,
    - an auctioneer,
    - an auditor,
    - an estate agent,
    - a tax advisor.

2. any person in the State who practises as a solicitor, when participating in any of the activities set out in Article 2a(5) of the Directive,

3. any person who provides money remittance services,

4. administration companies providing services to collective investment schemes,

5. an investment business firm,

6. a trustee or custodian of a collective investment scheme where it is regulated in the State,

7. a dealer in high-value goods, including precious stones, precious metals and works of art where payment is made in cash for a sum of €15,000 or more,

8. casinos.

In order to ensure compliance with the Directive casinos were included in the list of prescribed bodies although casinos are illegal in Ireland.

The Minister has the powers to extend this list as appropriate.

Types of Activities

73. The following are activities prescribed in Section 32 of the Act:

1. Acceptance of deposits and other repayable funds from the public.
2. Lending, including (a) consumer credit, (b) mortgage credit, (c) factoring, with or without recourse, (d) financing of commercial transactions (including forfeiting).
3. Financial leasing.
4. Money transmission services.
5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts).
6. Guarantees and commitments.
7. Trading for one's own account or for the account of clients in:
    (i) Money market instruments (for example, cheques, bills and documentary credits).
    (ii) Foreign exchange.
    (iii) Financial futures and options.
    (iv) Exchange and interest rate instruments.
    (v) Transferable securities.
8. Participation in securities issues and the provision of services related to such issues.
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice on services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portfolio management and advice.
12. Safekeeping and administration of securities.
13. Safe custody services.
14. The purchase or sale of units or shares of collective investment schemes authorised under the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 (S.I. No. 78 of 1989), the Unit Trusts Act, 1990, Part XIII of the Companies Act, 1990, or the Investment Limited Partnerships Act, 1994.

Countries

74. The following countries are covered by Section 32(6):

European Union

Austria	Italy
Belgium	Luxembourg
Denmark	Netherlands
Finland	Portugal
France	Spain
Germany	Sweden
Greece	United Kingdom
Ireland	

Other prescribed countries

Australia*	New Zealand*
Canada*	Norway*
Channel Islands	Singapore*
Hong Kong*	Switzerland*
Iceland*	Turkey*
Isle of Man	United States of America*
Japan*	

***These countries are also members of the FATF.**

Appendix B1 – Irish Resident Personal Applicants for Business

75. Whenever possible, there should be face-to-face contact with the prospective client. The following information should be obtained from individual applicants for business and should be independently verified:

    (a) name and/or names used,

    (b) current permanent address, and

    In addition date of birth should normally be sought and recorded.

76. In respect of joint accounts for both face to face and non-face to face contact, the name and address of all account holders, not just the first named, should be established and the address of each verified.

77. Where possible a copy of the document(s) relied upon should be taken and retained. Where this is not possible a record of all verification procedures undertaken with the relevant details, should be recorded on the applicant's file. All such information as would enable a copy of the evidence to be obtained or re-obtained should be included.

78. For both face to face and non face to face transactions, when initial checks fail to identify the prospective client or give rise to suspicions that the information provided is false, additional verification measures should be undertaken and the details of the additional checks should be recorded.

Business Conducted Face to Face

79. Where business is conducted face to face the following verification procedures should be followed:

(a) ***Verification of Name***

The true name used should be verified by reference to a document obtained from a reputable source which bears a photograph and signature. Whenever possible a current valid passport should be requested and copied. Examples of other documents that clients might produce as evidence of their identity are Drivers Licence with photograph and Age Card issued by the Garda Community Relations Section. It is for each stockbroker to decide the appropriateness of such documents in the light of other security procedures operated and other information available at account opening. In circumstances where copying facilities are not available at the office of the stockbroker, reference numbers and other relevant details should be recorded.

(b) ***Verification of Address***

In addition to the name verification, it is important that the current permanent address should also be verified. Address should be verified by one of the following means:

- Checking the Electoral Register (local registers are held at Post Offices, Libraries and Garda Stations);
- Making a credit reference agency search;

- Checking a local telephone directory or available street directory;
- Requesting sight of an original copy of any of the following:
    - Current utility bill, bank, building society or financial institution statement,
    - Notice of Determination for Tax Credit,
    - Current Balancing Statement from Revenue Commissioners,
    - Social Insurance documents,
    - Current Household/Motor Insurance Documents,
    - Invoice from a mobile telephone company,
    - Revenue Commissioners C2 Tax Certificate.

Verification of Name and Address in Certain Exceptional Circumstances

80. Where a prospective client does not possess evidence of identity and/or address verification as outlined above in (a) and (b), the stockbroker may adopt alternative identification procedures. The requirements outlined here are aimed at those persons who due to exceptional circumstances cannot reasonably be expected to produce certain forms of identification, such as a person who does not have a passport or driving licence and/or whose name and Irish address does not appear on a utility bill, electoral register or directory. In these cases the stockbroker should require the prospective client to complete and sign a form indicating the specific documentation that the client does not hold (e.g. passport/driving licence, utility bill).

    The stockbroker may use the Garda Siochana Identification form with photograph signed by a member of the Gardaí (see Appendix D) in these exceptional circumstances to verify the name of the client. Other possible methods of identification are outlined in more detail in the Guidance Notes for Credit Institutions.

    In such cases firms might decide that a designated senior person in the firm may authorise the business if he/she is satisfied with the circumstances and should record these circumstances in the same manner and for the same period of time as other identification records. All such cases should be reported to the MLRO.

    The level of such cases should be monitored by the stockbroker to ensure that they are reasonable in the circumstances.

    In all cases the onus is on the stockbroker to establish that the circumstances warranted a departure from the recommended procedures and that the opinion it formed of a person's identity from the information it received was reasonable. Under no circumstances should a stockbroker depart from the recommended procedures where money laundering is suspected.

Business Conducted by Post, Telephone or Electronically (Non Face to Face)

81. Any mechanism (e.g. post, telephone, or electronic) that avoids face to face contact between stockbrokers and clients inevitably poses challenges for client identification.

In such circumstances obtaining an original document which bears a photograph and a signature may be impracticable and accordingly the methods to establish identity must be adapted for such business. The specific methods used should compensate for the greater risk of money laundering which arises when a client has not been physically present for identification purposes. The stockbroker should ensure that there is sufficient communication to confirm personal identity and address and should ensure that the measures to prevent and detect money laundering take specific account of the inherent risks associated with the conduct of such business and in particular should establish procedures for monitoring and investigating activity on accounts opened on such a non face to face basis. For example, staff undertaking telephone contact should be provided with sufficient training to enable them to identify potentially suspicious responses and to prevent inadvertent disclosure of confidential information.

There are a number of measures which, when undertaken together, will give stockbrokers a reasonable degree of assurance as to the authenticity of the applicant where there is no face to face contact. The list of measures is not exhaustive and a stockbroker may include other measures in its list of identification procedures provided that:

(i) they fulfil the same criteria i.e. they must provide an independent means of verification from a reputable source, and

(ii) the same principles are applied as set out below.

Where initial checks fail to identify the prospective client or give rise to suspicions that the information provided is false, additional verification measures should be undertaken and the details of the additional checks should be recorded. The provision of false information is an offence and should be reported in accordance with the stockbroker's internal reporting procedures.

82. Where business is conducted on a non face to face basis the following verification procedures should be followed:

(i) two types of name verification should be obtained (one type in cases where a certified copy of passport/driving licence/other official document is obtained), and

(ii) two types of address verification should be obtained.

(a) ***Verification of Name***

The following are some of the methods which are considered reasonable measures to establish evidence of personal identity. In this regard there are two options and a stockbroker may use either option:

Option One

A **certified** copy of a passport, drivers licence or identity form verified by the Garda Síochána. Certification of passports/driving licences should be by a suitable person. Suitable persons include:

- A member of the Garda Síochána
- Chartered & Certified Public Accountants
- Notaries Public/Practising Solicitors
- Embassy /Consular staff
- Designated Bodies in Ireland or from a country listed in Appendix A.

Option Two

Two of the following items should be required.

(i) An initial deposit cheque or other payment drawn on a personal account in the applicant's own name at an Irish bank or building society or from a bank from one of the countries listed at Appendix A.

(ii) Copy of passport, copy of driving licence or identity form issued by Gardaí. Copies of passport or driving licence should be reviewed by the stockbroker to ensure that these are in date, that there is no apparent variation between the signature on the copy and the signature obtained on any other document received from the client (e.g. account opening form, agreement to terms of business etc.) and that the format of the copy document is consistent with the official format of that document for the country in question (e.g. layout, number format etc.).

(iii) Verification that the named applicant is registered as living at the home address provided (i.e. confirmed from the electoral register or from a credit reference agency).

(iv) Telephone contact with the applicant at an independently verified home or business telephone number (in order to make this telephone contact, the client's written consent may be required).

(v) The personnel department of the client's employer confirms employment by verbal confirmation on a listed business telephone number (in order to make this contact, the client's written consent may be required).

(b) **Verification of Address**

In the case of address verification any **two** of the items on the list below should be obtained (originals of two different types of utility bills may be sought).

If a stockbroker uses the electoral register or telephone contact as a means of personal identification it cannot use these same means to verify address.

- Checking electoral register (local registers held at Post Offices, Libraries and Garda Stations),
- Making a credit reference agency search,
- Checking a local telephone directory or available street directory,
- Requesting sight of current originals of any of the following:
- Utility bill, Bank, building society or financial institution statement,
- Notice of Determination for Tax Credit,
- Current Balancing statement from Revenue Commissioners,
- Social Insurance Documents,
- Current Household/Motor Insurance Documents,
- Invoice from a mobile telephone company,
- Revenue Commissioners C2 Tax Certificate.

Appendix B2 -Non Resident Personal Applicants for Business

Business Conducted Face to Face

83. It is important that the identity of prospective clients, who are not normally resident in the State but who wish to open accounts here, is established using procedures which are, as far as possible, similar to those used to establish the identity of clients resident here.

    For those prospective non-resident clients where face-to-face contact is made it is recognised that address verification procedures may present difficulties. However passports, national identity cards or other documents containing a photograph and signature issued by a reliable source should be available and the relevant reference numbers should be recorded.

    In addition, stockbrokers may wish to obtain verification of the identity of the applicant from a reputable credit or financial institution in the applicant's country of residence.

84. Particular care should be taken when relying on identification evidence provided by financial sector businesses from countries which have not been prescribed under Section 32(10)(d) of the Act (as noted in Appendix A) or from non FATF countries to ensure that the client's true identity and current permanent address can be confirmed. Copies of relevant documents should be sought and retained.

Business Conducted by Post, Telephone or Electronically (Non Face to Face)

85. For prospective non-resident clients who wish to open accounts without face-to-face contact it is important that, as far as possible, the verification procedures outlined for resident personal clients in Appendix B1 should be carried out and the same information should be obtained in respect of name and address verification.

    As well as the independent methods of name and address verification outlined above under Appendix B1, other methods which may be used to obtain evidence of identity in cases of non-resident clients (where appropriate the consent of the prospective clients should be obtained) include:

    - Use of branches, subsidiaries, head offices or correspondent institutions of the stockbroker in the prospective client's home country to confirm identity or as an agent to check personal identity and address verification.
    - An account opening reference may be sought from a reputable credit or financial institution in the applicant's home country. Verification details should be requested covering true name, current permanent address, date of birth and verification of signature.

86. In certain very limited circumstances, which are outlined below, it is regarded as reasonable, in establishing identity, to rely upon a cheque or other payment providing the address of the person applying for the service is also verified in accordance with Appendix B1, paragraph 82.

    In such circumstances a record must be made of the person's account number and of the branch sorting code of the credit institution from which the payment originated and this record must be retained.

Under no circumstances may the procedures provided for in this section be used where there is any suspicion of money laundering.

The circumstances in which the procedures outlined above may be relied upon are where:-

- payment is to be made from an account held in the name of the person to whom the service is to be provided at a credit institution in a member state of the European Union or one of the other countries listed in Appendix A; and
- there is no apparent variation between the name on the application form and the name of the drawer of the cheque or, in the case of payment other than by cheque, the name of the holder of the account from which the payment originated. Payments from joint accounts are considered acceptable for this purpose. Payments by bank or building society draft or from a general account are not considered acceptable for this purpose unless certified by the bank or building society concerned as coming from an account held with it in the name of the person to whom the service is to be provided.

Appendix B3 - Intermediaries: As Agents or Clients of Stockbrokers

Client Accounts

87. Intermediaries frequently invest on behalf of their clients in accounts opened with stockbrokers. In these cases, while it is the intermediary who may be the stockbroker's client the effect of the Act is that where the stockbroker knows or has reason to believe that the intermediary is acting on behalf of a third party the firm must also take reasonable measures to establish the identity of the third party (or underlying client).

88. The implementation of Criminal Justice Act 1994 (Section 32) Regulations 2003 means that the Minister has added to the list of designated bodies under the Act, effective from 15th September, 2003. Details of the additional designated bodies are outlined in Appendix A and the additional categories include intermediaries commonly used by clients of stockbrokers.

Verification of Identity

89. The procedures to be applied for establishing identity where there is a client account depend on whether or not the intermediary itself is a designated body. The different scenarios are set out below.

(a) Where the intermediary is a designated body, or body corresponding to a designated body in a member state of the European Union or in one of the other countries listed in Appendix A there is no need to establish the identity of the designated body nor to establish the identity of the third party save for obtaining confirmation of its status from an appropriate industry reference guide.

(b) Where the intermediary is from Ireland, or from a member state of the European Union or one of the other countries listed in Appendix A, but is not a designated body (or a corresponding body) then, not alone must the identity of the intermediary itself be established in accordance with the appropriate procedures in these Guidance Notes, but, additionally, reasonable measures must be taken to establish the identity of the party for whom the intermediary acts.

In these circumstances, and if the stockbroker has no reason not to be satisfied with the bona fides of the intermediary, it is regarded as reasonable for a stockbroker to establish identity by receiving the name of the third party from the intermediary. This may only be relied upon where the intermediary has supplied the stockbroker with a written undertaking that, in respect of all third parties for whom the intermediary acts in obtaining from the stockbroking services, the intermediary will take reasonable measures to establish identity, will retain documentary evidence establishing such identity and will, promptly upon request, furnish the stockbroker with a copy of all such documents. This undertaking can be given separately by the intermediary for a particular client or by way of a general undertaking.

Where the intermediary does not furnish a stockbroker with such an undertaking, or where such an undertaking has previously been breached by an intermediary, the stockbroker must itself establish the identity of the third party in accordance with the appropriate procedures in these Guidance Notes.

(c) Where the intermediary is from a country other than a member state of the European Union, or one of the other countries listed in Appendix A, then the

stockbroker must establish the identity of the intermediary and of the third party. In establishing the identity of the third party it is reasonable for the stockbroker to have regard to the nature of the intermediary, the degree of confidence which the stockbroker has in the intermediary, the geographical area in which the intermediary operates and the type of business being done. Depending on these factors it may be reasonable, in some cases, for a stockbroker to rely upon a written undertaking from the intermediary as provided for in (b). Where, however, it appears that the intermediary is playing little or no role beyond providing a "front", such an undertaking will not be adequate and it will be necessary for the stockbroker to establish the identity of the third party in accordance with the appropriate procedures in these Guidance Notes.

Appendix B4 - Minors

90. When opening accounts for minors, the normal identification procedures set out in Appendix B1 or B2 as relevant should be followed save in exceptional circumstances. In situations where it is not possible to obtain verification of identity directly from the prospective client it should be obtained from another source such as from the parent(s) or by enquiries from the relevant school or college/university of the minor.

    Under normal circumstances, a minor would be introduced to the stockbroker by a family member or guardian who has an existing relationship with the stockbroker concerned. An introduction cannot be relied upon as the sole method of identification. In order to verify identity, sight of either of the following documents should be obtained:

    - the minor's birth certificate, or
    - the relevant children's allowance book relating to the minor.

    Copies should be made of the documents sought and should be retained on file.

Appendix B5 - Partnerships

Verification of Identity

91. The following procedures should be carried out:

- Where a formal partnership arrangement exists, a copy of the certificate of trade or equivalent document establishing the partnership should be obtained.

- The identity of at least two of the partners in line with the requirements for personal clients in accordance with Appendix B1 or B2 as relevant should be verified.

- For any parties issuing instructions to the stockbroker if different to the parties already identified, the firm should seek a copy of the document (Partnership Agreement) giving the individual the necessary authority to act on the partnership's behalf.

Appendix B6 - Corporate Applicants for Business

92. It is, generally recognised that corporate accounts, even when fronted by legitimate trading companies, are the most likely vehicles for large scale money laundering. Accordingly, stockbrokers should pay particular attention to identification procedures in respect of corporate bodies and obtain information on the nature of the company's business and verify it as far as reasonably possible.

Particular care should be taken to verify the legal existence of companies and to ensure that any person purporting to act on behalf of the company is fully authorised to do so. The principal aim here is to look behind the corporate entity to identify those who have ultimate control over the business and the company assets, with particular attention paid to any shareholders or others who inject a significant proportion of capital or financial support. Enquiries should be made to confirm that the company exists for a legitimate trading or economic purposes and that it is not merely a 'brass-plate company' where the controlling principals cannot be identified.

Irish Registered Corporates

93. The following documents and information should be obtained to establish identity in the case of private companies or unquoted public companies:

(a) the original or certified copy or electronic copy issued by the Companies Registration Office of the Certificate of Incorporation or the Certificate to Trade;

(b) Memorandum and Articles of Association;

(c) A list of directors names, occupations, residential and business addresses and dates of birth;

(d) the identity of at least two directors and two people authorised to operate the account from time to time should be established in line with Appendix B1; and.

(e) A properly authorised mandate or Board Resolution of the Directors to open an account and conferring authority on those who will operate it. If there is a change in authorised signatories a new mandate should be required. When one of the two signatories change, a new signatory should replace the old signatory and the new signatory should be verified.

94. It may also be prudent to carry out:

(a) A search of the file at the Companies Registration Office or a copy of the audited financial statements for the purposes of confirming that the correct date of incorporation of the company has been furnished under paragraph 93(a) above and that the directors on the file corresponds to the list of directors furnished as per paragraph 93(c) above.

(b) a list of names and addresses of shareholders holding 10 per cent or more of the issued share capital of the company and in the case of individual shareholders their occupations and dates of birth should also be obtained.

(c) Where a significant shareholder (say 25 per cent) is a body corporate and particularly where it appears to be a nominee or "front" company, information from the company regarding the ultimate beneficial ownership of that particular

shareholder. If adequate information is not forthcoming from the company, the stockbroker should pay particular attention to business relations and transactions with that corporate client.

If there are discrepancies or inconsistencies between the information disclosed and that which appears on the file in the Companies Registration Office or in the audited financial statements an explanation should be sought from the Company and the explanations should be noted.

Public Companies and their Subsidiaries

95. In the case of a company:

(i) quoted on a Stock Exchange in Ireland or in another country which is a member of the European Union or is one of the countries listed in Appendix A; or

(ii) known to be the subsidiary of such a company,

the following procedures should be adopted:

- verification of the company's existence by reference to the relevant Exchange,
- a board resolution/mandate authorising the opening of an account and conferring authority on those who will operate it,
- a copy of the latest financial statements verifying directors and subsidiaries existence.

Non-Irish Registered Corporates

96. In the case of companies which fall under one of the categories listed in paragraph 95, the procedures listed in paragraph 95 should be sufficient.

In the case of all other non-Irish registered companies, the procedures for establishing identity are the same as those contained in paragraphs 93 and 94 save that a reference should be obtained from either the individuals' banker or company's banker where either the relevant directors or authorised persons are non-resident.

It is recognised that company registration documents may differ from country to country and if memorandum and articles of association are not appropriate then the appropriate corporate constitution documentation should be obtained. It would normally be advisable to obtain appropriate legal opinions from lawyers practising in the relevant country as to the status and effect of the documents and in particular as to the fact of incorporation. Particular care should be taken to ensure that entities claiming to be subsidiaries or branches of quoted public companies are what they claim to be by checking an appropriate independent source. Additional care will be required to be exercised by stockbrokers in the case of bodies incorporated in countries which are neither member states of the European Union nor one of the other countries listed in Appendix A and particular attention given to the question of why the body concerned proposes to transact business with an Irish stockbroker.

Appendix B7 - Pension Funds

97. Where the applicant for business is an investor such as a pension fund, a firm can refer to appropriate sources to check identity depending on the circumstances such as:

- industry directories (e.g. "Pension Funds and their Advisers");
- a reference from a specialist consultant; or
- checking with the Pensions Board or similar supervisory bodies.

98. Where the applicant is a pension fund of a listed company (or its subsidiary) or of a Government agency or local authority, or of a private company or unquoted public company, the majority of whose directors are already known to the stockbroker no further steps to verify identity, will normally be required.

99. In all cases firms should seek a copy of the document giving the individual the necessary authority to act on the entity's behalf.

Appendix B8 – Central Banks, State Owned Bodies and Local Authorities

100. Where the applicant for business is an investor such as a Central Bank, State owned body or local authority, in the EU or other FATF country, a firm may refer to appropriate sources to check identity depending on the circumstances.

101. Where the applicant for business is a Central Bank or State-owned body or organisation of sovereigns (supranationals), from outside the EU and is not from a State or country prescribed by the Minister for Justice, Equality and Law Reform under Section 32 (10)(d) of the Act, provided that such an applicant is not from a non co-operative country (NCCT) as prescribed by the FATF from time to time, a stockbroker may refer to appropriate sources to check identity. Appropriate sources include industry directories, reference from a specialist consultant or a lawyer.

102. In all cases firms should seek a copy of the document (Resolution/Trust Deeds) giving the individual the necessary authority to act on the entity's behalf.

Appendix B9 - Trusts and Nominee Accounts

103. Trusts and nominee accounts are popular vehicles for criminals wishing to avoid identification procedures and to hide the origin of money they wish to launder. Consequently, in the case of all trust and nominee accounts, reasonable measures must be taken to establish and verify the identity of not only the trustee but also the settler, the beneficiary of the funds and any other party that has power to influence decisions of the trust/nominee account.

104. Particular care is required when such accounts are established in offshore jurisdictions with strict bank, secrecy and confidentiality rules. Any such accounts established in jurisdictions outside the EU or other FATF approved country warrant particular attention. In addition, any application to open an account or undertake a transaction on behalf of another without the applicant identifying their trust or nominee capacity should be regarded as suspicious and should lead to further enquiries.

105. Reasonable measures to establish identity in the case of an Irish trust would include:

- sight of the original trust deed or a relevant extract and any supplementary deed,
- independent verification of the names and addresses of the trustees of the trust.
- Confirmation should be sought that the trustees/managers are themselves aware of the true identity of the underlying principals.
- Confirmation of authority to operate the account on behalf of the trust should also be sought.

For a trust established in another jurisdiction, the stockbroker should be able to rely on a formal introduction from another institution which is a designated body in a country listed in Appendix A. When the stockbroker has no previous relationship with the trustee and the trustee is not regulated in one of the countries listed in Appendix A, then the stockbroker itself must establish and verify the identity of all settlers and named beneficiaries with appropriate independent local professional advisers, except where the trustees have no individual authority to operate the account or to give relevant instructions concerning the use or transfer of funds. If the funds have been drawn on an account, which is not under the control of the trustees, the identity of authorised signatories and their authority to operate the account should also be verified.

106. Where money is received on behalf of a trust, it is important to ensure that the source of the money is properly identified, the nature of the transaction is properly understood and that payments are made only in accordance with the terms of the trust deed and are properly authorised in writing by the trustee.

Appendix B10 – Clubs and Societies

107. In the case of investment clubs or other clubs and societies, the firm should:

- satisfy itself as to the legitimate purpose of the organisation,
- identify at least two nominated officials or other persons authorised to deal on behalf of the club\society,
- verify the identity of the above individuals in accordance with the guidelines set out in Appendix B1 or B2, as appropriate,
- obtain a copy of the document giving the nominated officials authority to act on behalf of the club/society. If the identity of a nominated official previously verified changes, then a verification of the identity of the new signatory should be carried out.

Appendix B11 – Deceased Estates

108. In the case of deceased estates the firm should:

- obtain the grant of probate,
- obtain a mandate for the executor(s) to act on behalf of the estate or a copy of a letter from a solicitor advising the identity of the executor, and
- satisfy itself as to the identity of the executor (or if more than one, at least two executors) in accordance with the provisions of Appendix B1 or B2 as appropriate unless the solicitor has been previously been appointed an intermediary of the firm.

Appendix B12 – Charities and Approved Bodies

109. In the case of charities the firm should:

- obtain a copy of the Revenue authorisation of the charity as an 'eligible charity'or approved body for the purposes of Section 848A Taxes Consolidation Act, 1997,
- satisfy itself as to the identity of at least two named officials of the Charity in accordance with the provisions of Appendix B1 or B2 as appropriate, and.
- obtain a mandate for the individual(s) who place instructions on behalf of the Charity or a copy of a letter from a solicitor advising the identity of the executor.

Appendix B13 – Hedge Funds

110. The phrase "hedge fund" can have different meanings depending on the context in which it is used. In these Guidance Notes the phrase refers to any fund managed on a discretionary basis by an unregulated professional fund manager (or a regulated professional fund manager established outside the FATF jurisdictions typically with substantial minimum investment sizes for individual investors. Funds can be open ended (in other words at specified regular intervals investors can withdraw from the fund and new investors can come in) or closed ended (investors must leave their investment in the fund until a specified date). In many cases the fund manager operates multiple funds, each for a small number of end investors the identities of which are commercially sensitive.

111. The legal structures used within the industry are varied and often complex but in most cases at fund manager and fund level they involve one or more limited companies, limited partnerships or vehicles similar to a unit trust, investment trust or investment company. In some cases the fund manager will enter into arrangements with a prime broker which provides financing, risk management and settlement services. The main prime brokers are substantial regulated international investment firms. The fund manager may also use the services of external administrators who are typically responsible for certain administrative, registration, custodial and trustee services.

112. When providing services to a hedge fund it is necessary to identify the hedge fund manager and the individual fund for which the manager is acting. In the case of closed ended funds substantial end investors (those with an interest of over 20% in the fund) should be identified. In the absence of suspicions about the fund and/or its investors, it is not necessary to identify the end investors in open ended funds.

113. In some cases it will be possible to identify the hedge fund manager and the hedge fund itself using the guidance in the relevant Appendices to these Notes depending on legal structure. This approach is likely to be most practicable with straight forward structures or in cases where the fund is a listed fund on a recognised stock exchange or is referred to in a leading hedge fund directory or publication. Where reliance is placed on an industry directory or publication the firm should satisfy itself that it has reasonable grounds for believing the directory or publication to be a reliable indicator of the funds bona fides. In cases where satisfactory verification of identity can be achieved using the relevant appendices, and absent reason for suspicion, no further identification procedures are required.

114. In many cases, however, this approach is impracticable. In such cases it is reasonable to apply identification procedures which rely on a rigorous evaluation of the quality of the fund manager and, once this is satisfactorily completed, to rely on assurances from the fund manager as to the identity of the fund. Before relying on this approach firms must establish written procedures setting out the factors they will take into account and the persons authorised to open accounts on this basis. The procedures should require that new accounts be approved by a senior employee designated by a partner/director and independent of the person proposing to open the account and should require that the basis upon which the decision to open the account is made be documented in writing. The procedures should not permit an account to be opened using this approach unless each of the factors set out below are in place and the firm is otherwise satisfied with the quality of the account.

115. The minimum factors are:

- The existence of a prime brokerage relationship with a major investment house known to the firm and in good standing with it.

- The existence of an independent administrator of good standing. In some cases the administrator will have subcontracted some or all of its duties to agents. In such cases it is reasonable to look at the standing of the entities actually performing the duties. Confirmation should be obtained from the fund manager of the range of activities for which the administrator is responsible. The approach is not appropriate if the administrator's role is unduly narrow.

- The firm should document the basis upon which it has determined that it is satisfied the administrator is independent and of good standing.

- The existence of relationships with professional advisors of good repute.

- The firm should document the enquiries it has made to satisfy itself the advisors are of good standing

- The main managers (which normally should be taken to mean any persons with an interest of over 20%) within the fund manager have substantial relevant professional investment management experience and are in good standing. Where the main manager operates in a jurisdiction where regulatory history is a matter of public record the history of each of the main managers should be verified.

- In cases where one or more of the main managers is professionally known to the person opening the account to an extent that he can stand over that persons professional background and reasonably believes him to be likely to know the background of the other main managers it is reasonable to rely on confirmations from him in conjunction with the check of regulatory history. In other cases the information provided in relation to each main manager should be independently verified.

- The scale of funds under management. The approach is unlikely to be appropriate for fund managers with less than $100m under management. Funds under management should be verified through audited accounts or independent industry publications.

- The length of time the fund manager has operated as such. An ability to demonstrate a significant track record for the fund manager and/or the fund would tend to support the use of the approach, although it may still be possible with new funds if strong comfort is obtained in relation to the other factors noted above.

- A substantive change to any of the above factors will warrant a complete review of the status of the hedge fund in question. Procedures should be put in place to ensure a periodic review of hedge funds to revalidate their continued compliance with these criteria.

Appendix C - Reporting Suspicious Transactions – Indications on when to be suspicious

116. In the stockbroking business it is much more likely that a firm will come into contact with the layering and integration stages of a money laundering operation than the placement of cash - although placement has certainly been attempted.

Often the money launderers' intention will be simply to carry out transactions for their own sake, to complicate the audit trail in case anyone should try to investigate the money at a later stage.

Always think carefully about clients who:

- are unknown to you and verification of identity proves difficult,
- wish to invest using cash,
- change the settlement details at the last moment,
- clients who wish to settle high value transactions using cash,
- require the settlement to be made by way of bearer securities outside the recognised clearing system,
- ask to transfer investments to apparently unrelated third parties,
- indulge in a lot of activity with little or no profit over a number of jurisdictions,
- wish to deal on a large scale but are completely unknown to you,
- are happy to accept relatively uneconomic terms, when with a little effort they could have a much better deal,
- refuse to explain why they wish to make an investment that has no obvious purpose,
- suddenly vary their pattern of investment,
- use a cheque that has been drawn on an account other than their own,
- insist on entering into financial commitments that appear to be considerably beyond their means,
- are introduced by an overseas agent who is based in a country noted for drug production or distribution or a client introduced by an overseas branch, affiliate or other bank based in countries where production of drugs or drug trafficking may be prevalent,
- make regular and large payments, including wire transactions, that cannot be clearly identified as bona fide transactions to, or receive regular and large payments from, countries which are commonly associated with the production, processing or marketing or drugs; prescribed terrorist organisations; tax haven countries,
- want to transfer funds overseas, or to make payments with foreign currency which appear to have no commercial objective,
- have no obvious reason for using a stockbroker’s services,
- carry out large numbers of transactions by the same counterparty in small amounts of the same security, each purchased for cash and then sold in one

transaction, the proceeds being credited to an account different from the original account,

- transfer funds or shares to accounts in recognised tax havens,

- constantly pay-in or deposit cash to cover requests for bankers drafts, money transfers or other negotiable and readily marketable money instruments, and
- wish to maintain a number of trustee or clients' accounts which do not appear consistent with the type of business, including transactions which involve nominee names.

117. The firm also needs to be aware that its employees could be targeted by money launderers and therefore should be aware of:

- changes in employee characteristics, e.g. lavish life styles or avoiding taking holidays, and
- changes in employee or agent performance, e.g. a dealer has remarkable or unexpected increase in performance.

118. The above mentioned factors are not meant to be exhaustive but identification of any of the types of transactions and situations noted should merit further examination by the stockbroking firm.

Appendix D

Criminal Justice Act, 1994
RESIDENT PERSONAL CUSTOMERS: CERTIFICATION OF IDENTITY

SECTION 1 DECLARATION BY APPLICANT

Name_____

Address_____
_____
__
_____
__
_____
__

Please sign in a Garda Station in the presence of a Garda.

I declare that I do not hold a current passport or driving licence.

Signature of
applicant_____

If the applicant is unable to sign, a parent/guardian should sign here_____

SECTION 2 CERTIFICATE OF IDENTITY

Please have this Section completed at a Garda Station by a member of An Garda Síochána.

I certify that I have satisfied myself as to the identity of the applicant who has signed Section 1 above in my presence. I also certify that the photograph (on the back of which I have signed my name and affixed the Station Stamp) supplied with this application is a true likeness of the applicant.

Signature of the Garda_____

Name (in block letters) _____

Rank_____

Garda Number _____Date_____
Garda Station_____

Telephone Number (including Area Code)_____

Garda Station Stamp

Warning:
A person who provides false or misleading information for the purposes of establishing identity under Section 32 of the Criminal Justice shall be guilty of an offence.

Appendix E - Garda and Revenue Commissioners Contact Details

119. The following are the details relating to the Garda Unit responsible for receiving reports under the Act.

Garda Bureau of Fraud Investigation
Money Laundering Investigation Unit
"C" Branch
Harcourt Square
Dublin 2

Telephone: (01) 677 1156

Fax: (01) 475 5527

120. The following are the details relating to the Revenue Unit responsible for receiving reports under the Act.

Office of the Revenue Commissioners
Suspicious Transaction Reports Office
Block D
4th Floor
Ashtown Gate
Navan Road
Dublin 15

Telephone: (01) 8277636

Fax: (01) 8277682

121. The standard form which should be used in making any reports to the Gardai and the Revenue Commissioners is attached at Appendix F.

Appendix F - Standard Reporting Format

Garda Ref.No._____Source Ref No._____Date_____

Disclosure by: **PHONE:** **NAME OF INSTITUTION:** **NAME OF REPORTING OFFICER:**	
BRANCH NAME:	**SORT CODE:**
BRANCH	
ACCOUNT NAME(S):	**ACCOUNT NO's/** **DATE OF OPENING:**
ADDRESS OF SUBJECT:	
DATE OF BIRTH:	
OCCUPATION:	**EMPLOYER:**
NATIONALITY:	**PASSPORT NO:**
IDENTIFICATION AND/OR REFERENCES	
DETAILS of sums arousing suspicion indicating origin **form (cash/cheques etc) destination and instruction/authority**	
Other RELEVANT INFORMATION including reason **for suspicion aroused, associates, associated companies etc.** **(To be continued on additional pages, if required)**	

Appendix G – Feedback letter from the Garda Unit

OUR REF: _____ **your address**

YOUR REF: _____

DATE:_____

TO: Money Laundering Reporting Officer
(Name of Institution)

Dear Sir/Madam

I refer to your Report dated_____concerning_____

_____

_____

_____

_____

_____

and wish to inform you that the present position in the matter is as outlined hereunder:-

- ☐ Suspected Money Laundering Offences disclosed
- ☐ No offence disclosed
- ☐ Report Under Investigation
- ☐ Criminal proceedings commenced
- ☐ No further action necessary

Comments _____

_____

_____

_____

Yours faithfully

_____

DETECTIVE SUPERINTENDENT