Welcome
ACAMS Ireland Chapter Event
Board Governance & the MLRO
21st April 2016
ACAMS Ireland Chapter April Event
Board Governance & the MLRO

Speakers & Panellists – Peter Oakes & Marcus Doherty
Moderator – Elizabeth Henry Co–Chair ACAMS Ireland Chapter
ACAMS Ireland Chapter
Mission and Objectives

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ACAMS Ireland Chapter
Mission and Objectives
Board Governance and the MLRO
ACAMS Irish Chapter

• Thursday 21\textsuperscript{st} April 2016

• Peter Oakes
• Executive and non-executive director and advisory committee member to regulated and unregulated companies, including Fintech, RegTech, MiFID and Funds

• Peter is the founder of Financial Crime, Fintech Ireland, Fintech UK & RegTech Ireland

• Board Director & Chief Risk Officer for Bank of America Merchant Services Europe based in London, a non-executive director and supports ‘fintech’ initiatives in Ireland through Fintech Ireland (registered with the CRO)

• Appointed as the Central Bank’s first Director of Enforcement and AML/CTF Supervision in October 2010. In this role Peter was a member of the Senior Leadership, Operations, Policy and Supervisory Risk committees

• He is a solicitor admitted in Ireland, the United Kingdom and Australia. Over the past 25 years Peter has worked as a regulator (Ireland, UK & Australia) and in the investment management and funds industries (UK & Ireland). Peter has established a number of successful consultancy and training firms in Ireland. He has advised Central Banks, Regulators and their senior management on a wide range of supervisory and enforcement issues
• 122 Sections (5 Parts & 2 Schedules)

• Those **persons involved in the conduct of the designated person’s business** should have an appropriate and relevant understanding of the Act
Where an offence under this Act is committed by a body corporate or by a person purporting to act on behalf of a body corporate or on behalf of an unincorporated body of persons, and is proved to have been committed with the consent or connivance, or to be attributable to any wilful neglect, of a person who, when the offence is committed, is-

(a) a director, manager, secretary or other officer of the body, or a person purporting to act in that capacity, or

(b) a member of the committee or management or other controlling authority of the body, or a person purporting to act in that capacity,
• that *person is taken to have also committed the offence and may be proceeded against and punished accordingly*

• NB: The *word offence appears 50+ times in the legislation*
• A designated person shall adopt policies and procedures, in relation to the designated person’s business, to prevent and detect the commission of money laundering and terrorist financing [sec 54(1) CJA 2010]

• The policies and procedures - to be followed by persons involved in the conduct of the designated person’s business* - are to include the designated person’s obligations under Part 4, including [sec 54(2) CJA 2010]:

  a) the assessment and management of risks of money laundering or terrorist financing, and  
  b) internal controls, including internal reporting procedures for the purposes of Chapter 4.

* Note “directors” are specifically captured by the phrase “persons involved in the conduct of a designated person’s business”
• Part 4 ‘policies & procedures obligations’:
  • Customer Due Diligence (Ch 3)
  • Reporting of Suspicious Transactions and of Transactions involving Certain Places (Ch 4)
  • Tipping off by a Designated Person (Ch 5)
  • Internal policies and Procedures, Training and Record Keeping (Ch 6)
  • Special Provisions for Credit & Financial Institutions (Ch 7)

• Actions required by a designated person under section 54(2)?
  • Demonstrable internal controls and risk assessment (including continually reviewing effectiveness)
  • Risk assessment, e.g. susceptibility/attractiveness of business / product range
  • Risk management
  • Compliance management
  • Communication - training, giving directions
  • Don’t forget culture – it’s pervasive and generally proven to be at centre of systemic failures (just think the Irish Banking Inquiry Report!)
• 54(8) A designated person who fails to comply with this section commits an offence and is liable-
  (a) on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months (or both), or
  (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years (or both).

Summary:
• no money laundering or terrorist financing has occurred
• yet law provides for fines and jailing of directors, managers, secretaries and officers
Risk Governance & Monitoring

Board
- sets strategy
- risk appetite
- etc.
- delegates to management to implement
  - via procedures & policies
  - obliged to monitor delegations
  - therefore requires M.I. / Reports

Depts / Functional Heads
- M.I. (Dashboard) to Management & Board / Reporting & Escalation

Depts / Projects / Line Mgmt

Support Staff

Frontline Staff

Applies equally to setting & enhancing Culture?

Independent Assurance: reviewing effectiveness on continual basis
• Section 111 Criminal Justice (ML & TF) Act
  • see above

• Companies Law
  • Statute
  • Common Law
  • Think about:
    • duties of directors and officers
    • delegation from the board of directors to senior management of certain functions
    • how are delegations actioned, monitored and reported on?
    • accountability for functions delegated?
    • non-executive directors satisfied with M.I. received?
• Prescribed Contravention for a breach of the CJ (ML & TF) 2010 Act and ‘persons concerned in the management’ under the 1942 Act

• Fitness & Probity
  • exercising significant influence on the conduct of the entity’s affairs
  • Section 23 (refusal to grant appointment to PCF)
  • Section 25 (commencement of investigation)
    • Suspension notice
    • Prohibition notice
    • Prohibition notice without investigation (exceptional circumstances and undisputed facts)

• Section 50 Standards

• Guidelines
  • - remember – when performing a PCF or a CF, you are required to be (a) competent and capable, (b) honest, ethical and to act with integrity; and (c) financially sound
• Who is an officer?
  • 2010 CJA = no definition
  • 2014 Companies Act = “officer”, in relation to a body corporate, includes a director or secretary

• Is the MLRO an officer of the designated person and therefore can be proceeded against under section 111?

• Relationship between MLRO and PCF 15?
• **Central Bank definitions**
  • Banking Sector (2015) Report
    • Money Laundering Reporting Officer = The MLRO is responsible for ensuring that measures to combat Money Laundering / Terrorist Financing within the firm are effective.
  
• **Credit Union (2015) Report**
  • Same definition as per Banking Sector Report

• **Funds Sector (2015) Report**
  • Same as above but adds - The MLRO should have sufficient AML/CFT knowledge and sufficient seniority, to ensure the independence and autonomy of the role is maintained regardless of whether the MLRO also acts as PCF 15, Head of Compliance with responsibility for Anti-Money Laundering and Counter Terrorist Financing Legislation.

• **Irish Life Insurance Sector**
  • As per the Funds Sector Report
What keeps MLROs awake at night?

The risks for MLROs are high. If authorities can prove that preventions for money laundering were not sufficient then it could lead to imprisonment.

Sleep easy: There are five main areas that money laundering officers seek advice on.
The Board of Directors (the “Board”) and Senior Management must take responsibility for managing the identified risks by demonstrating active engagement in a bank’s approach to effectively mitigating such risks.

The methodology for undertaking risk assessments is documented to ensure consistency across business units, and includes collaborative engagement with the business units to assess risk, to facilitate Senior Management review as well as sign-off and to provide demonstrable engagement at board-level.

While the Board may delegate its AML/CFT responsibilities to Senior Management, the Board is ultimately responsible for ensuring compliance with the CJA 2010 and must put in place appropriate AML/CFT structures that reflect the nature and complexities of the bank’s activities.
2.2 ROLES & RESPONSIBILITIES

While the Board may delegate its AML/CFT responsibilities to Senior Management, the Board is ultimately responsible for ensuring compliance with the CJA 2010 and must put in place appropriate AML/CFT structures that reflect the nature and complexities of the bank’s activities. When assessing the Governance structures in place, the Central Bank found a number of inadequate practices, including:

- The Board and Senior Management take a reactive approach to managing Money Laundering/Terrorist Financing risk.
- Appropriate challenge at formal committee meetings is not evidenced by the relevant meeting minutes.
- Key AML/CFT processes and decisions are contained solely within the respective business units and are not overseen or challenged by the MLRO.
- There is a lack of oversight exercised by banks’ Senior Management over key elements of the AML/CFT framework that is outsourced.
In assessing the Governance structures in place the Central Bank expects that:

- The Board has explicitly delineated responsibility for the establishment and management of AML/CFT policies, procedures, systems and controls.
- Senior Management roles and responsibilities are clearly defined and documented.
- There is a clearly established organisational structure that reflects the responsibility for AML/CFT management based upon the nature, size and complexity of the bank.
- The governance structure includes dedicated committees both centrally and at business levels with distinct escalation procedures.
- The Board and Senior Management can demonstrate active engagement in the monitoring and management of Money Laundering/Terrorist Financing risk, including involvement in completion of the Money Laundering/Terrorist Financing risk assessment, effective flows of good quality MI and resulting proactive mitigating actions, timely closure and resolution of issues, regular assessment and evaluation of regulatory changes as well as consideration of industry developments that may impact the business.
- All relevant parties have formally acknowledged their responsibilities, fully understand their role and are sufficiently senior to have adequate knowledge of the bank, its products, services and systems.
- The MLRO is independent, knowledgeable and provides effective challenge to the business when necessary.
- The AML/CFT unit is adequately resourced.
• In carrying out risk assessments, the Central Bank expects that:
  • the risk assessment process is driven and overseen by the MLRO and covers all aspects of the CJA 2010.

• In assessing the Governance structures in place the Central Bank expects that:
  • the MLRO is independent, knowledgeable and provides effective challenge to the business when necessary

• In assessing the AML/CFT MI generated, the Central Bank found a number of inadequate practices, including:
  • AML/CFT MI reported within business units is not required to be provided to the MLRO, Senior Management or governance committees.
High level, quantitative MI is being provided but without formal, written commentary to support the analysis of trends and emerging issues:

- no stand-alone MLRO Report is produced, or if produced, it is not presented to the Board and does not include:
  - an assessment by the MLRO as to whether the AML/CFT controls are adequate or require improvement

In assessing the AML/CFT MI generated, the Central Bank expects:

- MLRO Report is produced on at least an annual basis and concludes not only on the effectiveness of the bank’s systems and controls but also makes recommendations, as appropriate, for improvement in the management of Money Laundering/Terrorist Financing risk.
• What’s the MLRO Report?

• a report prepared by the MLRO and presented to relevant governance committees that analyses and informs on the operation and effectiveness of a bank’s AML/CFT and FS systems and controls established to comply with the CJA 2010.
• Remember the Dear CEO letter?

• Are these types of circulars helpful?
1. Establish Governance
   1.1 Adopt formal AML policies
     - AML policy
     - Sanctions policy
     - Wire transfer policy
     - CDD process
     - PEPs policy
     - Record-keeping policy
   1.2 Define governance structure
   1.3 Define AML roles & responsibilities
   1.4 Define clear approval/escalation process
   1.5 Define AML training & awareness strategy

2. Adopt Risk-based Approach
   2.1 Identify risks faced by firm
   2.2 Establish risk-rating methodology
   2.3 Complete customer due diligence (CDD)
   2.4 Conduct ongoing customer monitoring
   2.5 Conduct transaction monitoring
   2.6 Conduct risk-based periodic customer review
   2.7 Create AML intelligence

3. Investigate/Escalate Suspicious Activity and Sanction Hits
   3.1 Report suspicious activity
   3.2 Report sanctions hits

4. Report Management Information
   4.1 Report AML MI
   4.2 Produce annual MLRO report
   4.3 Keep records

5. Manage people and training
   - Implement training & awareness strategy

6. Monitor and Improve Effectiveness of Controls
   6.1 Conduct ongoing monitoring of AML processes
   6.2 Analyse internal AML process trends
   6.3 Review new regulation & guidance
   6.4 Support internal audits
Delighted to be asked to speak at *Board Governance and the MLRO* event on Wednesday 21st April 2016 for the Irish Chapter of ACAMS. See details at [http://www.acams.org/acams-chapters/ireland/#events](http://www.acams.org/acams-chapters/ireland/#events) and consider joining ACAMS.

**Thursday 19th May: Financial Crime - Current and future regulatory risk for designated persons and PCFs (e.g. Directors, MLROs and staff with (anti) financial crime staff responsibilities).** This event will have limited places. If you wish to be kept informed about this event, send an email to news@peteroakes.com with your contact details.

If you want to know more about our upcoming regulatory compliance, risk and governance services, including financial crime training send an email to news@peteroakes.com and we'll keep you informed on developments.
Thank you

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Brown Brothers Harriman
Money Laundering Reporting Officers

Roles and Responsibilities
Marcus Doherty,
Head of Compliance & Anti-Money Laundering - Ireland
Brown Brothers Harriman
All Irish domiciled financial services providers are subject to AML/CTF laws and regulations in Ireland

What does that mean?

• apply a risk-based approach to its business and customers;
• apply Customer Due Diligence procedures for initial identification and verification of the identity of the customer;
• identify beneficial owners of legal entities and politically exposed persons;
• undertake due diligence (low, standard, enhanced) based on the customer’s risk rating;
• implement ongoing monitoring of the business relationship for any suspicion of money laundering or terrorist financing;
• report promptly any suspicion of money laundering or terrorist financing to the relevant authorities;
• maintain records, policies and procedures;
• appoint an MLRO.

We must, amongst other things:
Overview of the Headline Issues

**Governance**
- Implementation of the legislation
- Oversight by Board
- Board awareness of obligations, role of transfer agent and of liability
- Board review of incomplete accounts and discussion of relevant AML issues
- Procedures and Policies approved by Board

**Risk Based Approach**
- Policies and Procedures
- Customer Due Diligence files

**Ongoing Monitoring (name and activity)**
- Interdependence on group-wide systems (outsourcing?)
- Demonstration of oversight and control of those systems and the rulesets

**Role of MLRO**
- Regular interaction and involvement with the business
- Review and oversight
- Sampling of files and alerts

**Training**
- Board
- Employees
- Compliance

**Interaction between MLRO and the Board**
- Management information, management information, management information.
No legal definition of MLRO

Role vs Head of Anti-Money Laundering – is there a distinction?

Policies & procedures in place?

Oversight vs. execution
Role of the MLRO
The Board

Shareholders Appoint

Directors have fiduciary duties to Company

Board

Determine and execute policy

AML Policy is executed via their appointment of an MLRO

Oversight is key, decision making may be necessary, point of escalation
MLRO Reports to the Board

- AML Risk Management Strategy
- Forward Looking and Retrospective
- Regular report on the execution of that Strategy
- Focus will depend upon your organisation and your industry
- Challenge and discussion
At what point do MLROs begin to engage in supervisory conduct?

Particular area of focus in the U.S.

The difference between advice and guidance and supervisory control and oversight of the business
In the U.S., MLROs who execute supervisory liability have been found to have responsibility for the relevant business failing.

1. Business policy vs Compliance policy
2. Where are decisions made, and by whom?
3. Issues identified but no follow up?
4. Business failure could attach to the MLRO
Panel Discussion

Moderator - Elizabeth Henry Co–Chair Ireland ACAMS Chapter
Panellist's – Peter Oakes and Marcus Doherty
Ireland

- **2013** - AXA MPS Financial Limited, were fined €50,000 for two breaches of the CJA 2010, customer due diligence requirements and to determine whether a customer, or a beneficial owner connected with the customer or service concerned, was a politically exposed person.

- **2015** – WUPSIL The Central Bank found failed to demonstrate it had sufficiently robust policies and procedures for AML/CFT purposes, particularly around outsourcing, training of retail agents, CDD record retention, systems for monitoring and identifying suspicious activity.

UK

- **2010** The FSA fined foreign exchange services provider Alpari (UK) £140,000 for failing to have adequate anti-money laundering controls and systems in place. It also issued a £14,000 fine against the former MLRO.

- **2012** the FSA issued Final Notices fining Habib Bank AG Zurich (“Habib”) £525,000 for failure to take reasonable care to establish and maintain adequate anti-money laundering (“AML”) systems and controls and fining its former MLRO £17,500 for failure to take reasonable steps to ensure that Habib complied with relevant AML requirements.

- **2015** – Bank of Beirut (UK) Ltd. – Antony Wills (former compliance officer), and Michael Allin (internal auditor), £19,600 and £9,900, respectively, for repeatedly providing misleading information when ordered to address concerns about its financial crime systems and controls. The Bank of Beirut (UK) Ltd. Was fined £2.1 m

US

- **2014** FinCEN assessed a $1 million penalty against Thomas E. Haider, (CCO) alleging that over a five-year period as chair of the Fraud and Compliance Departments at MoneyGram, he failed to implement and maintain an effective AML program and neglected to comply with BSA requirements to report suspicious activity.

- **2014** FINRA suspended the BBH AML Compliance Officer for one month and fined him $25,000, for, among other things, the failure to have an adequate AML program in place or to monitor and detect suspicious penny stock transactions.
ACAMS Ireland Chapter next events:

- **September 2016** – Sanctions
- **Networking Christmas Event**
- **Future Events** will include topics such as – Fintech, KYC, CDD, Anti-Bribery & Corruption, Fraud, Risk Assessment, Transaction Monitoring

Keep Up to date:

- [www.acams.org/acams-chapters/ireland/](http://www.acams.org/acams-chapters/ireland/)
- [irelandchapter@acams.org](mailto:irelandchapter@acams.org)
Sanctions Updates – Sept 15, 2016

• Sanctions Screening Risk Methods

• Sanctions Regulatory Changes – Crimea, Iran, North Korea

• Cuba – Impact of Sanctions Relaxation