THE TA FORUM
AML Working Group

Attestations from TA Providers

Use of comfort letters in the industry when Asset Managers change Transfer Agent or use of alternate due diligence

Introduction

Firms must ensure they have measures in place to identify financial crime risks to its business and customers. These measures must also be proportionate to the business and implemented based on an assessment of risk.

There are occasions when an Asset Manager will change TA resulting in the transfer of customer records from one TA to another. Often, in regards to Anti-Money Laundering and Due Diligence checks, firms facilitate this through the migration of customer data that states whether AML checks have passed, whether the client flags as a Politically Exposed Person or Sanctioned Individual or Entity, and if available, the risk rating of the customer. This migration however would not necessarily include the transfer of any documentation or specific records to evidence that the checks have been performed.

To overcome this, receiving TA's have requested a comfort letter, often known as an AML assurance letter or attestation from the outgoing TA. This attestation would generally be signed by the MLRO of the outgoing firm to confirm that the checks have been performed to the standards of the Money Laundering regulations and the Joint Money Laundering Steering Guidance (JMLSG). Such attestations may also incorporate the completion of a Wolfsberg questionnaire.

This paper explores the types of attestations received and the best practice steps that TAs can consider when receiving customer records transferred from another TA.

JMLSG

The JMLSG states:

5.3.21

When a firm acquires the business and customers of another firm, either as a whole, or as a portfolio, it is not necessary for the identity of all existing customers to be re-verified, provided that:

➢ all underlying customer records are acquired with the business; or

➢ a warranty is given by the acquired firm, or by the vendor where a portfolio of customers or business has been acquired, that the identities of its customers have been verified. It is, however, important that the acquiring firm's due diligence enquiries include some sample testing in order to confirm that the customer identification procedures previously followed by the acquired firm (or by the vendor, in relation to a portfolio) have been carried out in accordance with UK requirements.

5.3.22

In the event that:
➢ the sample testing of the customer identification procedures previously undertaken shows that these have not been carried out to an appropriate standard; or
➢ the procedures cannot be checked; or
➢ the customer records are not accessible by the acquiring firm,

verification of identity will need to be undertaken as soon as is practicable for all transferred customers who are not existing verified customers of the transferee, in line with the acquiring firm's risk-based approach, and the requirements for existing customers opening new accounts.

Scenarios where the above situation could occur relevant to a TA

Scenario

An Asset Manager transfers its book of business from one TA to another – in this scenario the AML checks will have been undertaken by the previous TA with the Asset Manager having had oversight of the checks that were performed and the procedures in place. This can give the Asset Manager confidence with regards to the checks that have been carried out, however, the receiving TA will not have had sight or understanding of this with regards to the new clients being taken on.

Possible steps to take

1. Discussions with the Asset Manager about the controls, procedures and oversight in place at the previous TA.
2. A transfer of the records of due diligence checks performed at the previous TA (e.g. electronic AML verification results).
3. An attestation from the outgoing TA and from the Asset Manager regarding the checks performed and procedures and controls in place with sample checks and testing performed by the new TA.
4. Verification of all customers or customers on a risk assessed basis by the new TA upon receipt of the records
5. The new TA should consider whether their contractual AML services differ to the quality/completeness of records received, and agree with the Asset Manager to either bring records up to their current standards OR formally document where this is not required.

Scenario

An Asset Manager acquires the business and customers of another firm. In this instance the Asset Manager will have had no oversight of previous checks made unless these are transferred.

Possible solution

1. A transfer of the records of due diligence checks previously performed (e.g. electronic AML verification results).
2. An attestation from the outgoing TA regarding the checks performed and procedures and controls in place with sample checks and testing performed by the new TA.
3. Verification of all customers or customers on a risk assessed basis by the new TA upon receipt of the records
4. The new TA should consider whether their contractual AML services differ to the quality/completeness of records received, and agree with the Asset Manager to either bring records up to their current standards OR formally document where this is not required.

A TA may determine as part of its standard onboarding process that all records should be verified or verified on a risk assessed basis. This should be made explicit in contracts / agreements with the Asset Manager.

Other considerations

1. Verification will naturally happen in the future based on risk assessments and existing re-verification procedures in place.
2. All new clients must be added to the PEP and Sanctions checking process regardless as to whether AML verification is performed at on-boarding stage.

Contractual requirements

Any decisions made with regards to onboarding and AML verification must be incorporated into contracts / agreements

Appendix 1

Other Industry Attestations

Administration services moving from in-house TA to external TPA

- The fund MLRO may provide an attestation to their new TPA
- The fund MLRO may make available all existing KYC records to the new TPA, to perform ongoing due diligence

Administration services moving from external TPA to another TPA

- The fund MLRO may provide an attestation to their new TPA
- The outgoing TPA may provide an attestation to the fund MLRO, were AML was part of their contractual services arrangement.
- The outgoing TPA, on behalf of the fund MLRO, may provide an attestation to the new TPA, were AML was part of their contractual services arrangement.
- The outgoing TPA may make available all existing KYC records to the new TPA, to perform ongoing due diligence (either as part of existing contractual arrangement or as agreed separately to limit investor inconvenience/disruption)

Book of business from one firm acquired by another firm (irrespective of whether in-house TA or TPA)

- The acquired firm MLRO may provide an attestation to the acquiring firm MLRO
- The acquired firm may make available all existing records to the acquiring firm, to limit investor inconvenience/disruption
- The acquiring firm's MLRO should take steps to perform sample checking to determine whether they can either continue to be relied upon (either in whole or part). Where such assurance cannot be gained (in whole or part), such records must be remediated promptly per JMLSG 5.3.21-22)

Appendix 2

Examples of attestation wording:

TA

<TA Firm> of <address> is authorised and regulated by the Financial Conduct Authority, Firm Reference Number <FRN>.

<Firm> hereby confirms that in its capacity as the Transfer Agent for <Asset Manager>, it adheres to laws and regulations to combat money laundering and the financing of terrorism applicable to the United Kingdom.

Procedures are in place to establish the identity of the Investor, associated parties and beneficial owners in accordance with the Money Laundering Regulations and guidance produced by the Joint Money Laundering Steering Group. These include enhanced due diligence procedures for higher risk customers.

<TA Firm> retains all necessary documentary evidence for the establishment of identity for such period as may be required by applicable laws, but not less than 5 years after the relationship with the customer has ended.

Systems and procedures are in place to identify Politically Exposed Persons (PEPs) and sanctioned individuals and entities via daily automated screening of PEP and sanctions lists.

Transactions are monitored to identify, detect and report potentially suspicious activity and/or suspicious behavior.

<TA Firm> has a Suspicious Activity Reporting procedure. Suspicious Activity Reports are submitted to the Money Laundering Reporting Officer at the <Asset Manager> for investigation and reporting to the relevant authorities when applicable.

All staff receive financial crime prevention training, at least annually, including the prevention of money laundering and terrorist financing, fraud and anti-bribery and corruption.

Outgoing Asset Manager

<Asset Manager> of <Address>, is authorised and regulated by the Financial Conduct Authority, Firm Reference Number <FRN>.

<Asset Manager> hereby confirms that in its capacity as an Authorised Fund Manager, it has processes in place to comply with laws and regulations applicable to the United Kingdom to combat money laundering and the financing of terrorism.

Procedures are in place at <Asset Manger's> delegated Transfer Agent, <TA Firm> , to establish the identity of an investor, associated parties and beneficial owners in accordance with the Money Laundering and Terrorist Financing Regulations and guidance produced by the Joint Money Laundering Steering Group. These include enhanced due diligence procedures for higher risk customers.

<Asset Manager> retains all necessary documentary evidence for the establishment of identity, for such period as may be required by applicable laws, but not less than 5 years after the relationship with the investor has ended.

Systems and procedures are in place to identify Politically Exposed Persons (PEPs) and sanctioned individuals and entities via daily automated screening of PEP and sanctions lists.

Transactions are monitored to identify, detect and report potentially suspicious activity and/or suspicious behaviour. <Asset Manager> and <TA Firm> have a Suspicious Activity Reporting procedure. Suspicious Activity Reports are submitted to <Asset Manager's> Money Laundering Reporting Officer for review / investigation and reporting to the relevant authorities when applicable.

All staff receive financial crime prevention training, at least annually, including the prevention of money laundering and terrorist financing, fraud and anti-bribery and corruption.

<Asset Managers> compliance monitoring programme includes quarterly sample checking of the AML procedures and controls at <TA Firm>.

Wolfsberg questionnaire

The Wolfsberg questionnaire can be found at the following link https://www.wolfsberg-principles.com/wolfsbergcb

