

TRAINING & DEVELOPMENT PROGRAMME

Knowledge Network

Webinar Series

AML Update: Reform and Trending Topics

Wednesday, 14 June 2023 | 8.30 am to 9.30 am



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AML Update: Reform and Trending Topics

14 June 2023

Josh Hogan, Partner, Martin O'Neill, Of Counsel and Holly Draper-Spillane, Senior Associate





35

Br

eaking

56

Bad

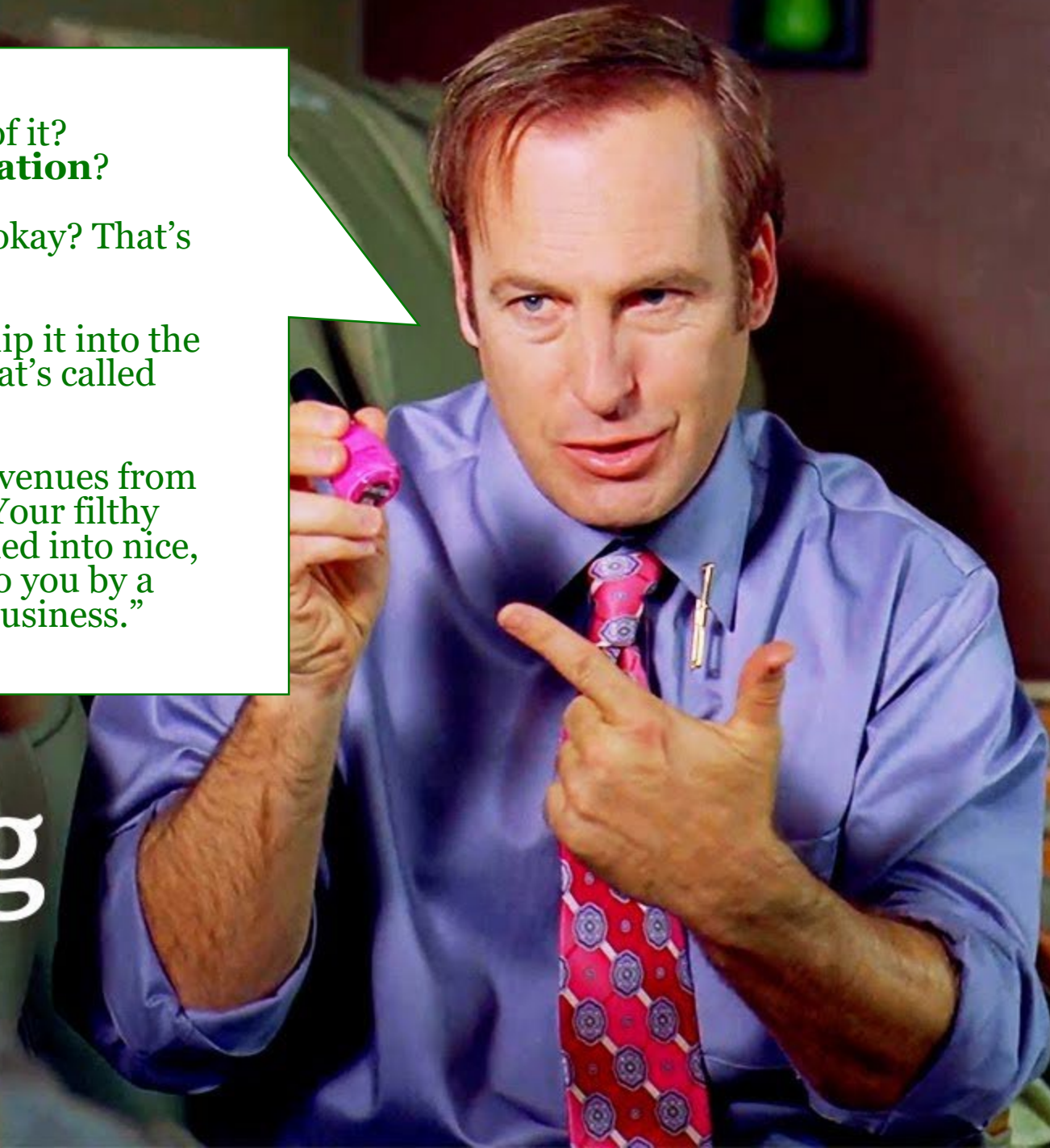
“Do you understand the basics of it?
Placement, layering, integration?

Now, you give me your money, okay? That’s called **placement**.

I take your dirty money, and I slip it into the salon’s nice, clean cash flow. That’s called **layering**.

Final step, **integration**. The revenues from the salon go to you, the owner. Your filthy drug money has been transformed into nice, clean, taxable income brought to you by a savvy investment in a thriving business.”

35
Breaking
56
Bad



STRs Received at FIU Ireland (1995 – 2022)

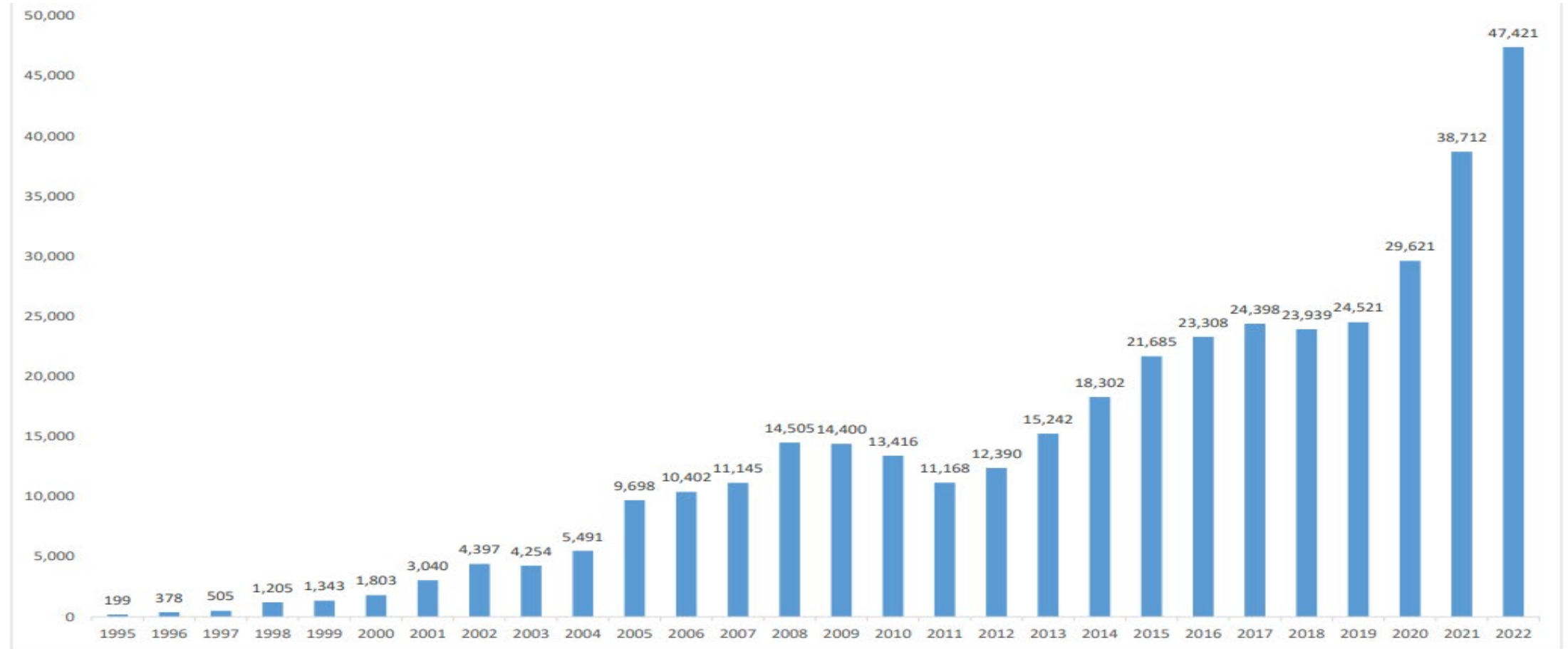


Figure 1. Number of STRs received at FIU Ireland per annum (1995 – 2022)

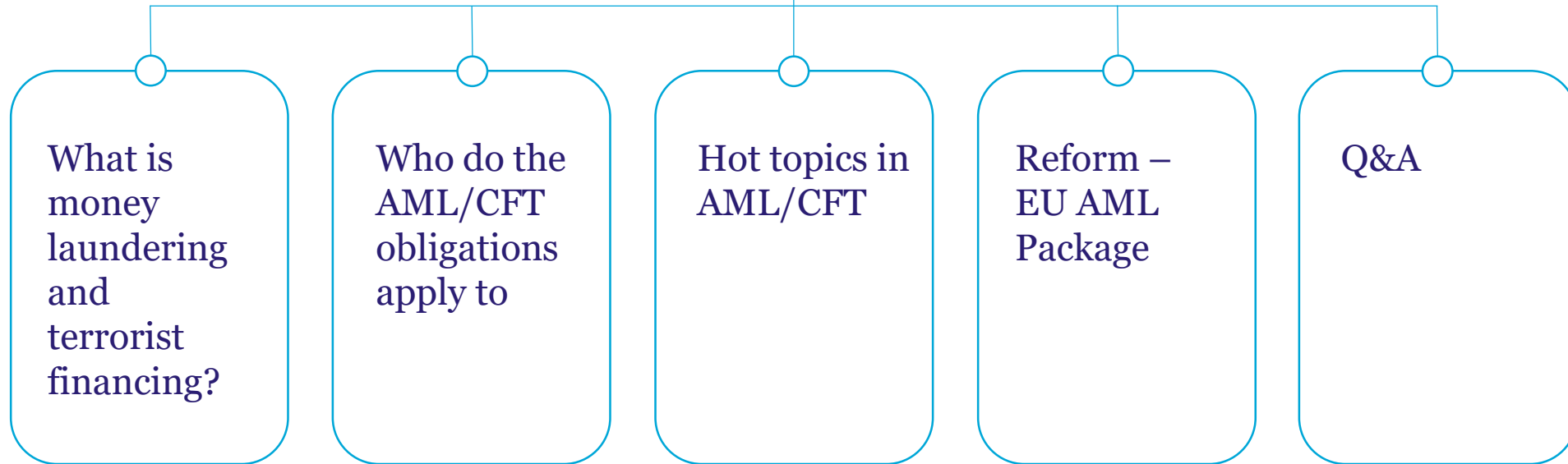
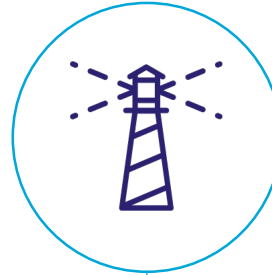
		2018	2019	2020	2021	2022*
STR **	<i>Accountant</i>	21	17	11	33	9
	<i>Auctioneer</i>	2	4	2	5	0
	<i>Auditor</i>	20	21	25	4	1
	<i>Bank</i>	14,544	15,031	19,322	23,323	18,785
	<i>Bookmakers</i>	87	164	276	299	1,039
	<i>Bureau de Change</i>	203	189	50	46	108
	<i>Car Dealer</i>	132	118	61	86	49
	<i>Casino</i>	137	87	72	259	178
	<i>Credit Union</i>	5,489	6,047	5,829	4,993	4,246
	<i>DHVG</i>	19	35	56	59	130
	<i>eMoney Institution</i>	26	28	351	1,382	931
	<i>Fund</i>	17	13	17	41	26
	<i>Fund Administrator</i>	50	43	35	45	35
	<i>Fund Manager</i>	78	77	48	28	10
	<i>Investment Firm</i>	16	26	17	21	57
	<i>Investment Intermediary</i>	1	1	1	2	2
	<i>Life Assurance Company</i>	608	356	279	123	52
	<i>Money Lender</i>	5	19	4	4	1
	<i>Money Remitter</i>	83	94	91	58	41
	<i>Notary Public</i>	0	0	0	1	1
	<i>Other Financial Services Provider</i>	294	324	316	417	555
	<i>Other Fund Service Provider</i>	8	7	9	9	18
	<i>Payment Institution</i>	2,017	1,685	2,637	3,247	2,338
	<i>Private Members Club</i>	17	4	1	1	7
	<i>Property Service Provider</i>	0	1	1	0	0
	<i>Retail Credit Firm</i>	28	99	92	428	480
	<i>Solicitor</i>	13	8	8	12	13
	<i>Tax Advisor</i>	0	0	0	1	1
	<i>TCSP</i>	15	19	6	12	12
	<i>VASP</i>	0	0	0	300	6,625
<i>Other</i>	9	4	4	0	1	
		23,939	24,521	29,621	35,239	35,751
STReu ***	<i>eMoney Institution</i>	0	0	0	1,944	4,881
	<i>Fund Manager</i>	0	0	0	51	70
	<i>Investment Firm</i>	0	0	0	0	54
	<i>Life Assurance Company</i>	0	0	0	286	407
	<i>Payment Institution</i>	0	0	0	476	1,120
	<i>VASP</i>	0	0	0	716	5,138
		0	0	0	3,473	11,670
Total		23,939	24,521	29,621	38,712	47,421
% Change		-	2%	21%	31%	22%

* Provisional Figures as of 10 January 2023

** Designation is selected by entity at registration

*** STReu is a specific report, usually submitted by entities located in Ireland and passporting their services to other EU countries, where there is no nexus to Ireland.

Overview



What is money laundering?

Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (“CJA 2010”)

- in relation to property that is the proceeds of criminal conduct
- engages in...concealing or disguising the true nature, source, location, ownership of the property
- converting, transferring, handling, removing from/ bringing the property into Ireland
- knows or believes or is reckless as to whether or not the proceeds of criminal conduct



What is terrorist financing?

Criminal Justice (Terrorist Offences) Act 2005

- ...directly or indirectly, unlawfully and willfully provides, collects or receives funds intending that they be used or knowing that they will be used, in whole or in part
 - an act that constitutes an offence under the law of Ireland
 - intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict
 - the purpose of which is, by its nature or context, to intimidate a population or to compel a government or an international organisation to do or abstain from doing any act



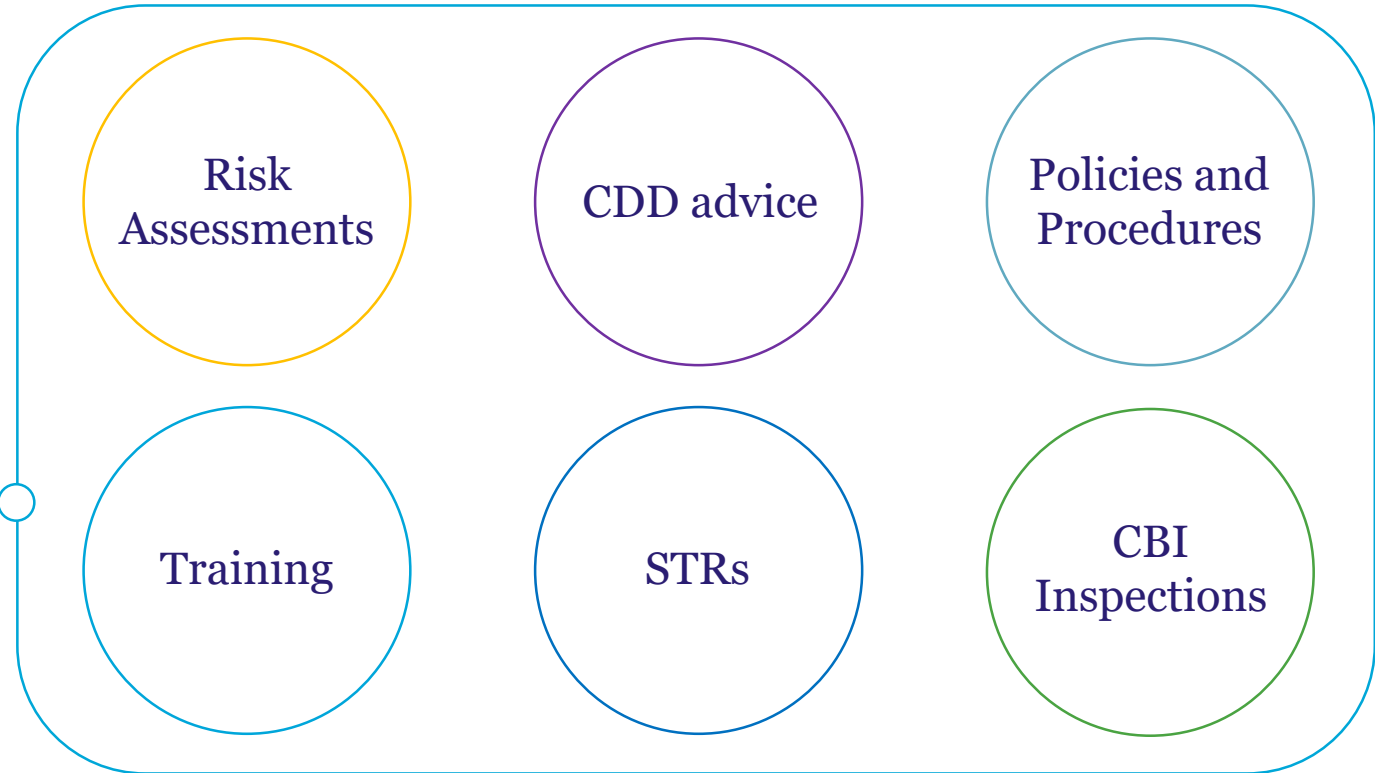
Who do the AML/CFT obligations apply to?



- Duty not to engage in money laundering/terrorist financing – everyone
- Obligations under CJA 2010 in relation to AML/CFT – designated persons
- Acting in Ireland in the course of business carried on by persons in Ireland
 - All types of regulated financial service providers
 - Schedule 2 firms

Practical Considerations

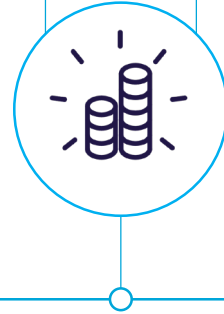
- Obligations on designated persons under CJA 2010 – what do you need to do?



- Assistance from external counsel:

AML in Fintech

- Regulated Fintech entities
 - Payment Institutions
 - Electronic Money Institutions



- CBI as Regulator

- Dear CEO Letter – 20 January 2023 - Supervisory Findings and Expectations for Payment and Electronic Money (E-Money) Firms
 - Risk-based approach
 - Distributors and agents
 - Misapplication of CDD derogation

AML Issues in Loan Sales



- Inadequate CDD carried out by original lender
 - Requirement to do so under CJA 2010 – designated person
 - Purchaser of loans – shortfall in CDD documentation available
 - Remediation programme – what documentation is missing, what can be relied on?
 - Outreach to customers – no responses?
 - Other information available on customer?

AML in Crypto



- Designated persons - Virtual Asset Service Providers (“**VASPs**”)
 - Register with CBI for AML purposes only
 - E.g. exchange between virtual assets and fiat currencies
 - CBI AML Bulletin – July 2022
 - Significant number of issues with the ML/TF risk assessments
 - Recurring issues with the AML/CFT policies and procedures
 - CDD
 - Financial Sanctions Screening
 - Outsourcing

AML for Schedule 2 Firms



- CJA 2010 – Section 108A and Schedule 2
- Not otherwise regulated by CBI but carrying out schedule 2 activities
 - e.g. lending (consumer credit, factoring with out without recourse, financing of commercial transactions), financial leasing
 - Dear CEO Letter - 16 December 2020
 - Board oversight and governance
 - Risk assessment
 - Policies & Procedures
 - Suspicious Transaction Reporting

Sanctions Requirements

- Restrictions which governments or international organisations apply in reaction to certain undesirable behaviours, such as: aggression, terrorism, criminal behaviour, human rights violations, etc.
- Financial, trade, travel-related, individuals, entities, and countries, certain goods and services
- Part of CDD - screen customers/beneficial owners
- Risk factors/red flags: subject to sanctions or embargoes, jurisdiction in which the customer/beneficial owners are based/operate in is subject to financial sanctions
- True sanctions hits - CBI - European Commission & Financial Intelligence Unit in Ireland



Reform



EU Commission Action Plan

Six Pillars

1. Ensuring the effective implementation of the existing EU AML/CFT framework
2. Establishing an EU single rule book on AML/CFT
3. Bringing about EU level AML/CFT supervision
4. Establishing a support and cooperation mechanism for FIUs
5. Enforcing Union-level criminal law provisions and information exchange
6. Strengthening the international dimension of the EU AML/CFT framework





Reform – AML Package

AMLA

- New AML Authority Regulation

Single Rulebook

- New AML Regulation
- 6th AML Directive
- Recast “Wire Transfer” Regulation





AML Authority (AMLA)

- AMLA: “heart” of the reformed system
- Governance and Funding
- Direct / indirect supervision
- Significant supervisory powers





AMLA: Supervisory tasks

- Risk monitoring
- Managing central database
- Facilitating co-operation
- Supervisory methodologies (risk-based approach)
- Direct supervision
- Indirect supervision
- Monitoring financial sanctions
- Adopting technical standards / guidelines and recommendations



Single Rulebook



- **AML Regulation**

- Captures and enhances existing provisions applicable to obliged entities

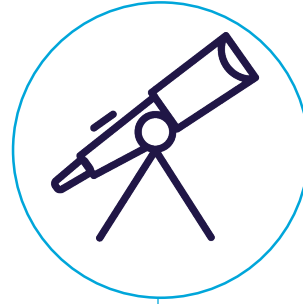
- **MLD6**

- Organises the AML/CFT system at the national level

- **Recast Wire Transfer Regulation**

- Ensuring cryptoasset transfers can be traced

Single Rulebook

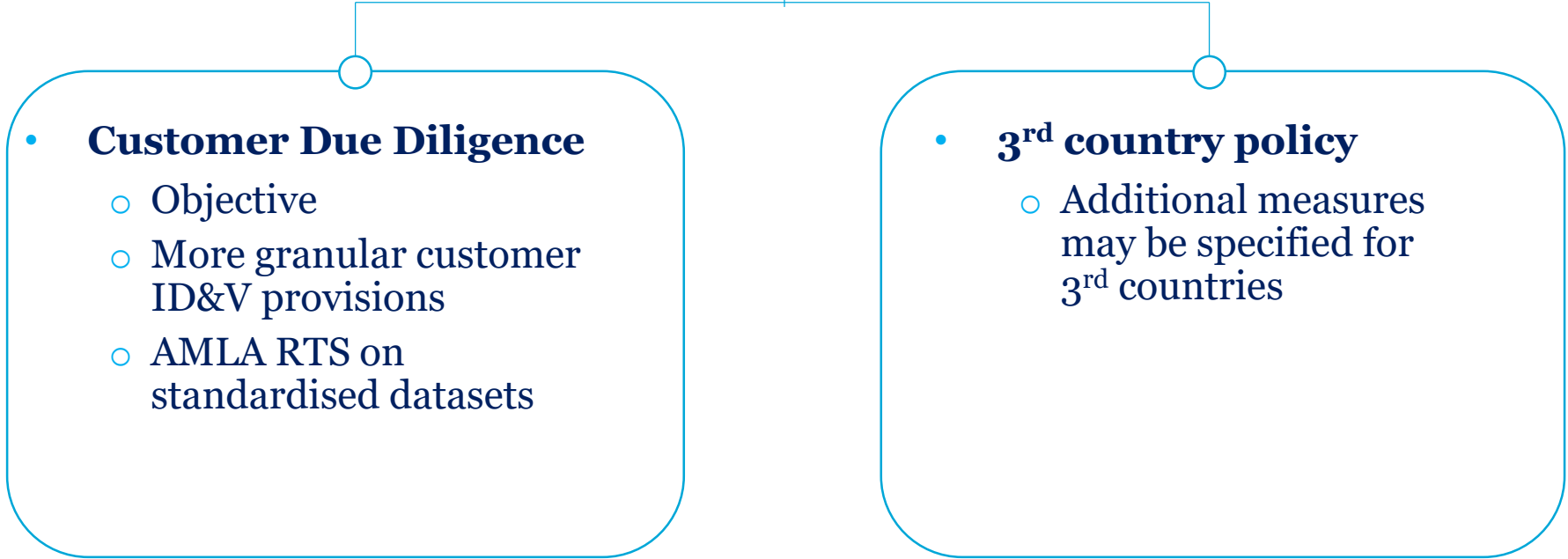


- **Increased scope:**
 - Cryptoasset service provider
 - Crowdfunding service providers
 - Traders in precious metals/stones
 - All mortgage lenders and consumer credit providers

- **Internal governance:**
 - Compliance manager + compliance officer
 - Group-wide requirements
 - 3rd country branches and subsidiaries



Single Rulebook



- **Customer Due Diligence**
 - Objective
 - More granular customer ID&V provisions
 - AMLA RTS on standardised datasets

- **3rd country policy**
 - Additional measures may be specified for 3rd countries

Single Rulebook



- **Reliance / Outsourcing**

- Still possible (but not to 3rd countries identified by EC)
- Certain tasks cannot be outsourced

- **Cap on large cash payments**

- €10k limit (or less) for cash payment to traders

- **Beneficial ownership**

- Non-EU legal entities may need to register
- Nominee shareholders/directors disclosure requirements



Questions?



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