

## Regulation

Statement 15 January 2024 – 1/2024

# Definition of a fund management company's customer

## 1 FIN-FSA statement

Fund management companies' Finnish unitholders are customers falling within the scope of the customer due diligence obligation under chapter 3 of the Act on the prevention of money laundering and terrorist financing (444/2017, the AML Act).

Where necessary, procedures must be adjusted to align with this statement by 1 January 2025.

## 2 Justifications

The FIN-FSA's position is based on an interpretation of chapter 9, section 4 of the Mutual Funds Act (213/2019) and the definition of an investment fund's customer in EBA Guidelines on customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions (EBA/GL/2021/02, the EBA Risk Factors Guidelines)<sup>1</sup>.

The EBA Risk Factors Guidelines also apply to fund management companies. In accordance with Article 16(3) of the EBA Regulation<sup>2</sup>, financial institutions shall make every effort to comply with EBA guidelines.

In accordance with guideline 16.14 of the EBA Risk Factors Guidelines, the customer of a fund manager is:

- a. a natural or legal person who directly purchases units of or shares in a fund on their own account, and not on behalf of other, underlying investors; or
- b. a firm that, as part of its economic activity, directly purchases units of or shares in its own name and exercises control over the investment for the ultimate benefit of one or more third parties who do not control the investment or investment decisions; or
- c. a firm, for example a financial intermediary, that acts in its own name and is registered in the fund's share/units register but acts on the account of, and pursuant to specific instructions from, one or more third parties (e.g. because the financial intermediary is a nominee, broker, multi-client pooled account/omnibus type account operator or operator of a similar passive-type arrangement); or



d. a firm's customer, for example a financial intermediary's customer, where the firm is not registered in the fund's share/units register (e.g. because the investment fund uses a financial intermediary to distribute fund shares or units, and the investor purchases units or shares through the firm and is registered in the fund's share/units register).

Chapter 9, section 4 of the Mutual Funds Act provides that the fund management company shall keep a unit register of the units of an investment fund to record the each unitholder's holdings. The unit register must contain information on the owner of each fund unit.

A unitholder as referred to in chapter 9, section 4 of the Mutual Funds Act corresponds to the case described in guideline 16.14 d) of the EBA Risk Factors Guidelines. The fund management company's customer is the owner of the fund unit indicated in the unit register.

Chapter 1.2 of FIN-FSA regulations and guidelines 2/2023 on the prevention of money laundering and terrorist financing provides that a customer refers to one to whom the supervised entity provides products or services.

In accordance with chapter 1.2 of the regulations and guidelines, a customer relationship refers to a contractual relationship, based on which the supervised entity provides services to a customer, and which is

- assumed, at the inception of the contractual relationship, to be permanent or become permanent regardless of the initial term of the contractual relationship or
- deemed permanent based on an assessment of the frequency, regularity of duration of separate transactions or other relevant factors based on a risk-based assessment of the obliged entity.

Chapter 3, sections 2 and 3 of the AML Act provide on the measures to be taken for customer identification and due diligence. The AML Act does not lay out specific provisions on the definition of a customer with respect to fund management companies' customers. According to the FIN-FSA's opinion, fund management companies' customers shall be subject to rules comparable to those applied to other customer relationships entered into with customers, however, excluding circumstances covered by the derogation concerning foreign customers (see below).

### 3 Derogation concerning foreign customers

Chapter 11, section 1 of the Mutual Funds Act provides a derogation, under which units owned by a foreign national or a foreign entity or foundation may be entered in the unit register so that a nominee who, on commission, manages the units on behalf of the unitholder, is entered therein instead of the unitholder.

In accordance with guideline 14.16 c) of the EBA Risk Factors Guidelines, a financial intermediary may be regarded as a customer where it acts in its own name and is registered in the fund's share/unit register but acts on the account of, and pursuant to specific instructions from, one or more third parties (e.g. because the financial intermediary is a nominee, broker, multi-client pooled account/omnibus type account operator or operator of a similar passive-type arrangement). In accordance with guideline 16.20 of the EBA Risk Factors Guidelines, however, the fund or fund manager should also take risk-sensitive measures in these circumstances to identify, and verify the identity of, the investors underlying the financial intermediary.

## 4 Outsourcing and use of a third party

Outsourcing or the use of a third party is possible in different customer due diligence tasks. However, firms cannot be released by contractual relationships from responsibilities imposed on them in the AML Act, for example through outsourcing or the use of a third party. If the division of tasks has not been defined in a clear manner, the risk of money laundering and terrorist financing associated with the obliged entity's activities may become elevated.

According to the FIN-FSA's interpretation stated in chapter 10.1, paragraph 7 of FIN-FSA regulations and guidelines 2/2023, the provisions of chapter 3, section 7(8) of the AML Act on the use of third parties also apply to outsourcing or the use of a representative, which means that supervised entities cannot be released by contractual relationships from responsibilities imposed on them by the AML Act.

<sup>1</sup> The Guidelines repealed and replaced EBA Guidelines JC/2017/37.

<sup>2</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.