

The Wolfsberg AML Principles Frequently Asked Questions with Regard to Intermediaries

Wolfsberg Principles

1.2.3 Accounts held in the name of money managers and similar intermediaries

The private banker will perform due diligence on the intermediary and establish that the intermediary has a due diligence process for its clients, or a regulatory obligation to conduct such due diligence, that is satisfactory to the bank.

1.2.4. Power of attorney/Authorized signers

Where the holder of a power of attorney or another authorized signer is appointed by a client, it is generally sufficient to do due diligence on the client.

Q.1. What is an intermediary in the private banking area?

- A.** An intermediary may act in a variety of different capacities and for different purposes. In these Frequently Asked Questions, the term intermediary is used to describe a person that:
- refers clients to the bank (an "Introducing intermediary"); or
 - acts as a professional asset manager for another person or entity and either:
 - (i) is authorized to act in connection with an account that such person or entity has with the bank (and typically also has a direct contractual relationship with the bank (see the response to Q6)); or
 - (ii) is itself the accountholder with the bank
- (in either case we refer to these intermediaries as a "Managing intermediary"); or
- acts as a power of attorney or signatory to the account (an "Agent intermediary")

For the purposes of this paper, the term intermediary does not refer to the situation where an account holder is simply a legal structure such as trusts, foundations, partnerships, companies or other vehicles for holding assets.

Q.2. What references are there in the Wolfsberg Principles concerning intermediaries?

- A.** The Wolfsberg Principles refer to intermediaries in the following sections:

1.2.3 Accounts held in the name of money managers and similar intermediaries

The private banker will perform due diligence on the intermediary and establish that the intermediary has a due diligence process for its clients, or a regulatory obligation to conduct such due diligence, that is satisfactory to the bank.

1.2.4 Powers of attorney/Authorized signers

Where a client appoints the holder of a power of attorney or another authorized signer, it is generally sufficient to do due diligence on the client

In broad terms Principle 1.2.3 refers to certain types of Managing intermediaries (most usually those described in clause (ii) of the second bullet in the response to Q1). It may be helpful, for the purpose of this paper, to distinguish this type of Managing intermediary from the type of Managing intermediary described in clause (i) of the second bullet in the response to Q1. Principle 1.2.4 refers to Agent intermediaries. Although there is no principle dealing specifically with Introducing intermediaries it may be helpful to discuss their role in this paper.

Q.3. What is an Introducing intermediary?

- A.** The role of the Introducing intermediary is limited to introducing a client to the bank. The intermediary is not the accountholder, beneficial owner or signatory on the account. For example, Introducing intermediaries may include lawyers, accountants, financial advisers and fund managers. The Introducing intermediary may also be an existing client or other person who occasionally refers clients to the bank.

Q.4. What due diligence should be undertaken on an Introducing intermediary?

- A.** The bank must be satisfied with the intermediary's reputation and integrity.

If the Introducing intermediary is an existing client, then the due diligence has already been completed on the intermediary. If the intermediary is not an existing client or an institution with a well-known and satisfactory reputation, then it would be appropriate for the bank to verify the intermediary's reputation and integrity.

An intermediary may have a continuing relationship with the bank as an introducer of clients. The bank should have a process in place to review and approve intermediaries that act on a professional basis. If the bank relies on the due diligence conducted by the intermediary on potential clients, the bank must be satisfied with the due diligence procedures used by the intermediary. Moreover, a record of the due diligence performed by the bank on the intermediary should be maintained.

If the Introducing intermediary also provides a reference for the client, the reference should document the nature and length of the relationship between the intermediary and the client.

Q.5. If an Introducing intermediary refers a client to the bank, what level of due diligence should be conducted by the bank with respect to the client?

- A. Generally, even if an Introducing intermediary is involved in the relationship, the bank must obtain the same type of information with respect to the accountholder (or, if different, beneficial owner) that would otherwise be obtained by the bank, absent such involvement by an intermediary. For example, the bank would obtain the requisite information regarding the accountholder's (or beneficial owner's) source of funds and anticipated account activity. The bank should also follow the guidance set forth in the Wolfsberg Principles and in the FAQs with respect to beneficial ownership above with regard to establishing identity by reference to official documents.

However, the bank may, under certain circumstances, as described in the next paragraph, rely on the intermediary to assist in obtaining this information and may obtain copies of official documents through the intermediary. Obtaining this type of information and documentation through the intermediary could, if the intermediary has met or will meet with the client, constitute reasonably sufficient measures that would render it unnecessary for the client to be met by an employee of the bank before the opening of the account (provided the intermediary attests to the accountholder's (beneficial owner's) identity). See Paragraph 1.3 of the Wolfsberg Principles.

There may be this level of reliance on the intermediary if the intermediary has a satisfactory reputation and satisfactory due diligence procedures.

Q.6. What is a Managing intermediary?

- A. The role of the Managing intermediary is to manage assets on behalf of one or more clients. In a typical situation, the Managing intermediary arranges for the opening of custody accounts for its clients with the bank. The bank has a direct account relationship with such clients and typically also has a direct contractual relationship with the intermediary setting out the responsibilities between the bank and the intermediary regarding due diligence. This is the situation described in Clause (i) of the second bullet in the response to Q.1.

There may also be situations in which the Managing intermediary becomes the accountholder with the bank. The intermediary's clients, in this situation, remain clients of the intermediary and do not become the clients of the bank and should not somehow be deemed to be clients of the bank. This is the situation described in Clause (ii) of the second bullet in the response to Q.1.

Managing intermediaries may include lawyers, fund managers or independent financial advisors.

Q.7. What due diligence should be undertaken on a Managing intermediary?

A. The bank must be satisfied with the intermediary's reputation and integrity. Moreover, the bank should inquire as to the relationship between the intermediary and its clients. In addition the following factors should be considered:

- Whether the intermediary is regulated and, if so, in which jurisdiction
- Whether the intermediary is from a jurisdiction that meets the FATF anti-money laundering standards and is subject to the jurisdiction's anti-money laundering legislation
- Whether, even if not based in an FATF country, the intermediary applies procedures and standards that are equivalent to those of intermediaries subject to money laundering legislation in jurisdictions that meet FATF standards (for example, companies that adopt global policies which reflect FATF requirements)
- Whether the intermediary is from an FATF non-cooperative country

If the intermediary is of the type described in clause (ii) of the second bullet in the response to Q.1, the bank must determine that the due diligence procedures the intermediary applies to clients are of an acceptable standard.

Q.8. Should the bank conduct due diligence with respect to the Managing intermediary's clients?

A. The answer differs depending on the role of the intermediary.

If the intermediary's client has a direct account relationship with the bank (i.e., the situation described in clause (i) of the second bullet in the answer to Q.1), then the due diligence conducted by the bank with regard to that client would generally be comparable to that described in Q.5.

However, if the intermediary is the accountholder with the bank (i.e., the situation described in clause (ii) of the second bullet in the answer to Q.1) and if it is reasonable for the bank to rely on the intermediary, it should not be necessary to conduct due diligence with respect to the intermediary's clients. The intermediary's clients in this situation should generally not be viewed as the bank's clients, and conducting due diligence with respect to them would accordingly not be necessary. However, such reliance on intermediaries may not always be warranted, and when it is not, the bank should consider the factors listed in the answer to Q.7 above in determining whether to conduct due diligence on a Managing intermediary's clients in this situation.

The cases below may be representative of situations faced by a financial institution concerning an intermediary that is the accountholder with the bank (i.e. the clause (ii) situation).

Case # 1: The intermediary is a financial institution subject to similar money laundering laws, due diligence standards and regulatory supervision as the bank. In such a case, it would be reasonable to rely on the intermediary and it would not be necessary for a bank to perform due diligence on the intermediary's clients.

Case # 2: The intermediary is an investment advisor or an investment fund that is not regulated and not subject to money laundering legislation. The bank should not rely on

the intermediary unless it determines that the fund or advisor is of good reputation and has satisfactory due diligence procedures (e.g., it is based in a non-FATF country but is part of a Group that applies acceptable global anti-money laundering control policies and procedures). If the bank determines that it is not comfortable relying on the intermediary to conduct the requisite due diligence with regard to the intermediary's clients, then the bank should perform its own due diligence on the underlying clients.

Case #3: The intermediary is an investment advisor or investment fund that is not regulated and not subject to money laundering legislation. The bank determines that the intermediary is of good reputation and has satisfactory due diligence procedures. However, regulation applicable to the bank requires the bank to conduct due diligence with respect to the intermediary's clients. The bank may rely on the intermediary to assist in obtaining relevant due diligence information with regard to the intermediary's clients.

Q.9. What is an Agent intermediary?

- A. An Agent intermediary is one that has signatory authority over an account but does not act on a professional basis as a manager of funds (see Question 6). The intermediary is neither the accountholder nor the beneficial owner of an account. Agent intermediaries may include lawyers, accountants, family members or friends of the accountholder or, if different, the beneficial owner of the account.

Q.10. What due diligence should be undertaken on an Agent intermediary

- A. It is not usual to perform due diligence on an Agent intermediary. Nevertheless, the relationship between the Agent intermediary, the accountholder and, if different, the beneficial owner of the account must be understood.

The nature of the relationship between the accountholder and beneficial owner of the account and the Agent intermediary may require the private banker to conduct further due diligence on the intermediary. For example, if the relationship between the Agent intermediary and the accountholder or beneficial owner is not evident, further information should be obtained from the intermediary concerning the relationship. If the intermediary's response to the private banker's questions concerning the relationship between the intermediary and the accountholder or, if different, the beneficial owner, is not satisfactory, then the account should not be opened.

The private banker must obtain the necessary documentation establishing the Agent intermediary's authority to act on behalf of the accountholder or beneficial owner (e.g., the power of attorney). It is also advisable to obtain a copy of the Agent intermediary's identification document.

The due diligence performed on the accountholder and, if different, the beneficial owner, is the same as it would be in the situation where there is no Agent intermediary. In this regard, the situation is generally the same as that discussed in the response to Q.5