



**CIRCULAR NO.CMA/MRT/ No.06/2023**

November 2, 2023

**To: All Chief Executive Officers/Managing Directors –  
All Market Intermediaries**

**RE: GUIDANCE ON ANTI-MONEY LAUNDERING AND COUNTERING FINANCING OF  
TERRORISM (AML/CFT) RISK-BASED APPROACH**

As you are aware, Money Laundering (ML) and Terrorism Financing (TF) National Risk Assessment (NRA) of Kenya was concluded in 2021. The NRA identified and assessed the threats, vulnerabilities, level and trends of ML/TF in the country as well as proposed measures to mitigate the identified risks. The NRA included a vulnerability assessment and control variables assessment of the securities sector including product specific vulnerabilities.

As contained in the NRA report, the CMA identified specific areas and key components that require immediate attention and enhanced due diligence (EDD) by all market intermediaries. These include:

1. The NRA identified the national money laundering threat and national money laundering vulnerability in Financial Institutions (FIs) sectors and Designated Non-Financial Business and Professions (DNFBPs) sectors as detailed in the table below:

**FIs**

|    | <b>Sector</b>                     | <b>ML Threat</b>  | <b>ML Vulnerability</b> |
|----|-----------------------------------|---|-------------------------|
| 1. | Securities                        | Low but there is a likelihood of the level of threat to increase in the following years | Medium                  |
| 2. | Banking                           | High with a likelihood of increasing in the following years                             | Medium- High            |
| 3. | Insurance and Retirement benefits | Medium with a likelihood of increasing in the following years                           | Medium                  |

|    |                                   |   |              |
|----|-----------------------------------|---|--------------|
| 4. | Foreign Exchange Bureaus          | Low with the level of threat likely to reduce further in the future | Medium- High |
| 5. | Money Remittance Providers (MRPs) | Low with the level of threat likely to reduce further in the future | Medium- High |
| 6. | Payment Service Providers (PSPs)  | Low with the level of threat likely to reduce further in the future | Medium       |
| 7. | Saccos                            | Low   | Medium- High |

#### DNFBPs

|    | Sector                      | ML Threat   | ML Vulnerability |
|----|-----------------------------|---|------------------|
| 1. | Casinos/ Betting and Gaming | Medium  | High             |
| 2. | Motor Vehicle Dealers       | Medium-High with a likely increase in the level of threat in the future due the lack of clear regulations for monitoring the sector | Very High        |
| 3. | Lawyers                     | Medium-High with a potential for increase in the level of threat  | High             |
| 4. | Accountants                 | Medium-Low with no likelihood for increase in the level of threat   | Medium- High     |
| 5. | Real Estate                 | High with a potential for increase in the level of threat in the future   | High             |

2. In addition, the money laundering vulnerability of dealers in precious metals and stones and certified secretaries' profession were rated as high and medium-high respectively.
3. As highlighted above, the money laundering vulnerability of the securities sector was assessed as medium. The ML threat in the securities sector was rated low but there is a likelihood of the level of threat to increase in the following years.

4. The capital markets product/service ML vulnerabilities are as detailed in the table below:

|    | Securities Products  | Product's ML vulnerability |
|----|--|----------------------------|
| 1. | Fixed Income Securities  | Medium                     |
| 2. | Equities   | Medium                     |
| 3. | Registered and Unregistered Collective Investments Schemes (CIS) | Medium                     |

|    |  |             |
|----|--|-------------|
| 4. | Alternative Asset Classes (Online Foreign Exchange Trading and CFDs)         | Medium high |
| 5. | Private Wealth   | Medium high |
| 6. | Regulatory Sandbox   | Medium low  |
| 7. | Hedge Funds, Private Equity Funds, Venture Capital Funds and Commodity Pools | Medium high |

5. ML component related to terrorism was rated as Very Low in the country as terrorist attacks in Kenya are largely ideological in nature and not an enterprise that aims to benefit the attackers financially. Therefore, the ML threat from terrorism related offences in Kenya was rated Low. This assessment is not likely to change in the near future.

6. Further, the NRA categorized predicate offenses as follows:

**High-risk predicate offences**

- Fraud and forgery related offences.
- Drug related offences.
- Corruption and economic crimes.

**Medium-risk predicate offences**

- Environmental and wildlife crimes.
- Cybercrime offences.
- Tax related offences.
- Counterfeiting and piracy products.

**Low-risk predicate offences**

- Human trafficking and smuggling of persons.
- Terrorism.

In this regard and in line with Regulation 7 of the Proceeds of Crime and Anti-Money Laundering Regulations (POCAMLRL), 2023, market intermediaries are required to undertake risk assessments to enable them to identify, assess, understand, monitor, manage and mitigate the risks associated with money laundering, terrorism financing and proliferation financing. The institutional risk assessments should factor in findings of the NRA and consider customer, geographic, delivery channels and products & services risks.

Further, all market intermediaries are reminded of their obligations as follows:

- i. Regulation 20 of the Proceeds of Crime and Anti-Money Laundering Regulations, 2023, requiring market intermediaries to apply EDD measures to persons and entities that present a higher risk.
- ii. Clause 4 (1) of the Guidelines on the Prevention of Money Laundering and Terrorism Financing in the Capital Markets, 2015 requires that where customers are assessed to be of higher money laundering risk, a market intermediary shall take enhanced measures to manage and mitigate those risks. Where the risks are lower, simplified measures may be applied. Simplified measures include reducing the frequency of customer identification updates or reducing the degree of ongoing.
- iii. Clause 4 (2) of the Guidelines on the Prevention of Money Laundering and Terrorism Financing in the Capital Markets, 2015 requires market intermediaries to identify, assess and take effective action to mitigate money laundering risks and adopt a holistic approach to the Risk Based Approach and should avoid a silo approach when assessing the relationship between risks.
- iv. Regulation 26 of the POCAMLR 2023 and Clause 6 (15) of the Guidelines on the Prevention of Money Laundering and Terrorism Financing in the Capital Markets, 2015 requires EDD measures be applied to high-risk customers such as transactions involving complex ownership structures, cash-intensive businesses, Politically Exposed Persons (PEPs) or customers from high-risk jurisdictions.
- v. PART 3 Regulation 7 (5) of the POCAMLR 2023 requires a reporting institution to update its risk assessment policies or programs regularly but at least once every two years taking into account changes such as the entry of the institution into new markets and the introduction of new products and services.

Consequently, all market intermediaries are required to implement EDD measures on any engagements and interactions with identified high-risk sectors in the 2021 NRA and **any subsequent updates to the NRA**. In addition, institutions should take into consideration NRA findings when carrying out ML/TF risk assessments. The NRA report may be accessed through <https://www.frc.go.ke/downloads/send/6-for-your-information/150-national-risk-assessment-report.html>.

Reporting institutions under the purview of CMA are required to submit their latest Money Laundering, Terrorism Financing and Proliferation Financing Risk Assessment Reports to the Authority by **December 31<sup>st</sup>, 2023**.

Failure to comply with this guidance will lead to regulatory intervention and enforcement action. This circular comes into effect from today, Thursday November 2, 2023.

This circular is also issued pursuant to Section 11 (3) (d) and (i) of the Capital Markets Act, Cap 485A to promote the proper conduct of licensed businesses and to promote the development of and to regulate the securities markets.

**For any clarifications, please contact:**

**Director Market Operations**

**Capital Markets Authority**

**Embankment Plaza, 3rd Floor**

**Longonot Road, off Kilimanjaro Avenue, Upperhill**

**P.O Box 74800 – 00200**

**Nairobi, Kenya**

**Email: [ms@cma.or.ke](mailto:ms@cma.or.ke)**

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Wycliffe Shamiah', written over a large, stylized circular flourish.

Wycliffe Shamiah, FCPA  
**CHIEF EXECUTIVE OFFICER**

Cc: Mr. Saitoti K. Maika, MBS  
Director General  
Financial Reporting Centre  
UAP Towers Upperhill  
Private Bag 00200  
**NAIROBI**

