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Link'n Learn
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Anti-money laundering

Speakers

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Agenda

1. The 4th EU Money Laundering Directive
2. Expected major effects on Irish legislation
3. EU Commission Updates to Directive
4. CBI Report on AML in Funds Industry
5. How does the CBI conduct an inspection?
6. AML Typologies
7. Next steps for investment funds and administrators

The 4th EU Anti Money Laundering Directive

Background and context

- The Third EU Anti Money Laundering Directive issued in 2005
- Transposed into local legislation over subsequent number of years, which drastically changed the approach to AML/CFT around the EU
- Elements of the Third Directive regarded as vague and non-prescriptive, making a consistent approach more difficult to achieve
- FATF issued framework recommendations and guidelines in 2012 to strengthen international standards
- Fourth EU AML Directive to be issued in response to this in 2015, with a lead time of 2 years for transposition to local legislation

Objectives of the Fourth EU AML Directive

- In order to remove ambiguities and improve consistency of AML/CFT rules across jurisdictions, Fourth Directive to be issued
- More clearly define obliged entity (designated persons) and competent authority requirements
- Assist in achieving standardised Anti-Money Laundering and Counter Terrorism Financing across EU Member States
- Counteract terrorist financing through improved adherence to obligations
- Increase the focus of obliged entities to threats of AML/CTF

Expected Effects on Irish Legislation

Impact

1. Risk Based Approach

- Member State requirement to evidence that appropriate steps have been taken to identify, assess, understand and mitigate AML/CTF risk
  - National Risk Assessment

- Obliged Entity requirement to evidence risk assessment will be more explicit in new Directive
  - Specific factors to be included e.g. customer, product, geography, channel i.e. bringing these FATF guidelines into legislation

2. CDD and Ongoing Monitoring

CDD:

- Minimum factors for consideration when applying Simplified CDD, and requirement to evidence rationale for applying SCDD
- More prescriptive requirements for applying Enhanced CDD and factors for consideration as higher risk

Ongoing Monitoring:

- More prescriptive requirements for conducting and keeping risk assessments up-to-date
- Requirement to evidence rationale for assignment of riskrating

Impact

3. Beneficial Owners & PEPs

Beneficial Ownership:

- Explicit requirement for legal persons to hold accurate and current information in relation to beneficial ownership of that legal person
- Provision of accurate information to obliged entities and competent authorities on request

PEPs:

- Definition of PEPs to be extended to include domestic PEPs
- Requirement to monitor persons ceasing to be PEPs for additional 6 months, i.e. for a total of at least 18 months

4. Senior Management & Third Party Equivalence

Senior Management:

- Definition of Senior Management to be introduced as employees/officers with specific knowledge of institutions exposure to AML/CTF risk, as well as sufficient seniority
- Clarity that Senior Management definition will not be restricted to members of the Board of Directors

Third Party Equivalence:

- Rescindment of the “white list” of equivalent jurisdictions for AML/CFT jurisdictions outside of the EU.
- Requirement for risk assessment to be conducted on countries outside of EU for AML/CFT purposes

Impact

5. Data Protection & Record Keeping

Data Protection:

- Requirement for consideration of Data Protection requirements for sharing customer information in AML/CFT procedures
- Clarity around application of AML/CFT rules for subsidiaries in third countries where legislation is deficient or non-equivalent

Record Keeping:

- Requirement to delete personal data 5 years after business relationship has come to an end (maximum of 10 years if greater period of retention required by Member State)

Additional Obligations

Competent Authority:

- Incorporate new directive requirements into legislation
- Perform a National Risk Assessment
- Provide guidance for adoption for obliged entities
- Assist with cooperation of Finance Intelligence Units on an international platform

Obliged Entity:

- Review risk classifications
- Maintain records to high quality standard that would stand up under CBI scrutiny
- Update procedures and systems to assist compliance with the new regulation requirements

EU Commission Updates to 4th Directive – February 2016

Key Updates Proposed

- Ensuring a high level of safeguards for financial flows from high risk third countries
- Enhancing the powers of EU Financial Intelligence Units and facilitating their cooperation
- Centralised national bank and payment account registers or central data retrieval systems in all Member States
- Tackling terrorist financing risks linked to virtual currencies
- Tackling risks linked to anonymous pre-paid instruments (e.g. pre-paid cards)

CBI Report on AML/CFT to Irish Funds Sector – November 2015

CBI Key Findings – AML/CFT Report

1. Governance
2. Risk assessments
3. Outsourcing
4. Customer Due Diligence
5. Suspicious Transaction Reporting
6. PEPs
7. Policies and Procedures

CBI Inspections – Potential Future Expectations

1. On-going Monitoring
2. CDD – Take-on of Investors from other administrators
3. Remediation of Investor register
4. IT Systems – User Access Management and System Interfaces
5. Acceptance of subsequent subscriptions and “as soon as practicable”
6. Management of Inactive Accounts

Themes


Review of Politically Exposed Persons for new and existing customers
Reliance on due diligence being conducted by third parties
Customer Due Diligence and on-going monitoring
Review of any outsourcing arrangements
Suspicious transaction reports including transaction monitoring

How does the CBI conduct an inspection?

How does the CBI conduct inspections for the Funds industry?

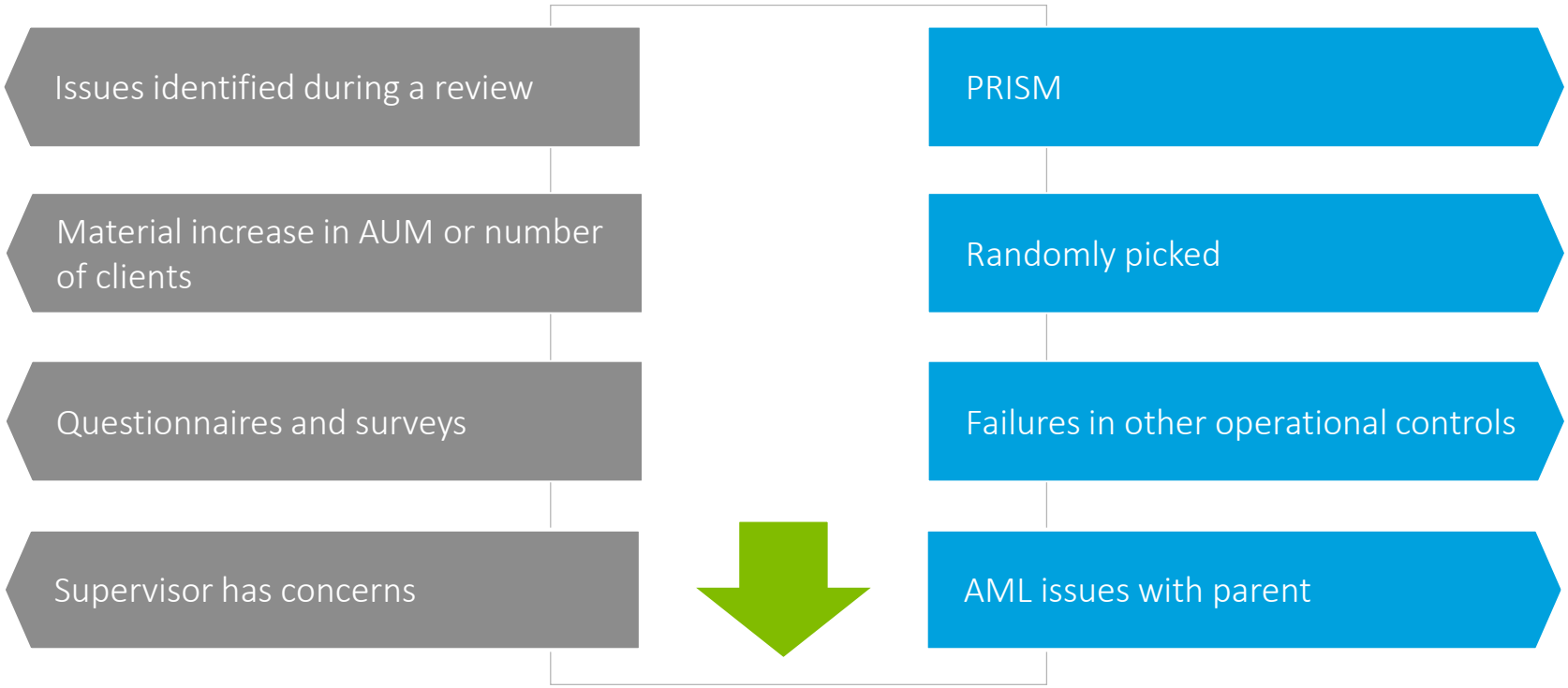
Fund Focused

CBI led inspection

Deep Dive using third party

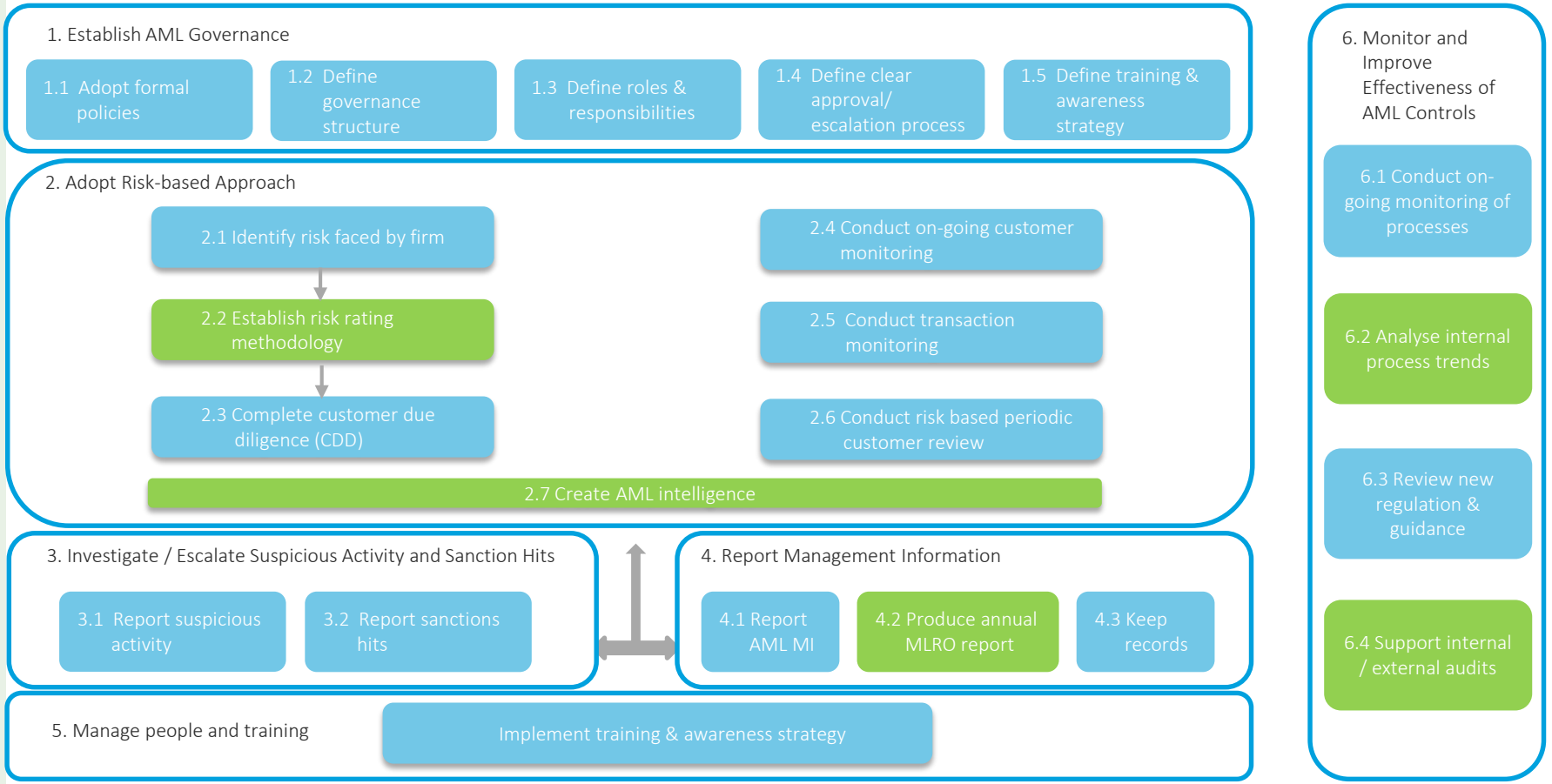
PRISM

Why does the CBI select an entity for inspection?

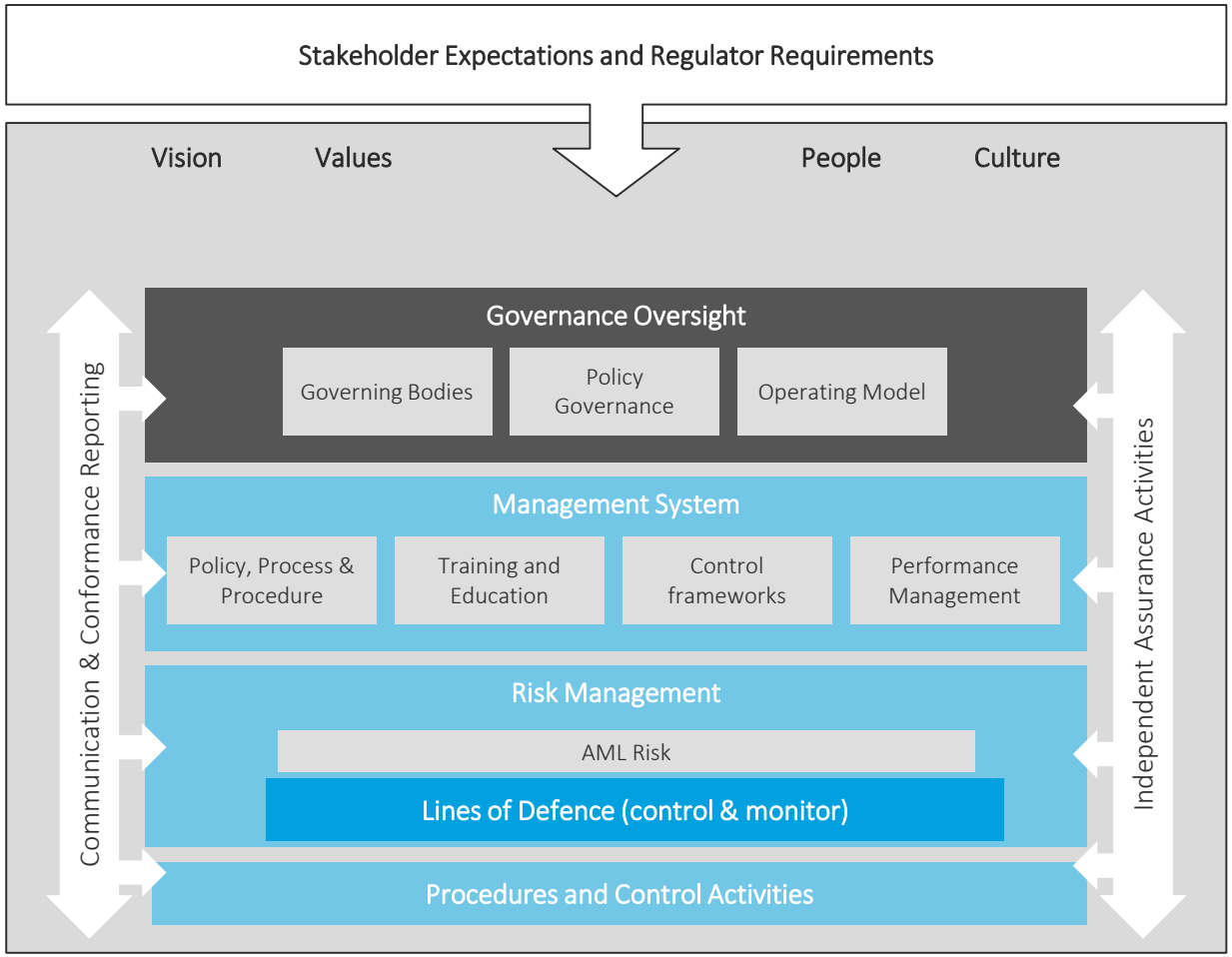


Triggers and reactive measures should be developed in this regard

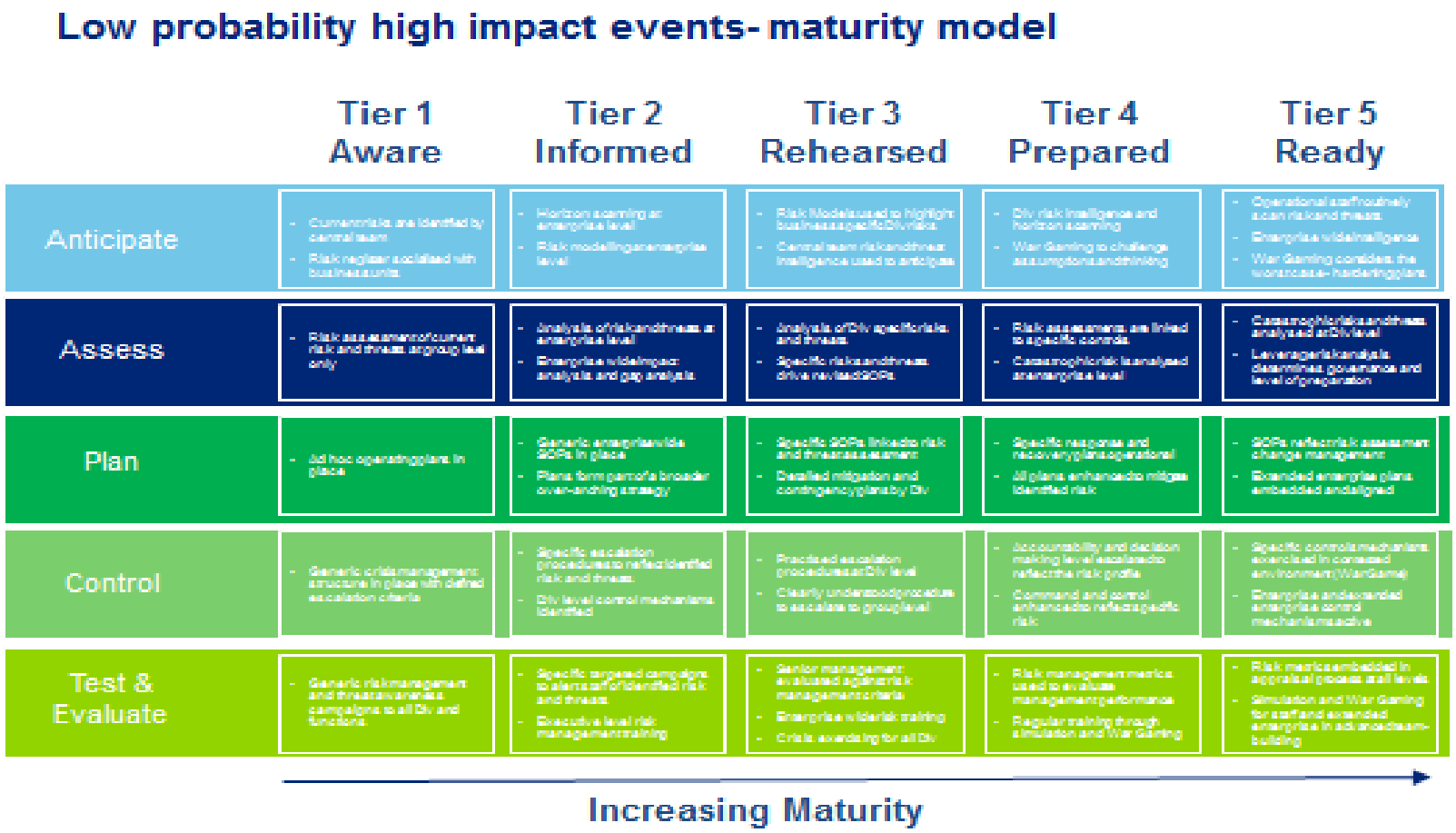
Central Bank review framework



Governance - AML Risk Framework



Risk Maturity



AML Typologies

US FinCEN Recent Awards

- SAR Review Task Force – IRS Criminal Investigation
- Transnational Organised Crime - FBI
- Transnational Security Threat – US Customs and Border Protection National Targeting Center
- Third Party Money Laundering – IRS Criminal Investigation
- Significant Fraud – Immigration and Customs Enforcement – Homeland Security Investigations

What should we do now?

Next Steps for investment funds and administrators

Review existing investor books and practices for regulatory expectations and legislative requirements

Revisit and expand risk assessments to incorporate financial sanctions as well as AML/CFT

Perform an impact assessment for the transposition of the 4th EU AML Directive into local legislation

Q&A