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DUFAS Response
RTS on Customer Due Diligence

To: AMLA
From: The Dutch Fund and Asset Management Association (DUFAS)
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Introduction

The Dutch Fund and Asset Management Association (DUFAS) welcomes the opportunity to respond to AMLA's public consultation on the draft regulatory technical standards (RTS) under Article 28 of Regulation (EU) 2024/1624.

As the representative body of the Dutch asset management sector, DUFAS supports the objective of strengthening the effectiveness and consistency of the EU's AML/CFT framework. In particular, we welcome the explicit recognition of a risk-based approach and the ambition to further harmonise customer due diligence (CDD) requirements across obliged entities.

At the same time, we emphasise that the AML framework applies to a wide range of obliged entities with fundamentally different business models, risk profiles and client relationships. This is particularly relevant in the asset management sector, where the nature of the relationship with investors differs materially from other parts of the financial sector, including where fund units or shares are distributed through regulated intermediaries.

Against this background, it is essential that the RTS provide sufficient flexibility for obliged entities to tailor their CDD measures to their specific role and the risks they face. In our view, several provisions of the draft RTS remain overly prescriptive, insufficiently risk-sensitive, or unclear from an operational perspective.

In this response, we therefore provide targeted comments aimed at enhancing clarity, proportionality and the effective application of the risk-based approach.

Question 1

Do you agree with the proposals set out in these draft RTS? If you do not agree, please specify:
(i) the provision(s) concerned; and
(ii) the rationale for your position.
Please provide concrete drafting proposals to resolving the issue and explain why the measure you propose would be more appropriate.

Partly. We welcome several elements, in particular the explicit recognition of a risk-based approach. However, a number of provisions remain too prescriptive, insufficiently tailored to the asset

management sector, or unclear from an operational perspective. We therefore propose the clarifications and drafting changes below.

Scope clarification for holding and parent companies

- Where a holding or parent company qualifies as an obliged entity under AMLR, we would appreciate clarification on who should be regarded as the relevant "customer" or "business relationship".
- The AMLR defines business relationship as follows: "*a business, professional or commercial relationship connected with the professional activities of an obliged entity, which is set up between an obliged entity and a customer, including in the absence of a written contract and which is expected to have, at the time when the contact is established, or which subsequently acquires, an element of repetition or duration.*" The definition requires that a relationship should be connected with the 'professional activities of the obliged entity'. In practice a holding company/parent company could have as main objective to manage and acquire other financial institutions or companies. Do we understand correctly that in those circumstances, due diligence would be required in case the financial holding acquires a new financial holding company? Could there be other examples?

In addition to the above, please find below our article-by-article comments on the draft RTS.

Article 1 - Risk-based approach and sector specificity

We welcome the inclusion of a risk-based approach. This seems to address DUFAS' earlier concern that the differences between types of obliged entities are not always adequately reflected in the AML framework.

Article 1 of the RTS appears to allow deviations from the information to be obtained and the measures to be applied under this RTS, depending on the type of risk identified. We therefore understand the RTS to permit a proportionate and risk-based application of the requirements. In that context, we would appreciate clarification on the following points:

- Can Article 1 of the RTS be applied to all provisions of the RTS? For example, to Article 5 of the RTS, which sets minimum requirements for customer identification in lower risk situations?
- Can Article 1 of the RTS result in fewer identification and verification measures to be applied, based on the internal policy of the obliged entity? For example, when carrying out due diligence on regulated investors or other regulated business relationships, where the relationship meets a predefined low-risk profile that takes into account the risk factors set out in Annexes I–III AMLR?
- The RTS is based on Article 28 AMLR (regulatory technical standards on the information required for customer due diligence). Article 28 AMLR also refers to other AMLR provisions that mandate the development of RTS, such as Article 33 AMLR (simplified due diligence). Does this RTS cover all RTS mandates assigned to AMLA under these articles?

Articles 2 to 5 - Identification data for natural persons

- Article 2 stipulates that obliged entities shall obtain all of the customer's full names and surnames. We propose to clarify how obliged entities should deal with call names, marital names, aliases, and the different use of prefixes and suffixes across Member States. Without such clarification, divergent implementation is likely.
- We propose to clarify that for example in cases of low risk, minor variations caused by local naming conventions, call names, marital names, prefixes, suffixes, diacritics, transliteration or ordering of names should not require additional remediation where the obliged entity can reasonably establish that the information relates to the same person.
- Article 4 details that the place of birth concerns at least the country name. In practice, passports and identity cards often do not show the country of birth in a manner that can be independently verified. The RTS should therefore specify what evidence is acceptable, including whether a customer statement can be relied upon where no official source is reasonably available, and whether additional measures/request for additional measures may be omitted, for example in cases of low risk.
- Article 5 requires obliged entities to obtain information on all nationalities. For many obliged entities, including asset managers, there is no public database against which this can be verified. The RTS should clarify that, absent red flags, a declaration by the customer and supporting identity documentation should be considered sufficient and obliged entities are not expected to independently verify the absence of other nationalities.

Article 11 – Understanding the ownership and control structure

We note that paragraph 1 already requires obliged entities to take “risk-sensitive measures” to obtain a comprehensive understanding of the ownership and control structure of the customer pursuant to Article 20(1)(b) of Regulation (EU) 2024/1624. We understand this to mean that the requirements set out in this Article should be interpreted and applied in a proportionate and risk-based manner.

In that context, we understand in particular that:

- the requirement to obtain references to intermediary legal entities or legal arrangements between the customer and the beneficial owner should be limited to entities that form part of the direct ownership or control chain, and should not extend to sister companies or other group entities that are not relevant to establishing ownership or control;
- the depth of the inquiry should remain commensurate with the level of ML/TF risk identified, such that in lower-risk cases obliged entities may rely on corporate documentation, public registers, or information already obtained for prudential or other regulatory purposes; and
- the requirement in paragraph 2(b)(ii) to obtain information on the regulated market on which securities are listed should be applied proportionately, particularly where listed status already points to a lower ML/TF risk and may support simplified customer due diligence.

We would welcome confirmation that this interpretation is consistent with the intended application of Article 11.

Article 12 - Understanding the ownership and control structure of the customer in case of complex corporate structures

DUFAS supports the objective of understanding ownership and control structures. However, in the asset management industry, the criterion in paragraph 1(b) ("jurisdictions outside the EU") is met in a large number of standard, legitimate structures due to the inherently international nature of the sector.

As a result, many low- or medium-risk structures are automatically classified as complex, leading to disproportionate administrative burdens without a corresponding increase in AML/CFT effectiveness.

To ensure a more risk-based and proportionate approach, DUFAS proposes to replace "three or more layers" with "five or more layer" and to replace "outside the EU" with a reference to "high-risk third countries" (e.g. as identified by the FATF or EU). This would better align the requirement with actual ML/TF risk.

DUFAS also proposes to amend Article 12(2) as follows: "In the case of complex corporate structures as referred to in paragraph 1, obliged entities shall take reasonable measures and, where necessary, obtain additional information, such as an organigram, needed to complement the information collected under Article 11(1), to understand the complex corporate structure."

Article 13 - Senior managing officials

Article 13 appears to require identification and verification of senior managing officials in a way that mirrors the approach for UBOs. Given the broad AMLR definition of senior managing official, this may create excessive operational burden without corresponding AML/CFT benefit.

DUFAS suggests limiting the obligation to executive board members or, alternatively, to those senior managing officials who are materially involved in the business relationship or transaction.

Moreover, we assume that, based on article 1 RTS, the information to be obtained in respect of senior managing officials can be more limited compared to UBO's. For senior managing officials, there is generally no added value in collecting source of funds or source of wealth information, because they do not themselves provide the funds for the relationship.

Articles 14 and 15 – Trusts and similar legal arrangements

DUFAS would welcome clarification whether Articles 14 and 15 apply only where the trust or similar legal arrangement is the customer, or also where such arrangement appears as an intermediate layer in a customer's ownership or control structure. Where the trust is only an intermediate layer and the relationship is not higher risk, a risk-sensitive ownership and control assessment under Articles 11 and 12 should be sufficient.

Article 16 – Person purporting to act on behalf of the customer

DUFAS would welcome clarification that Article 16 applies to persons with authority to bind or instruct the customer in relation to the business relationship, and does not extend to persons who merely transmit operational instructions, provide administrative support, or act in a limited technical capacity where the investor or account holder remains the customer. This would support harmonised application and avoid unnecessary requests for irrelevant individuals.

Article 17 - Identification and verification obligations for collective investment undertakings

We welcome article 17 RTS, as in the fund sector, the number of final investors subscribing through an intermediary can reach hundreds of thousands. Funds are pooled investment vehicles in which investment decisions are taken by the asset manager and are typically not determined or controlled by end-investors.

A general look-through requirement to all final investors should therefore not apply where units or shares are held or distributed through regulated intermediaries that are subject to equivalent AML/CFT requirements and effective supervision.

In addition, where the intermediary relationship is higher risk or where one of the Article 17 conditions is not fully met, this should not automatically result in systematic identification and verification of every final investor by the CIU. Instead, the CIU should apply enhanced due diligence and oversight to the intermediary and the distribution arrangement.

We understand Article 17 RTS to mean that a collective investment undertaking distributing its shares through another credit institution or financial institution may rely on the customer due diligence performed by that institution, provided that, in addition to the measures listed in points (a)–(d), the collective investment undertaking has conducted appropriate due diligence on the intermediary institution itself, including identification and verification, and is satisfied — for example through contractual arrangements — that the intermediary institution will provide relevant due diligence information relating to the final investors upon request where necessary.

For the purposes of Article 17, "final investor" should mean the natural or legal person on whose behalf or for whose benefit the intermediary credit institution or financial institution acts when acquiring, holding or redeeming shares or units of the collective investment undertaking.

DUFAS would welcome a practical common reference, such as an AMLA or Commission list, methodology or supervisory guidance identifying third countries whose AML/CFT requirements may be treated as no less robust than Regulation (EU) 2024/1624 for the purposes of Article 17(a).

Article 26 - Destination of funds

Article 26(1)(b) refers to obtaining additional information in order to be satisfied that the destination of funds is consistent with the stated nature of the business relationship or occasional transaction and the customer's risk profile. It is currently unclear what specific information or sources would, in practice, enable obliged entities to make this assessment.

We therefore consider that the RTS should provide further clarification and practical examples of acceptable methods for satisfying this requirement, such as assessing the transaction rationale, subscription or redemption documentation, account matching, known custody or settlement flows, and information already available through regulated intermediaries.

We further understand that obliged entities are not expected to establish or verify the ultimate end-use of funds, but rather to assess whether the payment flow is plausible and consistent with the known business relationship, the customer profile, and the relevant risk indicators. We would

welcome confirmation that this interpretation is consistent with the intended application of Article 26(1)(b).

Article 30 - Timing of onboarding checks

Article 30(c)(i) refers both to "during customer onboarding" and "before entering into a business relationship". It is not clear whether these are intended to describe different situations. Clarification is needed to avoid divergent interpretations and unnecessary duplication.

Question 2

Do you agree that the proposals set out in these draft RTS can be applied across the range of products and services provided by your obliged entity? If you do not agree, please:
(i) explain your rationale for why the current proposals do not provide sufficient flexibility; and
(ii) provide concrete drafting proposals and explain why the specific measures you propose would be more appropriate.

The RTS explicitly allows for a risk-based approach, which we welcome. However, it remains unclear how this approach should operate in practice across the range of products and services offered within the asset management sector. In particular, uncertainty remains regarding the interpretation and practical application of proportionality in light of several provisions that appear to prescribe minimum mandatory measures in a more rule-based manner, as well as the interaction with other RTS and guidelines that may still be forthcoming.

We therefore believe that the asset management sector would benefit from additional clarification, practical examples, and confirmation of certain interpretations, including those referred to in our consultation response. In our view, such clarifications would provide greater legal certainty and support a more consistent and proportionate implementation of the RTS across different business models, customer types, and distribution structures.

Question 3

Do you agree that the proposals set out in these draft RTS allow for the effective application of a risk based approach towards compliance with AML/CFT requirements? If you do not agree, please: (i) specify the provisions concerned; and (ii) provide concrete drafting proposals and explain why the specific measures you propose would be more appropriate.

Not fully.

Although Article 1 recognises the importance of a risk-based approach, several subsequent provisions appear to prescribe extensive information collection and verification requirements without sufficient flexibility to calibrate the depth of the measures, the verification standards applied, or the timing of remediation to the actual ML/TF risk identified.

We therefore believe the RTS should more explicitly confirm that obliged entities may determine, on the basis of a documented risk assessment, the appropriate extent of data

collection, the type and intensity of verification, the sources relied upon, and the remediation timelines, provided that the overall AML/CFT objectives are effectively achieved.

Question 4

Considering the nature of your business, including its size, risks, and complexity, are there any situations where the information to be collected for the purposes of customer due diligence as proposed in these draft RTS is routinely unavailable and the proposals in these draft RTS do not provide an alternative solution? If so, please provide concrete examples of such situations and your proposals for alternative solutions.

Yes.

Examples include: place of birth country where the identity document does not contain the relevant information; all nationalities where no independent source is available; address verification in cross-border situations; detailed ownership information on intermediary entities in complex but lower-risk structures; and information relating to very large populations of final investors investing through intermediaries into funds.

In intermediary distribution models, we believe obliged entities should not be required to routinely obtain all final investor information themselves, but should be able to rely on the confirmation that the regulated intermediary has obtained and verified the relevant CDD information and can provide it upon request where necessary.

Question 5

Considering AMLA's legal mandate in Article 28(1) of Regulation (EU) 2024/1624, and taking into account your obliged entities' products offered and service provided, what other simplified due diligence measures should be included in the draft RTS, for example because of the associated lower ML/TF risks of these products and services? Please provide concrete drafting proposals and rationale for the specific measures you would propose.

Additional simplified due diligence measures should be recognised for products and relationships with demonstrably lower ML/TF risk, including certain collective investment structures and relationships with regulated institutional investors or counterparties.

Concrete proposals: Examples include: allowing reliance on existing regulatory status and public supervisory registers for regulated investors and regulated counterparties; limiting UBO and ownership inquiries for listed entities and entities already subject to equivalent transparency requirements; and recognising that, for collective investment undertakings, the AML/CFT focus should be on persons exercising ownership or control rather than on all end-investors in pooled structures. For funds distributed through regulated intermediaries, the RTS should also expressly allow simplified or adapted measures where the intermediary is subject to equivalent AML/CFT requirements and the risk is not high.

Rationale: These measures would better reflect the actual risk profile of the sector, reduce unnecessary administrative burden, and support the consistent, harmonised and proportionate application of AML/CFT requirements across the EU.