Dear CEO

12 October 2012

Re: Compliance with the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 ("CJA 2010")

Dear CEO,

As of 15 July 2010 the Central Bank of Ireland ("Central Bank") was designated by the CJA 2010 as the competent authority for credit and financial institutions (hereinafter referred to as "firms"). The CJA 2010 was introduced to transpose into law in Ireland the Third Money Laundering Directive which in turn embodied the recommendations published by the Financial Action Task Force ("FATF").

The Central Bank has conducted a program of inspections across all regulated sectors of the financial services industry to monitor firms' compliance with the requirements of Part 4 of the CJA 2010. These inspections have revealed a significantly lower level of compliance than expected by the Central Bank, with control weaknesses and failures identified in a number of core areas.

This letter and its Appendix provides firms with an overview of the control failures repeatedly identified in the course of the Central Bank's inspections and outlines actions the Central Bank expects firms to take where they identify similar shortcomings in their anti-money laundering and counter-terrorism financing ("AML/CFT") infrastructures. The Appendix is not intended to address control failures in respect of all of the obligations imposed by relevant legislation. Firms are reminded to have regard to the CJA 2010 as the most comprehensive and definitive source of their obligations.

In addition to the control failures raised in the Appendix, firms are also reminded of the key obligations to establish and maintain frameworks tailored to mitigate AML/CFT risks inherent in their specific business activities and to position themselves to demonstrate to the Central Bank that all reasonable steps have been taken to ensure compliance with the requirements of CJA 2010.

The control failures identified by the Central Bank include:

- undue delay in implementing measures to ensure compliance with CJA 2010
- where day to day responsibility for compliance with CJA 2010 had been delegated by the board, the necessary oversight at the appropriate level within the organisation was absent
- firms purporting to apply a risk based approach were unable to either document or demonstrate how they had evaluated the specific risks arising from their business activities or to produce any detailed rationale for risk mitigation plans adopted
- material gaps in the AML/CFT policies and procedures adopted by firms to prevent and detect money laundering and terrorist financing
- failures to provide, or lapses in the provision of, AML/CFT training to relevant staff
- varying types of failure to conduct appropriate customer due diligence ("CDD")
- firms not filing suspicious transaction reports within the timeframe set out by the CJA 2010

It is imperative that firms align their business processes to ensure compliance with CJA 2010; they must be in a position to demonstrate to the Central Bank how they have satisfied themselves that they are compliant and they must maintain awareness at board level of the need to continually review the appropriateness of the firm's risk-based AML/CFT measures as business evolves.

As a breach of the CJA 2010 may result in significant criminal or civil penalties, it is imperative that the implications of non-compliance are understood by boards and senior management of all firms and that all reasonable steps to ensure compliance have been taken. The Central Bank is prepared to use the full range of its regulatory tools where firms do not comply with the CJA 2010. This includes, where necessary, the pursuit of enforcement action against firms and the Central Bank has previously taken action in this area.

Firms must appreciate that AML/CFT requirements continue to evolve at a national and international level. Boards and senior management must appropriately anticipate changes to legislation and international standards and future-proof systems and processes accordingly. Examples of such developments include:

- revised FATF recommendations published in February 2012

- European Commission's review of the implementation of the Third Anti-Money Laundering Directive (2005/60/EC) and preparation for a fourth Directive

- Heads of a Criminal Justice (Money Laundering and Terrorist Financing) Amendment Bill published in June 2012

- guidelines for the financial services sector published in February 2012

Firms are reminded that Ireland is a member of FATF and in that context has committed to ensure that a robust framework is in place to combat money laundering and terrorist financing and to protect the financial system from threats to its integrity. Through the mutual evaluation review process ("MER"), FATF continually assesses the implementation in member countries of legal, regulatory and operational measures for combating money laundering and terrorist financing. These reviews put particular emphasis on the effectiveness of those measures. The Central Bank performs its role in a manner that gives due regard to Ireland's membership of FATF and the MER process. It follows that compliance with the CJA 2010 should be viewed by firms in that wider context, bearing in mind the reputational considerations both for the financial services industry and Ireland as an international financial services centre.

The Central Bank continues to build its supervisory capabilities in respect of AML/CFT and will conduct programs of risk based thematic inspections on an annual basis. These programs will focus on compliance with specific areas of the CJA 2010 at a detailed level and individual firms may receive further direct contact from the AML/CFT supervision in this regard. Firms can expect further correspondence following completion of these programs.

The Central Bank, in light of this letter, expects firms to review their AML/CFT policies and procedures and address any shortcomings. In addition, firms should regularly monitor the anti-money laundering section of the Central Bank website for updates.

Yours sincerely,

Peter Oakes
Director of Enforcement

Niamh Lambe
AML/CFT Supervision

Appendix – control failures

The control failures are set out in the context that firms have, in the first instance, an obligation to have appropriate frameworks in place to "prevent and detect money laundering" and secondly, in making these findings, the Central Bank has considered whether firms were in a position to demonstrate compliance and or demonstrate that all reasonable steps had been taken to ensure compliance.

Details of Central Bank findings arising from inspections

Governance

The board and senior management of the firm were unable to demonstrate to the Central Bank that:

- they had considered the implications of the CJA 2010 on their business and aligned their business models accordingly to ensure compliance

- they had appropriately prepared for commencement of the CJA 2010 and allocated the necessary level of resources to implement the changes to business practices, policies and procedures that were required

- the firm had an appropriate governance framework to ensure ongoing oversight of compliance by the firm with the CJA 2010

- they had awareness of the potentially serious implications for the firm and for individual members of management and staff where the firm had failed to comply with the CJA 2010

The Central Bank expects firms to be able to demonstrate that it has taken all necessary steps to implement an appropriate framework to ensure compliance with the CJA 2010. Board awareness has previously been brought to the attention of firms through Central Bank communications[1]. The board and senior management in the firm have responsibility to ensure compliance by the firm with the CJA 2010 and need to satisfy themselves as to the ongoing effectiveness of their policies and procedures in this regard and in identifying evolving threats within their business model.

[1] Address by Peter Oakes, Director of Enforcement to ACOI (8 May 2012) and Settlement Agreement between the Central Bank and UBS International Life Limited (19 June 2012)

Risk assessment

Where firms had adopted a risk based approach to compliance, the firms:

- had not evaluated the risks of money laundering and terrorist financing pertinent to their business sector
- had not adopted appropriate risk mitigation plans to mitigate the risks
- were not in a position to demonstrate to the Central Bank the firm's risk evaluation methodology, the risks pertinent to their sector nor the mitigating measures taken in circumstances where they stated they had done so

The Central Bank will continue to seek supporting documentation of how the board and senior management satisfied itself that it is appropriate to adopt a risk based approach and that the approach is implemented effectively within the business.

Policies and procedures

The Central Bank found that there were material gaps in firms AML/CFT policies and procedures to prevent and detect money laundering and terrorist financing. There were also incidences whereby firms had not implemented policies and procedures in practice.

Policies and procedures should address all aspects of compliance with Part 4 of the CJA 2010 relevant to the business and be clearly set out to enable staff to apply them in practice. Furthermore AML/CFT policies and procedures should be appropriate to the risks associated with the nature of the firm's business.

The Central Bank will continue to seek documented AML/CFT policies and process-related procedures that cover all areas of business activity. The Central Bank expects firms to demonstrate on-going senior management oversight on the appropriateness and effectiveness of policies and procedures documented and adopted by the firm.

Training

The Central Bank found material gaps in the provision of AML/CFT training to all relevant staff in firms. Not all persons involved in the conduct of the firms business had received instruction on the law and on-going training relating to money laundering and terrorist financing. Such persons include board members and senior management. Instruction on the law and training is an obligation under the CJA 2010 and is deemed essential in ensuring senior management are in a position to oversee compliance with the CJA 2010.

Customer due diligence ("CDD")

The Central Bank identified a number of failures in respect of the application of CDD to customers:

- The Central Bank found that CDD remediation work was not being carried out in a systematic or comprehensive manner on existing customers.

  CDD must be applied not only to new customers but also to existing customers where there is a risk of money laundering or terrorist financing in respect of the customer or where there are reasonable grounds to doubt the veracity or adequacy of previously obtained CDD documentation or information. While a trigger-based approach to completion of CDD in respect of existing customers may be acceptable to the Central Bank e.g. where customers seeks a new product or service, the Central Bank expects firms to be able to demonstrate that the measures taken to perform the verification of identification on existing customers were reasonable, risk based and consistent

- The Central Bank found that firms were not verifying the identity of their customers in compliance with CJA 2010.

  Firms must, in all cases, establish the identity of a customer prior to the establishment of a business relationship or the provision of a service. Firms may in certain circumstances verify the identity of a customer during the establishment of a business relationship but reasonable steps must be taken to verify the identity as soon as practicable thereafter.

  The Central Bank expects the board and/or senior management to ensure that the business of the firm is conducted in such a manner as to ensure that verification takes place as soon as practicable. It is expected that in the majority of cases verification of identity would occur prior to the establishment of a business relationship or the provision of a service. However, the firm is best placed to determine how 'as soon as practicable' should be implemented within the business and expects firms to be able to demonstrate that the measures taken to perform the verification as soon as practicable were timely; delays in the verification of customers may be an obstacle to demonstrating compliance with the CJA 2010.

- The Central Bank found incidences whereby customers had failed to provide the firm with documents or information required for the purposes of completing CDD and the firm had failed to take the necessary measures set out in Section 33(8) of the CJA 2010.

The point at which it should be determined that such a failure to provide requested CDD documentation or information has taken place should be clearly outlined in the firm's policies and procedures. As with all elements of the CJA 2010, the Central Bank expects firms to be able to demonstrate how any action or inaction by the firm or its service providers complies with the firm's obligations under the CJA 2010.

- The Central Bank found incidences whereby firms had applied simplified CDD to customers that did not meet the definition of a specified customer as set out in the CJA 2010.

  Section 34 of the CJA 2010 permits firm's to apply simplified CDD to certain specified customers and products. However, the exemptions permitted by Section 34 of the CJA 2010 may only be applied to those customers or products which fall directly under the definitions contained within Section 34. The regulatory status of a customer's parent company, or any other third party connected to the customer, is not relevant to the determination of whether the Section 34 exemption may be applied to the customer, by a designated person.

- The Central Bank found incidences whereby firms had entered into arrangements with relevant third parties in circumstances where the conditions as set out in Section 40(4) of the CJA 2010 were not met

  Section 40 of the CJA 2010 permits reliance by firms on a relevant third party to complete certain of the firm's CDD obligations.

  A firm is not permitted to avail of such reliance unless it is able to satisfy both of the conditions as set out in Section 40(4).

  One of those conditions is that, on the basis of an arrangement between the firm and a relevant third party, the relevant third party will forward to the firm, as soon as practicable after a request from the firm, any CDD documents or information relating to the customer, obtained by the relevant third party.

  In the first instance, the firm needs to demonstrate how it is satisfied that the third party will forward the necessary documents and secondly, as a consequence, any such arrangements must not contain any clause, whether explicit or implied, which may result in the disclosure of such documents and information being dependent on permission being granted by a party other than the relevant third party.

Suspicious transaction reporting

The Central Bank found incidences of suspicious transaction reports not being made as soon as practicable after firms had formed a suspicion or acquired reasonable grounds to suspect that a person had been or was engaged in an offence of money laundering or terrorist financing. Section 42 of the CJA 2010 requires firms to report suspicious transactions as soon as practicable after forming a suspicion or acquiring reasonable grounds to suspect. The Central Bank expects firms to be able to demonstrate that reports have been made as soon as practicable and thus demonstrate compliance with the CJA 2010.