

Class exemption for managing intermediaries

This information sheet explains the conditions for reporting entities whose customers include managing intermediaries and customers of managing intermediaries to be able to rely on the Anti-Money Laundering and Countering Financing of Terrorism (Class Exemptions) Notice 2018¹.

Overview

Under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 ('AML/CFT Act'), reporting entities have customer due diligence (CDD) obligations to obtain and verify identity information about their customers, the people acting on behalf of their customers, and any 'beneficial owners' of their customers.

'Beneficial owners' include:

- a natural person who owns more than 25% of a customer
- a natural person who controls a customer
- a natural person on whose behalf a transaction is conducted.

The phrase 'person on whose behalf a transaction is conducted' ('POWBATIC') is a concept from the Financial Action Task Force (FATF) Recommendations. It is intended to ensure reporting entities can identify who is behind a transaction when that person is someone other than the person(s) with actual or legal ownership or control of the customer.

Paragraph 16 of the FATF [Guidance on Transparency and Beneficial Ownership](#) (October 2014) provides that:

"This element of the FATF definition of beneficial owner focuses on individuals that are central to

a transaction being conducted even where the transaction has been deliberately structured to avoid control or ownership of the customer but to retain the benefit of the transaction."

From this commentary, it is clear the concept of a 'person on whose behalf a transaction is conducted' is not intended to impose CDD obligations in respect of every possible natural person who may receive some benefit from a transaction occurring, but only in respect of people who are 'central to a transaction being conducted'.

Where there is a chain of financial institutions/schemes involved in providing a service to an underlying client (the customers of a customer and/or the natural persons who are the end customers), an underlying client may be the 'natural person on whose behalf a transaction is conducted' and therefore a 'beneficial owner'. This means that all reporting entities in a chain of managing intermediaries will be obliged to determine whether such beneficial owners (who could be 'central to a transaction') exist and do CDD on those people, despite not meeting the threshold for actual or legal control or ownership.

Depending on the complexity of the legal structure, a reporting entity may be required to look through one or more financial institutions/schemes. Each reporting entity below it in the chain will be required to do the same.

1. <http://www.legislation.govt.nz/regulation/public/2018/0101/13.0/LMS52466.html>

Purpose of the exemption

The primary purpose of the exemption is to reduce the compliance burden where there are multiple reporting entities in a chain of transactions that have the same CDD obligations. This also ensures the CDD obligations fall on the reporting entity best placed to identify the customer's beneficial owners.

The exemption exempts, subject to certain conditions, reporting entity 'A' from the requirement to look through managing intermediary customer 'B' to identify the person on whose behalf a transaction is conducted.

The exemption was amended when it was renewed in 2018, to ensure that reporting entity 'A' is exempt even if 'A' provides a facility to the person on whose behalf a transaction is conducted. This applies only where:

- the person on whose behalf a transaction is conducted is a customer of managing intermediary 'B'; and
- the facility was provided by 'A' in the name of the person for the purposes of acting on the instructions of 'B' (whether alone or together with the person); and
- a transaction through that facility is conducted by 'B' (whether alone or together with the person) giving instructions to 'A'.

The purpose of the exemption is not to relieve reporting entities of their CDD obligations in respect of facilities or transactions that are outside of the relationship between the reporting entity and the managing intermediary.

As a result, the exemption does not apply if the person on whose behalf a transaction is conducted is no longer a customer of managing intermediary 'B', or the facility provided by 'A' is for the purpose of acting on any instructions that are not provided by managing intermediary 'B'. The exemption also does not apply to a transaction that is not on the instructions of the managing intermediary (eg the instructions come from the person acting alone).

Customers in scope of the exemption and conditions

The exemption is in respect of customers of the reporting entity that are:

- licensed managing intermediaries ('LMI');
- LMI customers;
- specified managing intermediaries ('SMI');
- SMI customers.

Exemption in respect of customers that are licensed managing intermediaries

The exemption allows reporting entities to do simplified CDD (rather than standard CDD) on customers that are LMIs. Reporting entities are exempt from the requirement to do CDD on beneficial owners of customers that are LMIs. However, reporting entities must still identify and verify people acting on behalf of a customer that is an LMI according to sections 19 and 20 of the AML/CFT Act.

LMIs are easily identifiable because they hold a verifiable status under a statutory regime. They are considered low-risk for AML/CFT purposes because of their level of regulatory oversight. They include:

- licensed non-bank deposit takers
- Financial Markets Conduct Act 2013 (FMC Act) participants subject to rigorous vetting processes (licensed managers and supervisors of registered managed investment schemes, other FMC Act licence holders, FMA appointees, and registered managed investment schemes).

It is not necessary to include NZ registered banks as LMIs, because the simplified CDD provisions in the AML/CFT Act already apply to registered banks as customers².

To rely on the exemption, a reporting entity must take reasonable steps to verify that the managing intermediary it is dealing with is an LMI. The status of an LMI will be recorded on an official register. For example, 'Disclose' records whether a particular scheme has been registered, and the Financial Service Providers Register records whether a

2. See section 18(2)(n) of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009

particular entity has been licensed. It is sufficient to keep evidence that the appropriate register has been checked.

The reporting entity must conduct enhanced CDD on an LMI, including on all of the LMI's beneficial owners, if the reporting entity is instructed to conduct a transaction to which section 22A (Enhanced customer due diligence required for certain activities requiring suspicious activities report) of the AML/CFT Act applies.

Exemption in respect of customers that are LMI customers

Reporting entities are exempt from the requirement to do standard CDD on LMI customers. Reporting entities must still identify and verify people acting on behalf of an LMI customer in accordance with sections 19 and 20 of the AML/CFT Act.

The exemption applies in respect of customers of the LMI that have a facility with the reporting entity, where that facility is provided for the purpose of acting on, and any transaction through that facility is conducted on, the instructions of the LMI (whether alone or together with the customer) ('LMI customers').

To rely on the exemption in respect of LMI customers, a reporting entity must:

- conduct simplified CDD on the LMI that provides financial services to the LMI customer in connection with the services provided by the reporting entity to the LMI customer;
- obtain written confirmation:
 - signed by a senior manager of the LMI, that the LMI customer is a customer of the LMI; and
 - that the LMI customer has been subject to CDD by the LMI.

The reporting entity must conduct enhanced CDD on an LMI customer, including on all of the LMI customer's beneficial owners, if the reporting entity is instructed to conduct a transaction to which section 22A (Enhanced customer due diligence required for certain activities requiring suspicious activities report) of the AML/CFT Act applies.

Exemption in respect of customers that are specified managing intermediaries

Reporting entities are exempt from the requirement to do CDD on those beneficial owners of an SMI that are persons on whose behalf a transaction is conducted by the SMI. Reporting entities must still do CDD on the SMI and on any person acting on behalf of the SMI.

SMIs are financial institutions and schemes that are subject to the AML/CFT Act. However, as SMIs are not subject to the same level of regulatory oversight as LMIs, reporting entities must still do CDD on any beneficial owner of the SMI who has effective control (such as a director), or owns more than 25% of the SMI.

The exemption ensures there is still sufficient enquiry into the beneficial ownership of SMIs, while acknowledging these entities have their own reporting obligations under the AML/CFT Act and are required to conduct CDD on their own customer base (including those persons on whose behalf a transaction is conducted by the SMI giving instructions to the reporting entity).

SMIs include any of the following:

- 'financial institutions' to which the AML/CFT Act applies, that are not licensed managing intermediaries;
- foreign financial institutions that have their principal place of business in an overseas jurisdiction with sufficient AML/CFT systems and measures in place and are supervised for AML/CFT purposes, and that are not licensed managing intermediaries;
- unregistered managed investment schemes, where the scheme's manager or trustee is a person that falls within either of the two categories described above.

Financial advisers governed by the Financial Advisers Act 2008 who are not carrying out one of the roles described above are not SMIs.

Because SMIs are not as readily identifiable as LMIs, reporting entities must carry out more checks on these customers before they can rely on the exemption. Specifically, the reporting entity must

obtain written confirmation from a senior manager of the SMI to the effect that it:

- has an AML/CFT programme in place (or a foreign equivalent);
- is supervised for AML/CFT purposes;
- is doing CDD in accordance with the AML/CFT Act (or its foreign equivalent); and
- has its principal place of business in a jurisdiction with sufficient AML/CFT systems and measures in place.

A 'senior manager of an SMI' refers to a senior manager to whom a reporting entity's AML/CFT compliance officer must report under section 56(4) of the AML/CFT Act, or a person holding a comparable position in foreign financial institutions.

If the SMI is New Zealand-based, written confirmation of this is sufficient. To help ensure a foreign financial institution or scheme is in a jurisdiction with a sufficient AML/CFT regime, the New Zealand AML/CFT supervisors have jointly published a [Countries Assessment Guideline](#). The FATF also publishes [lists of jurisdictions it considers to be non-cooperative and high risk](#), and [lists of jurisdictions it continues to monitor](#). It is unlikely business from jurisdictions on these lists would qualify as entities with sufficient AML/CFT regulatory systems.

A reporting entity is not required to verify the written confirmation described above, unless there are reasonable grounds for the reporting entity to doubt the adequacy or veracity of the written confirmation.

The reporting entity must conduct enhanced CDD on an SMI, including on all of the SMI customer's beneficial owners, if the reporting entity is instructed to conduct a transaction to which section 22A (Enhanced customer due diligence required for certain activities requiring suspicious activities report) of the AML/CFT Act applies.

Exemption in respect of customers that are SMI customers

Reporting entities are exempt from the requirement to do CDD on beneficial owners of SMI customers (except where the beneficial owner of the SMI customer has effective control, or owns more

than 25% of the SMI that it is a customer of for the purposes of the exemption). Reporting entities must still do CDD on the SMI customer and on any person acting on behalf of the SMI customer.

The exemption applies in respect of customers of an SMI that have a facility with the reporting entity, as long as that facility is provided for the purpose of acting on, and any transaction through that facility is conducted on, the instructions of the SMI (whether alone or together with the customer) ('SMI customers'). The reporting entity must obtain a written confirmation from a senior manager of the SMI (to the same effect as the one described above in respect of the SMI).

However, the reporting entity must conduct:

- CDD on the beneficial owner of an SMI customer that has effective control, or owns more than 25% of the SMI of which it is a customer, in accordance with the AML/CFT Act; and
- enhanced CDD on an SMI customer, including on all of the SMI customer's beneficial owners, if the reporting entity is instructed to conduct a transaction to which section 22A (Enhanced customer due diligence required for certain activities requiring suspicious activities report) of the AML/CFT Act applies.

Further points for relying on the exemption

Reporting entities must, on request, provide supervisors with the name of any customer in respect of which the exemption is relied on.

The risk-based approach underpinning the AML/CFT Act applies equally to the exemption. Reporting entities must continue to do enhanced CDD on all customers that are LMIs and SMIs, and on LMI customers and SMI customers in accordance with the AML/CFT Act (for example, if any of the circumstances set out in section 22 of the AML/CFT Act apply, or if required under section 22A (Enhanced customer due diligence required for certain activities requiring suspicious activities report) of the AML/CFT Act).

There are two exceptions to this obligation:

• **Managing intermediaries that are trusts**

The default position under sections 22(1)(a)(i) and (b)(i) of the AML/CFT Act is that reporting entities must do enhanced CDD on all customers that are trusts. However, the exemption overrides this requirement for customers that are trusts. This is because a large portion of ‘managing intermediary’ customers will be managed funds, which are trusts. The purpose of the exemption would be defeated otherwise.

Any risk of money laundering or terrorist financing through customers that are trusts (and also LMIs or SMIs) is mitigated because all other circumstances triggering enhanced CDD will continue to apply.

• **Lower standard of enhanced CDD required under the exemption**

In ordinary circumstances where a reporting entity is required to do enhanced CDD (ie, excluding circumstances where enhanced CDD is required under section 22A (Enhanced customer due diligence required for certain activities requiring

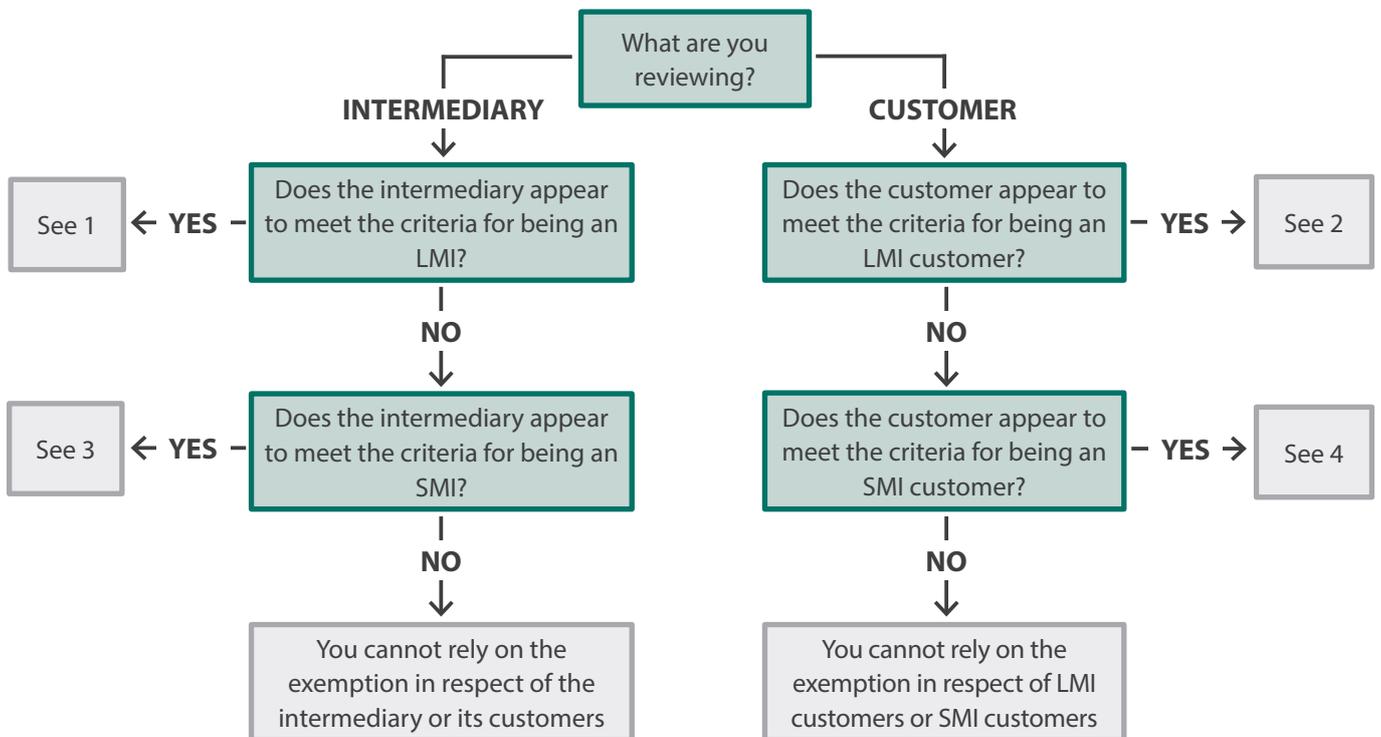
suspicious activities report) of the AML/CFT Act), sections 23 and 24(1) of the AML/CFT Act prescribe that the reporting entity must identify and verify any beneficial owner of that customer³.

The exemption provides that, due to the level of oversight of customers by managing intermediaries, even where enhanced CDD is ordinarily required, the reporting entity is not required to identify and verify:

- in the case of LMIs and SMIs, persons on whose behalf a transaction is conducted by the managing intermediary;
- in the case of LMI customers and SMI customers, any beneficial owners of that customer.

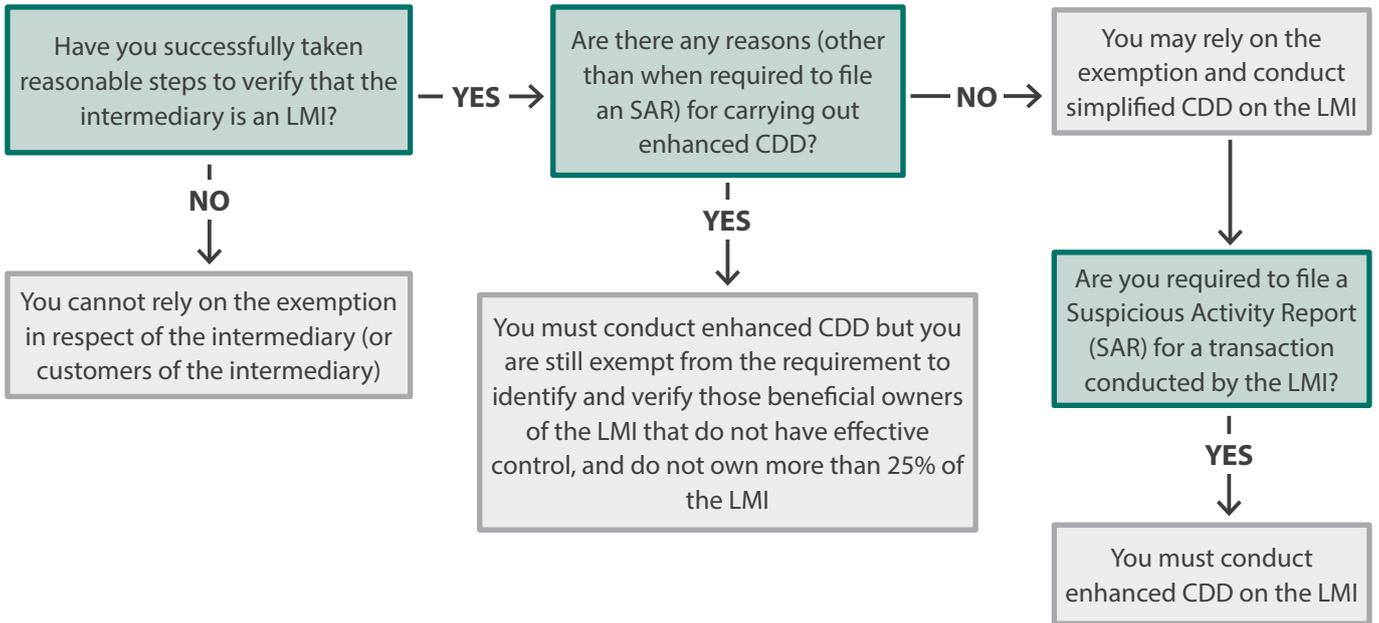
However, reporting entities must identify and verify any beneficial owner with effective control or who owns more than 25% of the LMI or SMI, and any beneficial owner of an SMI customer with effective control or who owns more than 25% of the SMI.

When can you rely on the exemption?

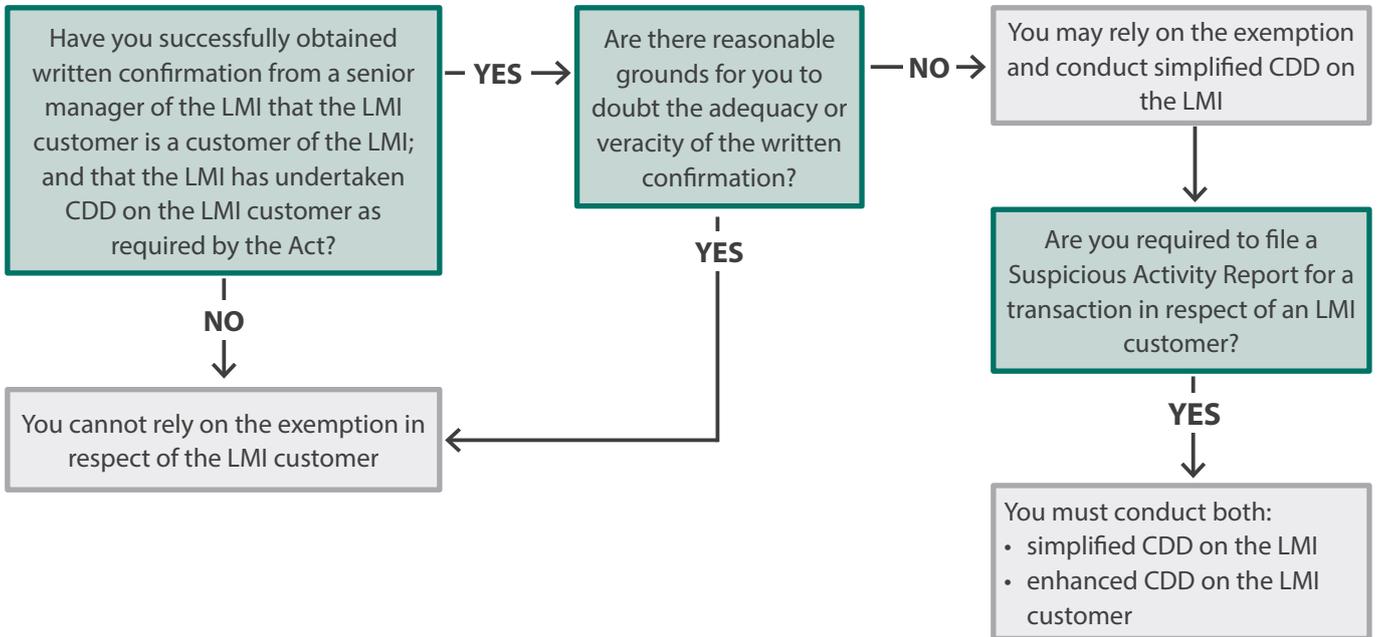


3. Sections 23 and 24 require reporting entities to identify and verify customers in accordance with sections 15 and 16 of the AML/CFT Act respectively. Sections 15 and 16 set out the identification and verification requirements with respect to the customers set out in section 11(1) of the AML/CFT Act, which includes any beneficial owner of a customer.

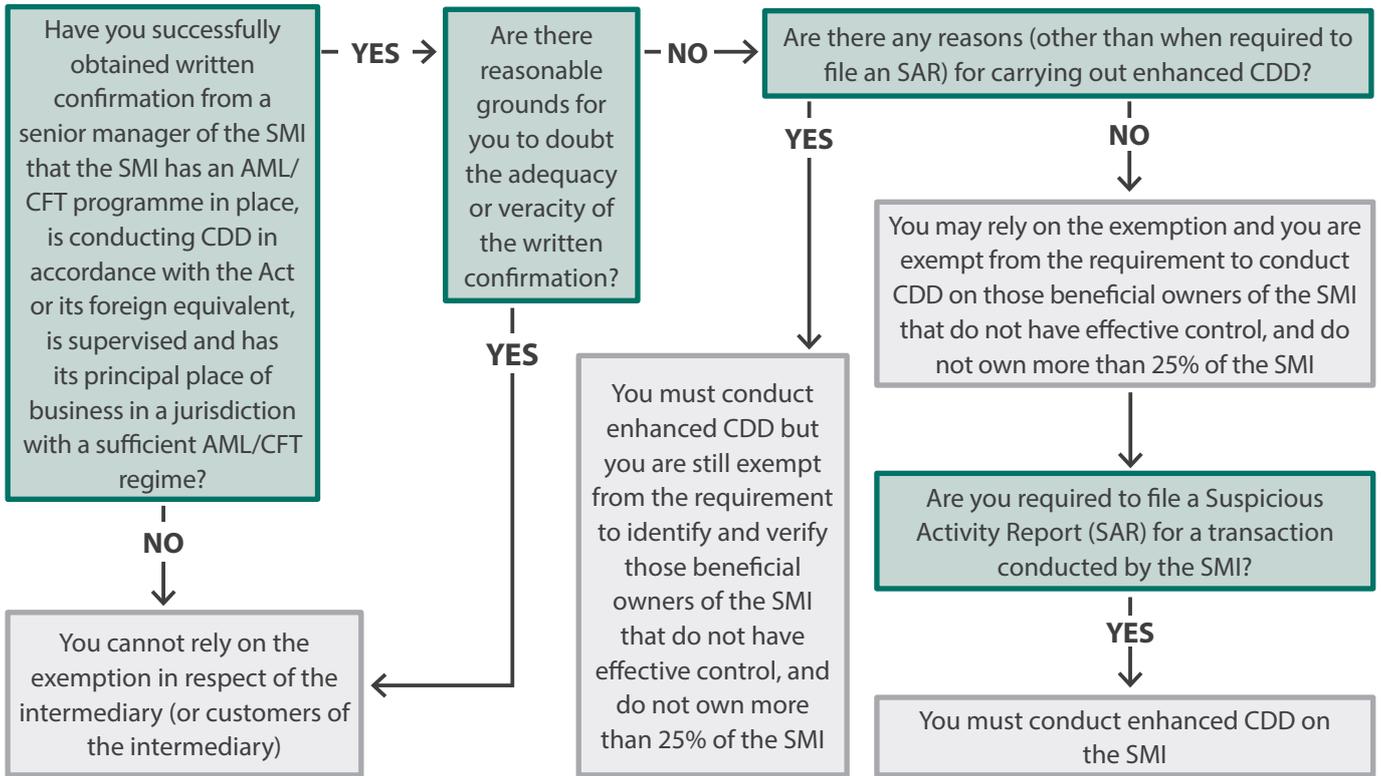
1. Licensed Managing Intermediaries



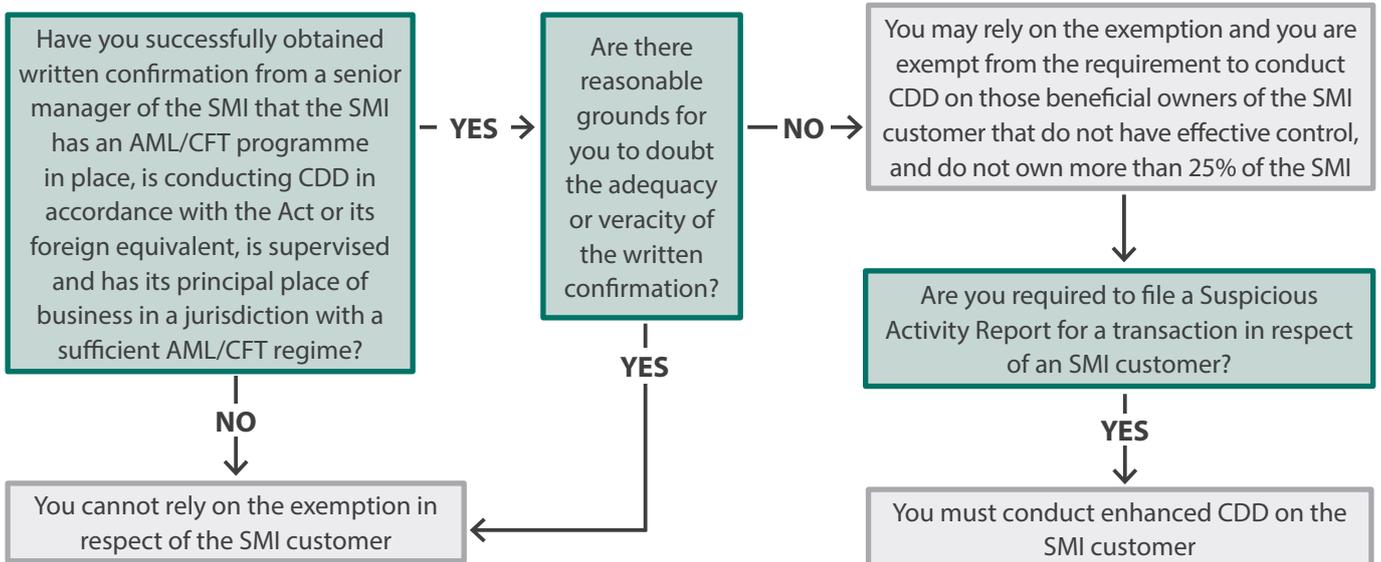
2. LMI customers



3. Specified Managing Intermediaries



4. SMI customers



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