



Financial Action Task Force  
防制洗錢金融行動工作組織

Groupe d'action financière



*FATF Report*  
*FATF 報告*

# Money Laundering and Terrorist Financing in the Securities Sector 證券業洗錢與資恐現況

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## THE FINANCIAL ACTION TASK FORCE (FATF) 防制洗錢金融行動工作組織 (FATF)

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering and terrorist financing. Recommendations issued by the FATF define criminal justice and regulatory measures that should be implemented to counter this problem. These Recommendations also include international co-operation and preventive measures to be taken by financial institutions and others such as casinos, real estate dealers, lawyers and accountants. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

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## EXECUTIVE SUMMARY

### 內容摘要

1. The securities industry plays a key role in the global economy. Participants range from multinational financial conglomerates that employ tens of thousands of people to single-person offices offering stock brokerage or financial advisory services.

1. 證券業在全球經濟扮演了關鍵的角色，參與者包括聘用上萬人的跨國金融集團，以及提供股票經紀或財務諮詢服務的個人辦公室。

2. New products and services are developed constantly, in reaction to investor demand, market conditions, and advances in technology. Product offerings are vast, and many are complex, with some devised for sale to the general public and others tailored to the needs of a single purchaser. Many transactions are effected electronically and across international borders.

2. 為因應投資人需求、市場情況以及技術的進步，市場也在不斷開發產品與服務。產品內容十分廣泛，且很多都非常複雜，部分是為銷售給一般大眾所設計，其他則是專為單一買方的需求而量身訂做。許多交易都是以電子方式跨國執行。

3. Some of the features that have long characterised the industry, including its speed in executing transactions, its global reach, and its adaptability, can make it attractive to those who would abuse it for illicit purposes, including money laundering and terrorist financing. Moreover, the securities sector is perhaps unique among industries in that it can be used both to launder illicit funds obtained elsewhere, and to generate illicit funds within the industry itself through fraudulent activities. Transactions and techniques associated with money laundering and the specific predicate securities offences are often difficult to distinguish, which is why specific indicators and case studies for insider trading, market manipulation and securities fraud are relevant and included in this study.

3. 本產業長久以來的部分代表特質，包括執行交易的速度、全球涵蓋範圍以及其可改造性，都很容易吸引意圖為非法目的而加以濫用的參與者，包括洗錢與資恐份子。此外，證券業在所有產業中最特別的一點，在於其可被用來漂白他處取得的非法資金，以及在產業內透過詐騙活動賺取非法資金。與洗錢及特定證券犯罪有關的交易與技巧，通常難以分辨，而這也是本研究將特定內線交易的指標案件以及案例研究視為攸關、並放入本研究的原因。

4. The case studies presented in this report illustrate the risks associated with the various types of intermediaries, products, payment methods and clients involved in the securities industry. Unlike other sectors, the risks lie mainly not in respect of the placement stage of money laundering, but rather in the layering and integration stages. Typical securities-related laundering schemes often involve a series of transactions that do not match the investor's profile and do not appear designed to provide a return on investment.

4. 本報告所列案例研究，說明了參與證券業之各種中介機構、產品、支付方法與客戶端有關的風險。與其他產業不同的是，證券業的風險主要不在洗錢的處置階段（Placement），而是分層化（Layering）以及整合（Integration）階段。傳統證券相關洗錢計謀，通常包括一連串與投資人屬性不相匹配的交易，且顯然並非為提供投資報酬而進行。



5. Some areas of vulnerability (for example, rogue employees) are not peculiar to the securities industry, and thus this study is of relevance to the wider financial services sector. In particular, some money laundering schemes involve products and transaction types that exist in the banking and insurance sectors as well.

5. 部分弱點（舉例來說，不良的員工）並非證券業獨有，因此本研究與廣泛的金融服務產業相關。部分洗錢計謀尤其牽涉銀行業與保險業的產品與交易類型。

6. Suspicious transaction reporting in the sector remains relatively low, which can be explained by a number of possible factors, including a lack of awareness and insufficient securities-specific indicators and case studies; issues that this report attempts to address. Consultations with the private sector conducted for this project outlined the need for enhanced securities-specific guidance by international organisations and national authorities.

6. 本產業的疑似洗錢或資恐交易通報比率相對仍較低，有許多可能的原因，包括缺乏警覺性、證券相關指標與案例研究不足等；這些都是本報告嘗試處理的問題。本專案對私部門所進行的調查，顯示國際組織與全國主管機關必須加強證券相關的指導。

7. The reported incidents of money laundering in the securities industry far outweigh those relating to terrorist financing. However, the sector remains vulnerable to both money laundering and terrorist financing.

7. 證券業通報洗錢事件的數量，遠超過通報資恐的數量。然而，洗錢與資恐皆為本產業的風險。

## CHAPTER 1: INTRODUCTION 第 1 章：介紹

### 1.1 Introduction 1.1 前言

1. The securities industry, along with banking and insurance, is one of the core industries through which persons and entities can access the financial system. This access provides opportunities for criminals to misuse the financial system to engage in money laundering (ML) and terrorist financing (TF).

1. 證券業、銀行與保險業，是個人與實體參與金融系統的一個核心產業。這個參與金融系統的渠道，讓罪犯有機會濫用金融系統從事洗錢（ML）與資恐（TF）的活動。

2. Whilst the securities industry has been the subject of international and domestic efforts relating to anti-money laundering (AML) and combating the financing of terrorism (CFT) for several years, ML/TF vulnerabilities specific to this industry have not been subject to global typology research.

2. 雖然證券業已連續多年成為國際與國內防制洗錢（AML）與打擊資恐（CFT）的目標，本產業的洗錢／資恐弱點，卻還未納入全球類型研究的範疇中。

### 1.2 Need for the Typology 1.2 需要進行類型研究的理由

3. The securities industry evolves rapidly and is global in nature. It provides opportunities to quickly carry out transactions across borders with a relative degree of anonymity. It is thus imperative to highlight and share current information about potential vulnerabilities.

3. 證券業演進快速，且具有全球性。讓投資人有機會在相當程度匿名之情況下，快速執行跨國交易。因此有必要找出並分享現行及潛在弱點相關的資訊。

4. The report previously published by the FATF in 2003<sup>1</sup> on the securities industry provided a relatively limited overview of ML/TF vulnerabilities due to the limited availability of securities typologies. In addition, MONEYVAL and the Asia/Pacific Group (APG) on money laundering, both FATF-Style Regional Bodies (FSRBs), have carried out work in this area. MONEYVAL published a securities typology report in 2008 and the APG incorporated a section on securities into its 2009 yearly typologies report. Both reports are limited in scope to those FSRBs' regional jurisdictions.

4. FATF 先前於 2003 年<sup>1</sup> 針對證券業所出版的報告，提供了洗錢／資恐弱點相對有限的說明，主要係因證券類型研究資料有限所致。此外，MONEYVAL 與亞太防制洗錢組織（Asia/Pacific Group，簡稱 APG）（皆為 FATF 形式之區域組織，簡稱 FSRB）都已針對此領域進行相關工作。MONEYVAL 在 2008 年發佈了一份證券類型研究報告，而 APG 則在 2009 年年度類型研究報告中納入證券專章。這兩份報告的範圍都限制在其區域。

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<sup>1</sup> FATF (2003).

<sup>1</sup> 防制洗錢金融行動工作組織（2003 年）。



5. The FATF decided to conduct a global study in June 2008 in order to better understand the ML/TF vulnerabilities in the securities industry. It is anticipated that this study will be of benefit to the industry, law enforcement and regulators.

5. FATF 在 2008 年 6 月決定進行一項全球性研究，以更加瞭解證券業的洗錢／資恐弱點。預期此研究將可為證券業、執法機構與主管機關帶來益處。

6. The need for this latest typology report is also driven by the comparatively low levels of suspicious transaction reporting in the securities industry relative to other industries, such as banking. The reason for lower levels of reporting is not entirely clear, but some possible explanations are explored later in the report.

6. 此等最新類型研究報告的需求，也來自於證券業相較於其他產業(如銀行業)來說較低的疑似洗錢或資恐交易報告。較低通報比率的原因，目前還不完全清楚，不過本報告將在後面章節說明部分可能原因。

7. The variation in the securities industry particular to different jurisdictions also contributes to the need for a global typology that addresses these variations. For example, jurisdictions differ in the types of products that they define as securities, as reflected in the numerous types of securities products mentioned in the current FATF Glossary definition linked to the activities of “financial institutions.”

7. 證券業的差異，尤其因不同地區所導致的差異，也是必須進行瞭解這些差異的全球性類型研究的原因之一。舉例來說，各地區對於定義為證券的產品種類有所差異，此點從 FATF 對「金融機構」活動所定義的相關名詞涵蓋多種證券產品就可以看得出來。

8. Moreover, while securities intermediaries in many jurisdictions do not accept cash for securities transactions, which is traditionally used in the placement stage of ML and where potential ML/TF activities may be easier to detect and report, some do. Finally, depending on the jurisdiction, trading in securities is often not limited to securities broker-dealers, but can also involve the banking and insurance industries.

8. 此外，許多地區的證券中介機構都不接受以現金進行證券交易。傳統上證券交易會被用在洗錢的處置階段，因此禁止現金交易將更容易發現與通報潛在洗錢／資恐活動，而且實際情況也確實如此。最後，視各地法律而定，通常證券交易並非僅限於證券經紀-經銷商，通常亦牽涉銀行與保險業。

9. The following countries and international organisations joined the project team and contributed to the study: Australia, Belgium, Brazil, Canada (as project co-leader), France, Japan, Luxembourg, the Netherlands, Spain, Switzerland, the United Kingdom (U.K.) (as project co-leader), the United States (U.S.) (as project co-leader), the Asian Development Bank, the Offshore Group of Banking Supervisors (“OGBS”), the International Organisation of Securities Commissions (“IOSCO”) and the World Bank. In total, over 40 countries and international organisations participated in the study.

9. 下列國家與國際組織加入了專案團隊，並為本研究做出了貢獻：澳洲、比利時、巴西、加拿大（共同帶領專案）、法國、日本、盧森堡、荷蘭、西班牙、瑞士、英國（U.K.）（共同專案領導）、美國（U.S.）（共同專案領導）、亞洲開發銀行、境外金融監理機關小組（Offshore Group of Banking Supervisors，簡稱「OGBS」）、國際證券管理機構組織（International Organisation of Securities Commissions，簡稱「IOSCO」）以及世界銀行。本研究合計共有超過 40 個國家與國際組織參與。

### 1.3 Scope

### 1.3 範圍

10. The objectives of this typology report are to:

10. 本類型研究報告的目標為：

- Raise overall awareness of the ML/TF risk in the securities industry for industry participants, regulators and law enforcement;
- 提高業界、主管機關與執法機構對證券業洗錢／資恐風險的整體認知；
- Identify specific ML/TF risks based on product type, intermediary, market type and payment/distribution channel;
- 依據產品種類、中介機構、市場種類以及支付／經銷通路之不同，找出特定洗錢／資恐風險；
- Provide a comprehensive set of suspicious indicators and case studies that are applicable to the securities industry; and
- 提供適用於證券業之完整可疑指標與案例研究；及
- Identify any current and emerging issues which would benefit from further consideration by the FATF.
- 找出所有可因 FATF 進一步研究而受益之當前與新興議題。

11. This project examines ML/TF vulnerabilities in the securities industry based on typical products, markets, payment methods and intermediaries associated with the industry. Where practicable, the report seeks to identify the particular vulnerabilities, whether at the placement, layering or integration phase, associated with a particular product, market, payment method or intermediary. Where possible, particularly in the case studies, the report identifies the source of funds used in money laundering and any predicate offence used to generate the funds.

11. 本專案將從證券業傳統產品、市場、支付方法以及中介機構角度，檢驗洗錢／資恐弱點。可行時，本報告也希望找出與特定產品、市場、支付方法或中介機構有關的特定弱點，包括處置、分層化或整合階段。於適當時，尤其是在案例研究，本報告將列出用於洗錢之資金來源，以及牟取不法利益之任何前置犯罪。

12. Importantly, this report highlights several situations that are of particular relevance or are unique to the securities industry.

12. 更重要的是，本報告將列出與證券業特別相關或僅適用證券的幾種情況。

13. For example, while money laundering generally encompasses the *introduction* of illicit assets into the financial system, securities can also be a vehicle for *generating* illicit assets within the financial system itself. The FATF glossary includes among the “designated categories of offences”, three offences that are predicate offences to money laundering: insider trading, market manipulation, and fraud. Insider trading and market manipulation are particular to the securities industry, as is securities-related fraud.<sup>2</sup> Because these illicit activities are particular to the securities industry, they are addressed in this report in the hope that ML/TF can be reduced when these activities are themselves detected and prevented.

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<sup>2</sup> Whilst insider trading and market manipulation can also occur in the commodities industry, in at least some jurisdictions commodities trading is included under the securities regulatory regime.

<sup>2</sup> 雖然大宗商品業也會發生內線交易與市場操縱，不過只有部分地區將大宗商品交易納入證券法規範疇。

13. 舉例來說，雖然洗錢通常包括將非法資產投入金融系統，證券亦可作為在金融系統內創造非法資產的工具。FATF 詞彙表包括「特定犯罪類型」，其中三種洗錢的前置犯罪是：內線交易、市場操縱與詐騙。內線交易與市場操縱是證券業所特有，為與證券相關之詐騙活動。<sup>2</sup> 因為此等非法活動尤其與證券業相關，本報告予以納入討論，希望能夠透過發現與預防此等活動而降低洗錢／資恐風險。

14. Also, the relatively detailed customer information many securities intermediaries collect as part of other regulatory obligations, such as suitability or know-your-customer (KYC), may allow for particular insights into potential ML/TF activities.

14. 另外，許多證券中介機構會在履行其他法定義務時，蒐集相對較為詳盡的顧客資訊，譬如適合度或瞭解您的顧客（KYC），因此尤其可以深入研究潛在洗錢／資恐活動。

15. Although the focus of this report is on the unwilling use of the securities industry in ML schemes, typologies have demonstrated that, at times, securities industry professionals can also be complicit in perpetuating ML schemes and securities-specific predicate offences. Accordingly, this report will address both phenomena.

15. 雖本報告的重點在於證券業被動地被洗錢計謀所利用，類型研究結果顯示，證券業專業人員有時亦可能共謀進行洗錢計畫，以及從事證券相關前置犯罪。因此，本報告將同時討論這兩種現象。

16. Finally, although the report's primary focus is on issues particular to the securities industry, it is worth noting that a number of the vulnerabilities and suspicious indicators identified in this report overlap with those that occur in other financial services sectors, such as banking. Moreover, whilst the report is intended to be a comparative survey, it is not an exhaustive overview of all aspects of this wide-ranging industry.

16. 最後，雖本報告的主要重點在專屬證券業的問題上，值得注意的是，本報告所列出的幾項弱點與可疑指標，在其他金融服務產業（譬如銀行業）也會發生。此外，雖然本報告預計作為比較性調查，卻也未完整涵蓋此廣泛產業的所有面向。

## 1.4 Methodology

### 1.4 研究方法

17. This report is based on four main sources. The first is a review of literature and related guidance that has been produced or undertaken by international groups, domestic regulators, trade associations, self-regulatory organisations (SROs)<sup>3</sup> and academia. The second is a compilation and analysis of the responses to a questionnaire that the project co-leaders distributed to FATF members and observers in November 2008. The third and fourth are the results of a typology workshop and consultations with the private sector, respectively.

17. 本報告採用四項主要資料來源。第一項是檢視文獻及國際組織、國內主管機關、同業公會、自律團體（SRO）<sup>3</sup> 以及學術機構的相關指南；第二項是針對專案共同負責人於 2008 年 11 月發送

<sup>3</sup> An SRO is a non-governmental organisation that has the power to issue and enforce industry regulations and standards.

<sup>3</sup> 自律團體是有權發佈與執行產業法規與標準的非政府組織。

給 FATF 會員國與觀察員的問卷做成的分析資料；第三與第四項是類型研討會的結果及與個別私部門諮詢結果。

18. The questionnaire results were obtained in December 2008 and January 2009 from 38 jurisdictions in the Americas, Asia, Australia, Europe, the Middle East, and two international organisations, giving a total of 40 respondents.<sup>4</sup> The responding jurisdictions varied in the size and organisation of their securities markets. These variations were taken into account to the extent practicable.

18. 問卷結果是在 2008 年 12 月以及 2009 年 11 月針對美洲、亞洲、澳洲、歐洲與中東地區的 38 個地區、以及兩個國際組織所做成，總共 40 份回覆。<sup>4</sup> 回應的各地區，其證券市場的規模與組織各有不同。已在實務可行範圍內，將此等差異納入考量。

19. In November 2008, at about the same time that the questionnaire was distributed, a workshop on money laundering and the securities industry was held in Monaco as part of the 2008 FATF/MONEYVAL Typologies meeting. This workshop was very well supported by members of the FATF, MONEYVAL, and representatives of several international organisations. The following participants examined the issue in depth during a break out session: Australia, Belgium, Brazil, Canada, the European Commission, Finland, France, Germany, Luxembourg, the Netherlands, Norway, Russia, Switzerland, the U.K., the Ukraine, the U.S., the APG Secretariat, IOSCO, the MONEYVAL Secretariat and the Organisation for Economic Co-operation and Development (“OECD”).

19. 2008 年 11 月，在問卷發出的同一時間，在摩納哥舉行的 2008 年度 FATF/MONEYVAL 類型研究會議，也召開了一個洗錢與證券產業研討會。此研討會獲得 FATF 會員國、MONEYVAL 以及數個國際組織代表的大力支持。下列參與方在研討會深入討論此議題：澳洲、比利時、巴西、加拿大、歐盟執委會、芬蘭、法國、德國、盧森堡、荷蘭、挪威、俄羅斯、瑞士、英國、烏克蘭、美國、APG 秘書處、IOSCO、MONEYVAL 秘書處以及經濟合作暨發展組織（「OECD」）。

20. This study is also based on consultations with non-governmental persons, including the Investment Industry Regulatory Organization of Canada (“IIROC”), representatives of the private sector in the U.K. and U.S., and the Financial Industry Regulatory Authority, Inc. (“FINRA”), a U.S. SRO, and representatives of the private sector in some core group countries.

20. 本研究也諮詢非政府單位的意見，包括加拿大投資業監管協會（「Investment Industry Regulatory Organization of Canada，簡稱 IIROC」）、英國與美國私人公司代表人以及 Financial Industry Regulatory Authority, Inc.（「FINRA」），美國自律團體、以及部分核心集團國家。

21. The project team would like to acknowledge the thoughtful work of all participants, including the FATF Secretariat. Their input has been greatly appreciated.

21. 專案團隊在此感謝所有參與方的細心參與，包括 FATF 秘書處。非常感謝他們的協助。

<sup>4</sup> The questionnaire and a list of the countries and jurisdictions that responded to it are attached as Annex D.

<sup>4</sup> 問卷內容與回應問卷之國家與地區清單，檢附於附錄 D。

## CHAPTER 2: LITERATURE AND ACTIVITIES REVIEW 第 2 章：文獻與活動研究

### 2.1 Overview

### 2.1 概述

22. Information on ML/TF typologies, trends and techniques in the securities industry can be found in various sources. As previously mentioned, both the FATF and some FSRBs have conducted typologies in the past. In addition, financial intelligence units (FIUs), law enforcement and other agencies publish suspicious transaction indicators, trends and sanitised ML/TF cases. Significant materials have also been produced by international groups, domestic regulators, trade associations, SROs, and academics. A review of this material is provided below.

22. 洗錢／資恐類型研究、以及證券業趨勢與技術資訊，在許多資料來源都可以找到。如前所述，FATF 與部分 FSRB 在過去已經進行類型研究。此外，金融情報中心（FIU）、執法機構與其他單位也發佈了可疑交易指標、趨勢與已去除個資的洗錢／資恐案例。國際組織、國內主管機關、同業公會、自律團體以及學術單位亦已發佈了大量的資料。此等資料的研究結果如下。

### 2.2 Previous Typologies Exercises

### 2.2 過去類型研究

#### *2002-03 FATF Typologies Report*

#### *2002-03 年度 FATF 類型研究報告*

23. In February 2003, the FATF published a general report on ML typologies (FATF Typology).<sup>5</sup> That report contained four chapters, including one devoted to ML through the securities industry. Other chapters of the 2002-03 FATF typology addressed terrorist financing, the gold and diamond markets, and other ML/TF trends.

23. 2003 年 2 月，FATF 發佈了一份洗錢類型研究概況報告（FATF Typology）。<sup>5</sup> 該報告共有四章，包括一章證券業洗錢專章。2002-03 年度 FATF 類型研究報告其他各章討論了資助恐怖分子、黃金與鑽石市場、以及其他洗錢／資恐趨勢。

24. The securities chapter in the FATF Typology made the following overall observations:

24. FATF Typology 的證券專章，提出下列整體觀察：

- The ability of the FATF to examine ML vulnerabilities in the securities industry was hampered by the lack of information regarding how, or indeed whether, the securities industry was being used for ML;
- 因缺乏關於證券業如何或是否被利用從事洗錢活動的資訊，FATF 檢驗證券業作為洗錢弱點的能力受到弱化；

<sup>5</sup> FATF (2003).

<sup>5</sup> 防制洗錢金融行動工作組織（2003 年）。



- ML in the securities industry occurs primarily at the layering and integration stages; and
- 證券業的洗錢行為，主要發生在分層化與整合階段；及
- The securities industry provides the money launderer with a double advantage – the ability to launder illicit assets generated from outside the securities industry and the ability to use these external illicit assets to generate additional illicit assets within the securities industry, for example through market manipulation and securities fraud.
- 證券業為洗錢者提供了雙重優勢 – 漂白證券業以外來源之非法資產的能力，以及在證券業內運用此等外部非法資產創造額外非法資產的能力，舉例來說，透過市場操縱與證券詐欺。

25. The FATF Typology also provided eight examples of the different stages through which the securities industry can be used for ML/TF, and illustrated the illicit activities that can generate illicit assets from within the industry.

25. FATF Typology 亦提供了洗錢／資恐份子可運用證券業的八個不同階段釋例，並說明證券業內可創造非法資產的非法活動。

26. The FATF Typology, however, did not provide a comprehensive set of suspicious indicators that compliance professionals in the securities industry could use when evaluating the particular risks that a client or series of transactions could pose. This may have been the result of the lack of information about how or whether the securities industry was actually being used for ML/TF purposes.

26. 然而，FATF Typology 並未提供證券專業人員可用來評估客戶或一連串交易可能存在之特定風險的完整可疑指標。可能是因為缺乏證券業如何、或是否實際被利用洗錢／資恐相關的資訊。

#### **2008 MONEYVAL Typologies Report (MONEYVAL Typology)<sup>6</sup>** **2008 年度 MONEYVAL 類型研究報告 (MONEYVAL Typology) <sup>6</sup>**

27. The MONEYVAL securities typology report focuses on countries predominantly in Eastern Europe that, in some cases, have a developing securities industry.

27. MONEYVAL 證券類型研究報告，將重點放在東歐國家，且部分情況下，研究證券業正在發展中的國家。

28. The MONEYVAL typology identified the following areas as presenting the greatest ML vulnerabilities in the securities industry:

28. MONEYVAL typology 列出了下列證券業中存在最大洗錢弱點的領域：

- Wholesale markets;
- 躉售市場；
- Unregulated funds;
- 未受監管基金；
- Wealth management;
- 財富管理；

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<sup>6</sup> MONEYVAL (2008)

<sup>6</sup> MONEYVAL (2008 年)。



- Investment funds;
- 無記名證券；以及
- Bills of exchange.
- 匯票。

29. MONEYVAL acknowledged that, in rare instances, cash can be placed through the securities industry. Significantly, MONEYVAL devoted a section of its report to market manipulation and insider trading, providing a number of case studies to illustrate these illicit activities.

29. MONEYVAL 瞭解，在極少數情況下，現金可透過證券業處置。MONEYVAL 在其報告中用非常多篇幅討論了市場操縱與內線交易，以許多案例研究說明此等非法活動。

30. The MONEYVAL typology presented a number of sanitised case studies as well as schematics to illustrate the flow of funds and the relationships between persons and entities. The MONEYVAL report also addressed suspicious indicators at the account opening stage, the execution and settlement of transactions, and the use of fictitious companies.

30. MONEYVAL typology 列出了一些去除個資的案例研究以及圖表，以說明資金流動以及相關人員與實體之間的關係。MONEYVAL 報告也說明了開戶階段、執行交易與交割、以及使用虛構公司的可疑指標。

31. The MONEYVAL typology also described how information is shared amongst and between financial regulators, FIUs and law enforcement. In particular, MONEYVAL identified information sharing as an important issue given that certain securities transactions are effected in different sectors and may be subject to different regulatory oversight. The report provided guidance on analysis and investigation techniques as well as information on how the FIUs of specific countries perform their analysis and how cases are investigated by law enforcement.

31. MONEYVAL typology 也敘述了金融主管機關、金融情報中心與執法機構之間共享資訊的方法。MONEYVAL 尤其說明了資訊分享的重要性，主要係因證券交易是在不同產業之間進行，而且可能需接受不同主管機關的監督。本報告提供了分析與調查技巧的指南，以及特定國家的金融情報中心如何執行分析作業以及執法機構如何調查案件的相關資訊。

#### ***APG Typology Workshop and 2009 Report<sup>7</sup>*** ***APG 類型研究研討會及 2009 年度報告<sup>7</sup>***

32. In October 2008, the APG held a typologies workshop during which several member countries provided presentations. A portion of the workshop featured the securities industry and was attended by several securities regulators. The cases and suspicious indicators included in those presentations focused more on predicate offences to money laundering, such as securities fraud, than on money laundering itself. This may be because fewer APG countries require the securities industry to report suspicious transactions. Where such requirements exist, securities related suspicious transaction reporting (STR) reporting levels are low, potentially impeding the ability of these jurisdictions to investigate money laundering. In any event, the overall experience of some APG countries is that the securities industry is a method of generating illicit assets instead of a conduit for laundering illicit assets generated outside of the industry.

32. 2008 年 10 月，APG 舉辦了一場類型研究研討會，有數個會員國在會議中發表了簡報。研討會有一部分討論證券業相關議題，並且有數個證券主管機關參與。該等簡報所包括的案例與可疑

<sup>7</sup> APG (2009)

<sup>7</sup> APG (2009 年)

指標，著重在洗錢相關的前置犯罪（譬如證券詐欺）以及洗錢行為本身，這可能是因為較少 APG 國家要求證券業通報疑似洗錢或資恐交易。即使有相關規定存在，證券相關的疑似洗錢或資恐交易通報（STR）的通報比率也很低，潛在影響了這些地區調查洗錢的能力。無論如何，部分 APG 國家的整體經驗是，證券業是創造非法資產的一個方法，而非漂白來自證券業外非法資產的管道。

33. Instances where ML was detected and reported were mostly at the placement stage because many APG countries still utilise cash as a payment method for securities transactions. For example, some APG country ML case studies focused on the laundering of proceeds of corruption through investments in the capital markets. As with the other typologies mentioned, the APG typology report did not present case studies where the securities industry was used for terrorist financing.

33. 洗錢活動被發現與通報的案例，大部分發生在處置階段，因為有許多 APG 國家仍然使用現金作為證券交易的支付方法。舉例來說，部分 APG 國家洗錢案例研究，著重在透過投資資本市場漂白貪污犯罪所得上。至於上述提及的其他類型研究，APG 類型研究報告則未提到任何證券業被用來資恐的案例研究。

34. As reported by APG member countries, the following were the most common suspicious indicators and methods related to money laundering and predicate offences involving the securities industry:

34. 依據 APG 會員國通報資料，下列是與證券業之洗錢與前置犯罪有關的最常見可疑指標與方法：

- Changing share ownership in order to transfer wealth across borders;
- 變更股份所有權，以跨國移轉財富；
- Redeeming a long-term investment within a short period;
- 短期內贖回長期投資；
- Opening multiple accounts or nominee accounts;
- 開設多個帳戶或名義人帳戶；
- Using brokerage accounts as long term depository accounts for funds;
- 使用經紀帳戶作為資金的長期存託帳戶；
- Effecting transactions involving nominees or third parties;
- 透過名義人或第三方執行交易；
- Engaging in market manipulation, e.g. “pump & dump” schemes; and
- 從事市場操縱行為，譬如（「哄抬與倒貨（pump & dump）」計謀；以及
- Engaging in boiler room operations.
- 從事鍋爐式騙局（boiler room operation）。

35. There appeared to be a consensus that APG countries need to better understand the ML/TF risks and vulnerabilities of the securities industry. It was noted that although APG mutual evaluation reports have some useful information on the sector, they do not address securities related ML/TF risks in a significant manner.

35. APG 國家顯然已有共識，必須進一步瞭解洗錢／資恐風險以及證券業弱點。我們也注意到，雖然 APG 相互評鑑報告提供了證券業的部分有用資訊，不過報告並未顯著說明與證券相關的洗錢／資恐風險。

## 2.3 International Activities and Materials

## 2.3 國際活動與資料

### *International Guidance and Best Practices*

### *國際指南與最佳實務*

36. A number of guidance documents issued by international organisations and/or domestic authorities provide useful information on ML/TF vulnerabilities in the securities industry.<sup>8</sup> International organisations, such as IOSCO, the Basel Committee on Banking Supervision and the International Association of Insurance Supervisors have produced documents that set out standards and best practices that national regulators and supervisors as well as banks, securities firms and insurance companies should follow.

36. 國際組織及／或 國內主管機關所發佈的數份指南文件，提供了證券業洗錢／資恐弱點的有效資訊。<sup>8</sup> 國際組織，譬如 IOSCO、巴塞爾銀行監理委員會（Basel Committee on Banking Supervision）、以及國際保險監理官協會（International Association of Insurance Supervisors），已經編製了相關文件，規範全國主管機關與監理機關、以及銀行、證券公司以及保險公司應該遵守的標準與最佳實務。

37. Vulnerabilities identified by these organisations requiring enhanced due diligence or a particular focus on supervision are listed below:

37. 這些組織指出、需加強審查或特殊監管的弱點如下：

- Transactions involving accounts in multiple jurisdictions;
- 牽涉多個地區帳戶的交易；
- Securities accounts introduced from one intermediary to another without adequate customer due diligence/know your customer (CDD/KYC) investigations or from high risk jurisdictions;
- 一家中介機構向其他機構所推薦未經過足夠客戶審查／瞭解您的顧客（CDD／KYC）調查，或來自高風險地區的證券帳戶；
- The use of front persons or entities (e.g. corporations, trusts);
- 採用掛名負責人或實體（譬如：公司、信託）；
- Entities with complex corporate structures;
- 具複雜企業架構的實體；
- Politically-exposed persons (PEPs);
- 擔任重要政治性職務人士（PEP）；
- Dealings with financial institutions and intermediaries or customers operating in jurisdictions with ineffective AML/CFT systems;
- 與在無有效防制洗錢／打擊資恐系統之地區營運的金融機構與中介機構或顧客往來；

<sup>8</sup> These documents are listed in the references and bibliography section.

<sup>8</sup> 此等文件列示在參考文獻與書目章節。

- Unregistered or unregulated investment vehicles;
- 未經登記或未受監管的投資工具；
- Cross-border omnibus and correspondent accounts; and
- 跨國綜合帳戶與往來帳戶；及
- Fictitious trading schemes.
- 虛構交易計畫。

38. Additional areas that are identified as low risk (and where reduced due diligence can, in some jurisdictions, be acceptable) also provide useful information on ML/TF vulnerabilities. These are generally products or accounts with restrictions, such as where:

38. 其他被認定風險較低的領域（以及部分地區可接受減免盡職調查的領域），也提供了與洗錢／資恐弱點有關的有用資訊。這些通常是有限制的產品或帳戶，譬如：

- Cash withdrawals are not permitted;
- 不允許現金提款；
- Redemption or withdrawal proceeds are not permitted to be paid to a third party; or
- 贖回或提領所得，不得支付給第三方；或
- It is not possible to change the characteristics of products or accounts at a future date to enable payments to be received from, or made to, third parties.
- 無法於未來變更產品或帳戶的屬性，以向第三方收取款項、或支付給第三方。

## 2.4 Domestic Material

### 2.4 國內資料

#### *Published Law Enforcement Cases*

#### *已公布之執法案例*

39. Some jurisdictions publish sanitised ML or other financial crime cases. Generally, these cases are published as part of an FIU's annual report, or as specific-topic trends or as typologies reports, and provide insights into ML or TF trends and methods, including statistics and other information. Such information is extracted from STRs and other reports, as well as investigations and other enforcement actions. These sources provide essential guidance to financial institutions and can be used by regulators and other government agencies to help develop their supervisory programmes, as well as in the assessment of AML/CFT system effectiveness.

39. 部分地區公布了去除個資的洗錢或其他金融犯罪案例。一般說來，這些案例會公布在金融情報中心的年度報告、或另外編製特定主題趨勢或類型研究報告，並提供了與洗錢或資恐趨勢與方法的深入研究，包括統計數據與其他資訊。此等資訊是擷取自 STR、其他報告以及調查與其他執法行動。此等來源為金融機構提供了基本指南，且主管機關與其他政府機構可用來制訂其監管計畫，以及評估防制洗錢／打擊資恐系統的有效性。

40. Although the Egmont Group also posts sanitised cases on its website, they contain relatively few references to securities.<sup>9</sup>

40. 雖然艾格蒙聯盟（Egmont Group）也會在其網站公布去除個資的案例，不過與證券相關的案例則相對較少。<sup>9</sup>

### **Regulatory Guidance and Reports**

#### **主管機關指導與報告**

41. Domestic regulators, FIUs and/or SROs produce guidance to assist their financial institutions and intermediaries in meeting their AML/CFT obligations. Some countries provide industry-specific guidance, including the securities industry, while other jurisdictions provide guidance that is applicable to financial institutions more generally. Guidance in respect of customer due diligence and risk assessment is intended to provide an indication of the types of transactions, customers and delivery channels that present higher ML/TF risks.

41. 國內主管機關、金融情報中心及／或自律團體會制訂指南，以協助其金融機構與中介機構履行防制洗錢／打擊資恐之責。部分國家提供產業別指南（包括證券業），而其他地區則提供更適用金融機構的指南。客戶審查與風險評估指南的目的，在提供存在較高洗錢／資恐風險的交易、顧客與交付通路種類之指標。

42. This regulatory guidance can involve, for example, a discussion of enhanced due diligence measures that are often recommended for specific types of products/customers, such as:

42. 此等主管機關指南可能包括（舉例來說），與針對特定種類產品／客戶通常建議進行之加強審查措施，譬如：

- Offshore trusts;
- 境外信託；
- Non-profit or charitable organisations;
- 非營利團體或慈善組織；
- Significant cross-border activity;
- 重大跨國活動；
- Internet/on-line accounts; and
- 網際網路／線上帳戶；及
- Omnibus and private banking accounts.
- 綜合帳戶與私人銀行帳戶。

43. Other guidance appears in the form of published suspicious transaction indicators. These indicators are often developed and published by FIUs and can be industry-specific or apply generally to all financial institutions and designated non-financial businesses and professions (DNFBPs). Some FIUs present the indicators in the context of specific cases that they have built and analysed. Each indicator individually is not an automatic trigger for reporting, but rather serves as a tool for determining whether a suspicious transaction report (STR) should be filed. A comprehensive list of such indicators has been

<sup>9</sup> The Egmont Group, [www.egmontgroup.org/library\\_sanitized\\_cases.html](http://www.egmontgroup.org/library_sanitized_cases.html)

<sup>9</sup> 艾格蒙聯盟，[www.egmontgroup.org/library\\_sanitized\\_cases.html](http://www.egmontgroup.org/library_sanitized_cases.html)



compiled using responses to the project questionnaire, published sources, and consultation with the private sector, and is available in Annex B.

43. 其他指南則以發佈可疑交易指標的形式提供。此等指標通常是由金融情報中心所制訂與發佈，且可能僅適用特定產業、或普遍適用所有金融機構以及指定之非金融事業或人員（DNFBP）。部分金融情報中心會以所引用與分析之特定案例說明指標。各指標個別並不會自動觸發報告義務，而是作為判定是否應申報疑似洗錢或資恐交易報告（STR）的工具。此等指標的完整清單，是採用專案問卷的回覆意見、已發佈的資料來源以及諮詢私部門後所得，茲檢附於附錄 B。

### Articles and Papers

#### 文章與論文

44. Specialised periodicals in the area of law, crime or finance publish research or analytical papers on topics related to money laundering written by regulators, law enforcement representatives, academics and members of the private sector. Even among such sources, little is found concerning securities. A few papers discuss the vulnerabilities of the securities industry, in particular at the layering stage, and provide indicators, cases, and discuss implications for regulators and broker-dealers.<sup>10</sup>

44. 法律、犯罪或金融領域的專業期刊，針對與洗錢有關的主題發佈了研究與分析論文，且是由主管機關、執法機構代表、學術機構與私部門成員所撰擬。即使是資料來源，也很少出現與證券有關的資料。只有幾份論文討論了證券業的弱點，尤其是分層化階段，並且提供指標、案例與對主管機關和經紀-經銷商影響的討論。<sup>10</sup>

## 2.5 Main Gaps in Existing Material

### 2.5 現有資料的主要差異

45. In comparison to several other sectors and financial products, there is significantly less documentation on the ML risks and vulnerabilities related to the securities industry. In many jurisdictions, the literature on TF is less still.

45. 於比較數個其他產業與金融產品時，與洗錢風險及證券業弱點有關的文件顯著較少。在許多地區，與資恐有關的文獻依然很少。

46. By contrast, there is much more abundant information on predicate crimes committed using securities, such as market manipulation and insider trading, in particular with respect to investigations, prosecutions and convictions. The possible connections between predicate offences and money laundering in the securities industry will be examined in this report.

46. 相對來說，與運用證券所犯下的前置犯罪有關的資訊，則顯然豐富許多，譬如市場操縱與內線交易，尤其是與調查、起訴與定罪有關的資料。本報告將檢驗前置犯罪與證券業洗錢的可能關連。

47. As noted above, a number of sanitised cases involving securities have been published, some of which provide detailed information on persons and entities involved and on the flows of funds. However, published cases rarely include information on the suspicious indicators or circumstances that led, or should have led, to the filing of an STR. In some cases, this limited information may be the result of the

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<sup>10</sup> A list of articles and papers is provided in the references and bibliography section.

<sup>10</sup> 相關文章與論文之清單，請見參考文獻與書目章節。



disclosure restrictions applicable to the STR filing itself. Also absent is information on any enforcement actions, e.g. prosecution or seizures, in respect of the specific case.

47. 如上所述，相關單位已經公布了許多牽涉證券且去除個資的案例，其中部分提供個人與實體的詳細資訊，以及資金流動情況。然而，已公布的案例鮮少包括與可疑指標或導致、或可能導致應申報 STR 有關的資訊。於部分情況下，此等有限資訊可能是因為 STR 申報本身的揭露限制所導致的。另外也缺乏與任何執法行動有關的資訊，譬如：特定案件的起訴或扣押。

## CHAPTER 3: ML/TF VULNERABILITIES IN THE SECURITIES INDUSTRY 第 3 章：證券業洗錢／資恐弱點

### 3.1 Introduction 3.1 前言

48. The FATF Glossary defines a “financial institution” as including a person or entity that, among other things, conducts as a business the following activities:

48. FATF 詞彙表將「金融機構」定義為（尤其）從事下列活動為業務之個人或實體：

- The transfer of value or money;
- 移轉價值或金錢；
- Trading in:
- 交易於：
  - (a) money market instruments such as cheques, bills, certificates of deposits (CDs), derivatives, etc.;
  - (a) 貨幣市場工具，譬如支票、票據、存款單（CD）、衍生性商品等；
  - (b) foreign exchange;
  - (b) 外幣兌換；
  - (c) exchange, interest rate and index instruments;
  - (c) 匯率、利率與指數商品；
  - (d) transferable securities;
  - (d) 可轉讓證券；
- Participation in securities issues and the provision of financial services related to such issues;
- 參與證券發行以及提供與此等發行有關之金融服務；
- Individual and collective portfolio management;
- 個別與集合投資組合管理；
- The safekeeping and administration of cash or liquid securities on behalf of other persons;
- 代表他人保管與管理現金或流動性證券；
- Otherwise investing, administering or managing funds or money on behalf of other persons; and
- 代表他人以其他方式投資、經營或管理資金或金錢；及
- Underwriting and placement of life insurance or other investment related insurance.
- 壽險契約之核保與招攬或其他有關投資型保險。

49. While the activities of securities industry participants do not constitute a distinct activity category under the 40+9 Recommendations<sup>11</sup>, the activities described in the questionnaire responses fall squarely within the FATF's definition of a financial institution. However, and perhaps not surprisingly, the full scope of securities industry activity is broader still. As such, a more detailed overview of the industry is needed in order to fully appreciate its ML/TF vulnerabilities. As the complexity of products and the diversity of the actors in the securities industry continue to expand, it is suggested that the FATF keep under consideration the extent to which the definition of "financial institution" still covers persons engaged in activities associated with the securities industry.

49. 雖然證券業參與方的活動不構成 40+9 建議書 (40+9 Recommendations) 獨特的活動種類，<sup>11</sup> 問卷回覆所述的活動則落在 FATF 的金融機構定義中。然而，可能並不令人驚訝的是，證券業活動範圍非常廣泛。因此，必須針對證券業進行更加詳細的說明，才能充分瞭解其洗錢／資恐弱點。隨著證券業產品複雜度與參與方多樣性持續擴大，我們建議 FATF 持續將「金融機構」的定義範圍，納入從事證券業相關活動的人員。

50. The content of this chapter is principally based on the 40 responses to the questionnaire, which asked participant jurisdictions to use the definition of "financial institution" in the FATF Glossary as a point of reference for identifying:

50. 本章內容主要依據問卷的 40 份回覆資料所做成。問卷要求參與地區採用 FATF 詞彙表的「金融機構」定義，作為辨識下列項目的參考基準：

- Products that are classified as "securities" within a jurisdiction;
- 該地區歸類為「證券」之產品；
- The type of market access and payment methods involved e.g. securities exchanges, over-the-counter markets, use of cash or cheques for payment;
- 進入市場與支付方法的種類，譬如：證券交易、櫃買市場、使用現金或支票支付；
- The type of intermediaries involved in the offer, sale, recommendation, or distribution of securities e.g. broker-dealers, financial advisers, banks, insurance companies; and
- 參與報價、銷售、推薦或經銷證券之中介機構種類，譬如：經紀-經銷商、財務顧問、銀行、保險公司；及
- The vulnerabilities associated with each, as well as some relevant case studies.
- 與各項以及部分相關案例研究有關之弱點。

## Organisation of Material

### 資料架構

51. This chapter is organised into eight topical sections: (1) products classified as securities according to questionnaire responses; (2) markets and other means of access; (3) payment methods; (4) securities intermediaries; (5) client and account types; (6) determination of value; (7) rogue employees;

<sup>11</sup> The FATF 40 and 9 Special Recommendations have been recognised by the International Monetary Fund and the World Bank as the international standards for combating money laundering and the financing of terrorism. They are available at

[www.fatf-gafi.org/document/28/0,3343,en\\_32250379\\_32236930\\_33658140\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/28/0,3343,en_32250379_32236930_33658140_1_1_1_1,00.html).

<sup>11</sup> 防制洗錢金融行動工作組織 40+9 特別建議書 (FATF 40 and 9 Special Recommendations)，已經獲得國際貨幣基金以及世界銀行認可為打擊洗錢與資恐的國際標準。建議書內容請參閱下列網址：

[www.fatf-gafi.org/document/28/0,3343,en\\_32250379\\_32236930\\_33658140\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/28/0,3343,en_32250379_32236930_33658140_1_1_1_1,00.html)。

and (8) terrorist financing. Each section provides an overview of the topic area, followed by a discussion of its particular ML/TF vulnerability. When available, these sections also present case studies.

51. 本章分為八大主題章節：(1) 依據問卷回覆歸類為證券之產品；(2) 市場與其他進入方法；(3) 支付方法；(4) 證券中介機構；(5) 客戶與帳戶種類；(6) 價值之決定；(7) 不良之員工；以及 (8) 資恐。每節皆將概要說明各主題，接著討論其特定洗錢／資恐弱點。於適當時，此等情境亦將說明案例研究。

### 3.2 Securities Products as Described in Questionnaire Responses

#### 3.2 問卷回覆所述之證券產品。

52. The FATF Glossary does not define the term “security.” Because of jurisdictional differences in defining the term, this report will not attempt to provide a universal definition. However, this report does provide an overview of the products that were identified as securities by the jurisdictions that responded to the questionnaire.

52. FATF 詞彙表並未定義「證券」一詞。因為各地區對證券的定義有所不同，本報告將不會試圖提供一個統一定義。不過，本報告將會概要說明回覆問卷之地區歸類為證券的產品。

53. The questionnaire asked that respondents categorise securities products under the following three broad categories: (1) *Transferable Securities*; (2) *Units in Collective Investment Schemes*; and (3) *Derivatives*.<sup>12</sup>

53. 問卷會要求回覆者依據下列三大廣義類別分類證券產品：(1) *可轉讓證券*；(2) *集合投資計畫單位*；以及 (3) *衍生性商品*。<sup>12</sup>

#### *Transferable Securities*

##### *可轉讓證券*

54. The questionnaire listed: (1) equities; (2) bonds and similar debt instruments; (3) certificates of deposit; and (4) bills of exchange as transferable securities. Jurisdictions were asked to include in their questionnaire responses any other products that were considered transferable securities in their jurisdictions or indicate which, if any, of the broad categories were not.

54. 問卷列示了：(1) 股票；(2) 債券及類似債務工具；(3) 存款單；及 (4) 匯票可轉讓證券。問卷要求各地區在回覆中列出其認為可轉讓證券之任何其他產品，或列出不屬可轉讓證券的廣泛類別（若有的話）。

55. Most jurisdictions indicated that the products listed in the questionnaire as transferable securities were designated as such under their laws. However, jurisdictions also identified additional products to those identified in the questionnaire that were considered transferable securities, such as:

55. 大部分地區都指出，問卷所列屬可轉讓證券之產品，其法律也規定在可轉讓證券項下。然而，除問卷所列產品外，各地區也列出了其視為可轉讓證券的其他產品，譬如：

- Bank bills and guarantees;
- 銀行票據與擔保；

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<sup>12</sup> A glossary is provided in Annex A that defines selected terms used in this report.

<sup>12</sup> 本報告所使用特定名詞之定義，請參附錄 A 詞彙表。

- Bonds that are convertible to other shares;
- 可轉換為其他股份之債券；
- Bonds with a share warrant;
- 具認股權證之債券；
- Certificates of participation;
- 參與證明書；
- Commercial notes;
- 商業本票；
- Debentures;
- 債券；
- Mortgage bonds, securities and certificates;
- 抵押擔保債券、證券與憑證；
- Notes issued in a series that obligates a corporation to pay a certain sum at a certain date; and
- 連續發行、且公司需負責於特定日期支付特定金額之票券；及
- Share warrants.<sup>13</sup>
- 認股權證。<sup>13</sup>

56. It should be noted that, while most jurisdictions treat certificates of deposit as securities, seven did not. In addition, only twelve jurisdictions treat bills of exchange as securities. The fact that they are not defined as a “security” does not in itself mean that there is any gap in the regulatory or supervisory system of the jurisdiction concerned, but highlights the complexity of the terminology used to define these products, and that different authorities (for example a banking supervisor) might be responsible for AML/CFT supervision of these products.

56. 應注意的是，雖然大部分地區都將存款單視為證券，不過有七個地區則不這麼認為。此外，只有十二個地區將匯票視為證券。相關產品未被定義為「證券」，並不代表相關地區的法規或監管系統有任何差異，而是凸顯了用於定義此等產品的名詞的複雜性質，且此等產品的防制洗錢／打擊資恐之監管，可能由不同主管機關（舉例來說，金融監理機關）負責。

### *Units in Collective Investment Schemes (CISs)*

#### **集合投資計畫單位 (CIS)**

57. The questionnaire listed: (1) unit trusts; (2) investment trusts; (3) mutual funds; (4) open-ended investment companies (OEICs); (5) open-ended collective investment schemes (SICAV/Fs); and (6) closed-end companies as units in collective investment schemes (UCIS).

57. 問卷列示了：(1) 基金信託；(2) 投資信託；(3) 共同基金；(4) 開放式投資公司 (OEIC)；(5) 開放式集合投資計畫 (SICAV/F)；及 (6) 屬集合投資計畫單位之封閉式公司 (UCIS)。

<sup>13</sup> While jurisdictions identified other instruments as transferable securities, the products listed here are intended simply to illustrate the wide scope of the instruments that were included in the questionnaire responses.

<sup>13</sup> 雖然各地區也列出了屬於可轉讓證券的其他工具，本文件所列產品僅為說明問卷回覆所列工具之廣泛範圍而使用。

58. Although jurisdictions included some variants, many of these differences may be attributable to regional language differences.<sup>14</sup>

58. 雖然各地區的回覆部分有所不同，其中許多差異可能是因為區域性語言差異所導致的。<sup>14</sup>

### *Derivatives*

#### *衍生性商品*

59. The questionnaire listed: (1) options; (2) futures; (3) swaps; (4) forward rate agreements; and (5) commodity derivatives contracts; and (6) foreign exchange contracts as derivatives.

59. 問卷列示了：(1) 選擇權；(2) 期貨；(3) 交換；(4) 遠期利率合約；(5) 大宗商品衍生性商品契約；以及 (6) 作為衍生性商品之外匯契約。

60. As with transferable securities and CISs, most jurisdictions consider these instruments to be securities, with some variations.<sup>15</sup>

60. 至於可轉讓證券與 CIS，大部分地區都認為此等票據屬於證券，只有少部分地區非如此。<sup>15</sup>

61. In most jurisdictions where instruments are not treated as securities by law, they are generally treated as “financial instruments” or “derivatives.” In some jurisdictions where particular products were not considered to be securities, it was not necessarily clear what alternative regulatory regime (if any) applied to those products. This gives rise to concerns that ML/TF risks relating to those products might not be fully identified. In any event, the complexity of and ability to customise derivatives products makes it difficult to assess the full scope of products in the marketplace.

61. 在法律未將相關工具視為證券的大部分地區，通常將該等產品視為「金融工具」或「衍生性商品」。在未將特定產品視為證券的部分地區，對於是否有其他法律規定（若有的話）適用該等產品，則並不清楚。因此，與該等產品有關的洗錢／資恐風險，可能發生無法被充分發現的疑慮。無論任何情況下，衍生性商品的複雜度與客製化能力，都令人難以完全瞭解市場的產品全貌。

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<sup>14</sup> For example, a number of jurisdictions do not treat unit trusts as securities. In addition, OEICs, SICAV/Fs, and closed-end companies are treated as securities in 18 (mainly European) jurisdictions, but do not exist in a small number of jurisdictions.

<sup>14</sup> 舉例來說，許多地區都不把基金信託視為證券。此外，有 18 個（主要在歐洲）地區將 OEIC、SICAV/F 以及封閉式公司視為證券，不過少部分地區則否。

<sup>15</sup> Five jurisdictions do not define options as securities; six jurisdictions do not define futures as securities; seven jurisdictions do not define swaps as securities and one jurisdiction indicated that swaps do not exist in its jurisdiction; ten jurisdictions do not define forward rate agreements as securities, and three jurisdictions indicated that forward rate agreements do not exist in their jurisdictions; ten jurisdictions do not define commodity derivatives contracts as securities and three jurisdictions indicated that commodity derivatives contracts do not exist in their jurisdictions.

<sup>15</sup> 五個地區並未將選擇權定義為證券；六個地區並未將期貨定義為證券；七個地區並未將交換定義為證券，且一個地區指出其地區內並無交換產品；十個地區並未將遠期利率合約定義為證券，且三個地區指出其地區內並無遠期利率合約產品；十個地區並未將大宗商品衍生性商品契約定義為證券，且三個地區指出其地區內並無大宗商品衍生性商品契約產品。



## Other 其他

62. The questionnaire also asked jurisdictions to list any other products that would be classified as securities but that were not captured in the categories listed in the questionnaire. Jurisdictions identified:

62. 問卷也要求各地區列出應歸類為證券、但不在問卷所列類別範圍之任何其他產品。各地區列出了：

- Annuities;
- 年金；
- Credit-default swaps;
- 信用違約交換；
- Equity-indexed annuities;
- 股票指數年金；
- Profit sharing agreements/certificates;
- 利潤分享協議／憑證；
- Subscription rights; and
- 申購權利；以及
- Variable life insurance and variable annuities.
- 變動壽險與變動年金。

63. Foreign exchange (Forex) trading is an example of an activity that is technically covered by the FATF definition, but is not always consistently treated as an activity undertaken in the securities sector. Limited suspicious indicators and typology information were available for this activity. This is an area that may benefit from further study.<sup>16</sup>

63. 匯率（Forex）交易是從技術上符合 FATF 定義、但實務上不一定被視為證券業相關活動的例子。此活動之可疑指標與類型研究資訊甚為有限，因此可能適合進一步的研究。<sup>16</sup>

<sup>16</sup> Ten jurisdictions do not define foreign exchange contracts as securities and four jurisdictions indicated that foreign exchange contracts do not exist in their jurisdictions.

<sup>16</sup> 十個地區並未將匯率契約定義為證券，另外有四個地區指出其地區內並無匯率契約產品。

### 3.2.1 Vulnerabilities Associated with Particular Types of Securities Products

#### 3.2.1 與特定種類證券產品有關的弱點。

64. As illustrated by the responses to the questionnaire, different jurisdictions classify a wide range of products as securities. In this respect, any of the products listed above can be utilised in the layering and integration stages of money laundering once illicit assets are placed in the financial system. As noted above, however, the securities industry is relatively inhospitable to the placement of illicit assets into the financial system. Nevertheless, as discussed below, certain securities products do pose identifiable ML/TF vulnerabilities even at the placement stage.

64. 如同問卷回覆所述，不同地區會將不同產品歸類為證券。因此，一旦非法資產進入金融系統之後，上述任何產品都可在洗錢的分層化與整合階段加以運用。然而，如同上述，證券業對於非法資產投入金融系統的態度相對較為冷淡。儘管如此，從我們下面的討論也可知道，特定證券產品確實存在可找出的洗錢／資恐弱點，即使是在處置階段也一樣。

#### *Physical Securities (Including Bearer Securities and Bills of Exchange)*

##### 實體證券（包括無記名證券與匯票）。

65. Although many jurisdictions have dematerialised securities, the questionnaire responses indicated that physical and bearer securities are still available in some jurisdictions. Bearer securities consist of both physical equity and debt securities that, unlike registered securities, do not necessarily require that the owner be registered with an issuer or a transfer agent. The transfer of bearer securities can be as simple as handing the security over to a new owner. It is important to note that the transfer of ownership can, in some jurisdictions, be almost as easily accomplished through electronic means that inhibit tracking any change of ownership.<sup>17</sup> In addition, some bearer bonds are almost equivalent to cash because they can be easily redeemed at financial institutions.

65. 雖然許多地區都有無實體證券，問卷回覆顯示，部分地區仍然提供實體與無記名證券。無記名證券包括實體股票與債務證券，且（與記名證券不同）不必然要求所有人向發行人或股務代理人登記。移轉無記名證券的作業，可以跟將證券交付給新所有人一樣簡單。應注意的一點是，在部分地區，移轉所有權的作業幾乎可以全部以電子方式進行，不會有任何所有權變動的記錄存在。<sup>17</sup> 此外，在可以透過金融機構輕鬆贖回的情況下，部分無記名債券幾乎等同於現金。

66. The anonymity and easy transferability of bearer securities presents a significant ML/TF vulnerability at all three stages of money laundering. Illicit assets can be placed in the securities industry through the purchase of bearer securities. Once a bearer security has been issued, money launderers or terrorist financiers can hold these securities or transfer them to an intended recipient without necessarily having to use facilities that would record a transaction, conduct CDD or impose KYC obligations. Recipients of bearer securities can deposit them into brokerage accounts in order to purchase other assets, or liquidate them and withdraw or wire transfer their proceeds out of the jurisdiction, thus layering and integrating the illicit assets. Bearer securities can also be used to conceal the identities of the beneficial owners of shell companies, as discussed below.

66. 無記名證券的匿名以及易於移轉的特性，在洗錢的全部三個階段都存在重大的洗錢／資助恐怖分子弱點。非法資產可透過購買無記名證券的方式進入證券業。於發行無記名證券後，洗錢行為人或恐怖份子資助者可持有此等證券或移轉給計畫中的受款方，不需透過將會記錄交易、執行客戶審查或規範 KYC 義務的機構。無記名證券收受方可將其存入經紀帳戶，以購買其他資產、或變

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<sup>17</sup> Marco Arnone & Pier Padoan (2008).

<sup>17</sup> Marco Arnone 與 Pier Padoan (2008 年)。

現並提領、或將其所得轉出該地區，因此可將非法資產分層化並將以整合。無記名證券亦可被用來隱匿空殼公司實質受益人的身份，詳如下述。

67. In some jurisdictions, bills of exchange are treated as securities. A bill of exchange (e.g. cheque, bank draft) is a written unconditional order by a drawer to a drawee to pay money on demand or at a fixed or determinable future time to a payee (the specified person or to the bearer). Bills of exchange can be payable on sight or at a future date and can be transferred by making an endorsement or signature. The risk posed by a bill of exchange is similar to that of a bearer security: ease of transfer and redemption. Although jurisdictions did not provide specific suspicious indicators for bills of exchange, those for bearer securities may be applicable.

67. 部分地區將匯票視為證券。匯票（譬如：支票、銀行匯票）是指由開票人開立書面指示給付款人，於提示時、或於固定或未來可確定的時間無條件支付貨幣給收款人（指定人或持票人）。匯票可見票即付、或於未來日期支付，且可透過背書或簽署之方式移轉。匯票的風險與無記名證券類似：容易移轉與贖回。雖然各地區並未提供匯票之特定可疑指標，不過可能可適用無記名證券之指標。

#### ***Suspicious Indicators for Physical Securities<sup>18</sup> (including Bearer Securities and Bills of Exchange)*** **實體證券之可疑指標<sup>18</sup>（包括無記名證券與匯票）**

68. The following are suspicious indicators that are applicable to physical securities, including bills of exchange:

68. 下列為適用實體證券（包括匯票）之可疑指標：

- The customer deposits a large number of bearer securities at the securities firm and quickly redeems the securities or sells them in the open marketplace;
- 顧客將大量無記名證券存入證券公司，並且在短時間內贖回證券或在公開市場出售；
- The customer requests cashing of bearer securities without first depositing them into an account;
- 顧客要求變現無記名證券，且未事先將證券存入帳戶；
- The customer frequently deposits bearer securities or bills of exchange into an account;
- 顧客經常將無記名證券或匯票存入帳戶；
- The bearer securities or bills of exchange, if titled, are titled differently than the name on the account;
- 無記名證券或匯票之名稱（若記名），與帳戶名稱不同；
- The customer's explanation regarding the method of acquiring the bearer securities or bill of exchange does not make sense or changes;
- 顧客對取得無記名證券或匯票所提供的說明，並不合理或經常改變；
- The customer frequently deposits bearer securities in amounts just below a jurisdiction's threshold reporting requirement;
- 顧客經常存入數量略低於該地區通報規定門檻的無記名證券；

<sup>18</sup> Physical securities are also implicated in market manipulation, as discussed in Chapter 4.

<sup>18</sup> 實體證券亦可能牽涉市場操縱，請參第 4 章說明。

- Payments for bills of exchange made by way of third party cheques are payable to, or endorsed over to, the customer; and
- 將來自第三方支票支付之匯票款項，支付或背書轉讓給顧客；
- The physical security does not bear a restrictive legend, even though the history of the security and/or the volume of shares being traded suggest that it should have such a legend.
- 即使待交易證券之過去紀錄及／或股票數量顯示其應載明限制性用語，實體證券仍未列示限制性用語。

### **Insurance Products**

#### **保險產品**

69. In some jurisdictions, insurance contracts that contain an investment component are considered to be securities, and thus are sold through a securities intermediary. For example, a variable annuity is a contract issued by an insurance company under which an investor provides the insurer with a lump-sum premium payment or series of periodic payments. In return, the insurer agrees to make periodic payments to the investor beginning immediately or at some future date. The investor is usually permitted to invest the purchase payments in a range of investment options, such as mutual funds or unit investment trusts. The value of the variable annuity will vary, depending on the performance of the investment options that have been chosen.

69. 部分地區將包括投資要素的保險契約視為證券，因此需透過證券中介機構出售。舉例來說，變動年金是由保險公司銷售之契約，投資人需支付保險公司一筆定額保險費、或連續定期支付保險費。保險公司則因此同意立即或自特定未來日期起定期付款給投資人。投資人通常可將購買款項投資在多種投資選擇，譬如共同基金或單位投資信託。變動年金的價值，將依所選擇投資項目的績效而變動。

70. In addition, variable annuity contracts typically have a “free look” or “cooling off” period of ten or more days during which the investor may terminate the contract without paying any penalties and receive a refund for the amount of the contract. The amount of the refund may equal either the account value when the contract is terminated or the amount of purchase payments, depending on the terms of the contract and applicable legal requirements.

70. 此外，變動年金契約通常提供十天或十天以上的「審閱 (free look)」或「冷靜 (cooling off)」期，投資人得在該期間內終止契約並退回契約金額，不需支付任何罰款。依據契約條款與適用法律規定之不同，退款金額可能等於契約終止時之帳戶價值，或等於購買款項。

71. This “free look” period gives rise to a particular risk: a money launderer can purchase a variable annuity and then seek a refund during the free look period. The cheque received from the insurance company may not draw suspicion when deposited at a bank.<sup>19</sup>

71. 此等「審閱」期將帶來特定風險：洗錢行為人可購買變動年金並於審閱期內要求退款。自保險公司領取之支票，若存入銀行，就可能不會引起懷疑。<sup>19</sup>

72. From a supervisory or regulatory perspective, there is potential duplication, but also a potential gap, if countries have two separate supervisory authorities looking at the insurance and securities

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<sup>19</sup> The placement stage risks of cheques and money orders are discussed more fully below in Section 3.4 on payment methods.

<sup>19</sup> 支票與匯票之處置階段風險，詳細說明於下列第 3.4 條支付方法。

industries. Although this is outside the scope of the current study, this is an area which might benefit from further investigation.

72. 從監理或主管機關角度來看，若國家設立兩個獨立監理主管機關分別負責監督保險與證券產業，則可能會出現重複監管或監管落差。雖然這個情況不在研究的範圍內，卻有必要進一步調查。

### *Suspicious Indicators for Insurance Company Products* **保險公司產品之可疑指標**

73. The following have been identified as suspicious indicators involving insurance company products:

73. 下列為與保險公司產品有關之可疑指標：

- The customer cancels an insurance contract and directs that the funds be sent to a third party;
- 顧客解除保險契約，並要求將退款支付給第三方；
- The customer deposits an insurance annuity check from a cancelled policy and immediately requests a withdrawal or transfer of the funds;
- 顧客存入已解約之保險合約的保險年金支票，並立即要求提領或進行資金轉帳；
- The customer cancels an annuity product within the “free look” period;<sup>20</sup>
- 顧客在「審閱」期內解除年金產品契約；<sup>20</sup>
- The customer opens and closes accounts with an insurance company only to open a new account shortly thereafter with the same insurance company, but with new ownership information;
- 顧客向保險公司申請開設及關閉帳戶，不過之後又立即以其他人名義向同一家保險公司申請開設新帳戶；
- The customer purchases an insurance product with no concern for investment objective or performance;
- 顧客購買保險產品，且不在意其投資目標或績效；
- The customer purchases an insurance product with unknown or unverifiable sources of funds, such as cash, sequentially numbered money orders, traveller’s cheques, and/or cashier’s cheques;
- 顧客以未知或無法辨識來源之資金購買保險產品，譬如現金、連續編號之匯票、旅行支票及／或銀行本票；
- The customer is particularly interested in the product’s early surrender and in the amount that he will then have at his disposal;
- 顧客對產品的提前解約、以及因此可處置之資金特別感到有興趣；

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<sup>20</sup> Although this will often be a legitimate transaction, it could also signal a method of laundering funds if accompanied by other suspicious indicators, such as purchasing the annuity with several sequentially numbered money orders, traveller’s cheques, or cashier’s cheques and/or the customer’s having a history of cancelling annuity products during the “free look” period.

<sup>20</sup> 通常此行為通常會是合法交易，不過若合併其他可疑指標，也可能代表漂白資金的方法，譬如以數張連續編號的匯票、旅行支票或銀行本票購買年金、及／或顧客過去曾有在「審閱」期解除年金產品契約的記錄。



- The customer purchases an insurance contract using a single large premium payment, particularly with an unusual payment method, such as cash or cash equivalent;
- 顧客使用單一大筆保險費購買保險契約，尤其是採用異常支付方法，譬如現金或約當現金；
- The customer purchases a single premium policy using cash, money orders, traveller's cheques, or cashier's cheques for an amount that is clearly out of proportion to the customer's income;
- 顧客使用現金、匯票、旅行支票或銀行本票購買單筆保險費保單，且其金額顯然與顧客之收入不相當；
- The customer enters into a contract for a considerable sum subject to payment of the premiums from abroad, particularly from an offshore financial centre;
- 顧客購買一大額保險契約，惟保險費需自海外支付，尤其是來自境外金融中心；
- The customer substitutes, during the life of the contract, the initial beneficiary for a person without any apparent link to the policyholder;
- 顧客於契約有效期限內，以與保單持有人無明顯關係之其他人取代原始受益人；
- The customer cancels the contract without concern for the considerable tax or other cancellation charges that he or she has to pay as a result; and
- 顧客解除契約，且不在乎因此需支付大額稅金或其他解約手續費；及
- The customer secures a policy loan against the cash value soon after the policy is issued and repays the loan with cash or various monetary instruments.
- 顧客在保單成立之後，以保單現金解約價值申請保單貸款，並以現金或各種貨幣工具償還貸款。

### ***Low Priced Securities and Private Issuers*** **低價證券與非公開發行人**

74. Low priced securities, also known as penny stocks, refer to low-value equity interests in companies that are publicly traded or are about to become so. The issuers of these shares generally have legitimate business operations and revenue streams. However, some publicly traded penny stocks are really shell companies that may be used for a reverse merger. In any event, shares in these issuers will often be represented with physical securities that can be deposited with a securities intermediary. These shares are not likely to be traded on traditional exchanges, but rather in over-the-counter ("OTC") markets or on bulletin boards, which are discussed below. Penny stocks typically have very low trading volume but, unlike bearer securities, ownership of these shares will often be registered with the issuer and/or a transfer agent.

74. 低價證券，又稱廉價股票（penny stocks；仙股），係指公開交易或即將公開交易之公司的低價股權利益。此等股份之發行人，通常擁有合法的商業營運與收入來源。然而，部分公開交易之低價股票，事實上可能是被反購併利用的空殼公司。無論如何，此等股份通常會以實體證券之形式存放在證券中介機構。此等股份不太可能會在傳統交易所進行交易，而是在櫃買（「OTC」）市場或布告欄交易，我們將在後報告後續章節討論。低價股票的交易量通常非常低，不過與無記名證券不同的是，此等股份之所有權通常需向發行人及／或股務代理人登記。

75. The ML/TF vulnerabilities posed by these securities are two-fold. First, these types of securities are often used to generate illicit assets through market manipulation, insider trading, and fraud. Illicit actors can either use existing shares that are already publicly traded, or start a shell company for the express purpose of engaging in those illicit activities. In addition, criminal organisations have also been



known to use illicit assets generated outside the securities industry to engage in market manipulation and fraud. This first vulnerability is discussed more fully in Chapter 4.

75. 此等證券所帶來的洗錢／資恐弱點有兩個部分。第一，此等類型證券通常被用來透過市場操縱、內線交易以及詐騙等方式創造非法資產。非法行為人可運用已公開交易之既有股份、或為從事非法活動之明顯目的開設空殼公司。此外，犯罪組織已被發現會運用於證券業外創造的非法資產從事市場操縱與詐騙行為。第一個弱點將在第 4 章進一步詳細說明。

76. Second, these securities can be acquired by investing illicit assets into a company that is about to become public. Once the company goes public, the money launderer can sell his or her stake, thereby giving funds the appearance of having been derived from a legitimate securities transaction. Moreover, criminal organisations can also initially invest in a private company that they can then use as a front company for comingling illicit and legitimate assets. They can then take this company public through an offering in the public securities markets, thus creating what appear to be legitimate offering revenues. Alternatively, criminal organisations can acquire a publicly traded company and use it to launder illicit assets.

76. 第二，此等證券可透過將非法資產投入即將公開發行之公司的方法取得。在公司公開發行之後，洗錢行為人可以出售他的股份，因此讓資金從形式上看來是源自於合法的證券交易。此外，犯罪組織也可以先投資非公開公司，並將其作為混合非法資產與合法資產的傀儡公司。接著則可透過於公開證券市場公開發行的方式，創造看起來合法的發行收入。犯罪組織另可收購公開公司，用來漂白非法資產。

### *Suspicious Indicators and Case Studies for Low Priced Securities and Private Issuers* 低價證券與非公開發行人之可疑指標與案例研究。

77. The suspicious indicators associated with low priced securities and private issuers are, for the most part, identical to those that are discussed in the market manipulation section of Chapter 4.

77. 與低價證券及非公開發行人有關之可疑指標，大部分與第 4 章市場操縱部分敘述的相同。

#### **Case Study 1: Laundering by acquisition of publicly traded shell company** 案例研究 1：透過取得公開發行的空殼公司洗錢

<b>Offence:</b> 犯罪行為：	Money laundering 洗錢
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	N/A 不適用
<b>Jurisdiction:</b> 地區：	Israel 以色列
<b>Subject:</b> 主體：	Individual 個人
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Front companies, publicly-traded shares of a shell company 傀儡公司、空殼公司之公開交易股份
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>• Use of a public shell company (traded on the stock exchange);</li> <li>• 運用公開發行的空殼公司（於證券交易所交易）；</li> <li>• Use of a front company/straw man to perform the acquisition;</li> <li>• 運用傀儡公司／傀儡執行收購；</li> <li>• Transferring funds through several accounts;</li> <li>• 透過數個帳戶移轉資金；</li> <li>• Use of a money services business (MSB) to transfer funds;</li> <li>• 運用金錢服務業（MSB）移轉資金；</li> <li>• Withdrawing the funds shortly after the acquisition by means of loans; and</li> <li>• 在收購後，透過貸款方式取回資金；及</li> <li>• Transferring funds to the same MSB.</li> </ul>

- 移轉資金至相同 MSB。

### Suspicious transaction/activity report information

#### 可疑交易／活動報告資訊

The FIU received an STR from a bank regarding D, a man in his twenties with a student account. The STR stated that D bought a controlling interest in public shell company X and then proceeded to open a bank account in the name of that company. A few days later, the account received a deposit of approximately US\$2.5 million.

金融情報中心（FIU）收到銀行所寄發、與 D 有關的疑似洗錢或資恐交易報告（STR）。D 是一名 20 幾歲的年輕人，擁有一個學生帳戶。根據 STR 資料，D 買入公開發行空殼公司 X 的控制權利益，接著以該公司的名義開設了一個銀行帳戶。幾天之後，該帳戶收到了一筆將近 250 萬美元的存款。

### Case description

#### 案例描述

In addition to company X, D was also the sole owner of a private company, Y. D used company Y to purchase a controlling interest in company X through the OTC market. Part of the US\$2.5 million that was credited to company X was derived from a company Y account. Company Y received large deposits from several private accounts managed by criminal entities involved in drug trafficking. In one case the funds were transferred from the person known to be involved in criminal activity through an MSB account to the account of company X to further distance the source of the funds. The new controlling owners appointed new directors, including family members.

除 X 公司外，D 也是一家私人公司 Y 的獨資資主。D 運用 Y 公司，透過 OTC 市場取得 X 公司的控制權。匯入 X 公司的 250 萬美元存款，有一部分來自 Y 公司帳戶。Y 公司收到了由從事毒品走私的幾個犯罪實體所管理的幾個私人帳戶所存入的大額存款。在其中一個案例中，資金是由已知從事犯罪活動的人透過一個 MSB 帳戶轉帳到 X 公司帳戶，以進一步稀釋資金來源。新的控制權所有人指派了幾名新任董事，包括其家庭成員。

Shortly after the US\$2.5 million was transferred to the account of company X, it was transferred back to the MSB account. Some of the money was transferred as a loan to company W, which was associated with the same criminal organisation that originally transferred funds to Company Y.

在 250 萬美元轉帳到 X 公司帳戶後，資金又被轉回 MSB 帳戶。部分金錢被以貸款的方式移轉給 W 公司，而後者與原轉帳資金給 Y 公司的同一犯罪組織有所關聯。

D and his family were well-known to the FIU for having acquired public shell companies in the past for money laundering purposes, including committing other predicate offences. They were also suspected of fraudulently influencing the movement of the stock share prices of companies owned by them, performing circular transfers of funds, and fraudulently removing funds from the companies.

依據金融情報中心資料，D 與他的家人在過去就一直為洗錢目的而收購公開發行空殼公司，而且也犯下其他前置犯罪。他們也被懷疑以詐騙的方式，影響其所控制公司的股價變動、從事資金循環轉帳以及以詐騙的方式自公司挪用資金。

### Options

#### 選擇權

78. An option is a contract where one party (option seller) agrees to either buy a specified number of securities from, or sell a specified number of securities to, another party (option buyer) at a specified price per share (strike price). The option seller receives an upfront payment (premium) in exchange for assuming the obligations under the option. A put option gives the option buyer the right to sell the securities to the option writer at the specified price. A call option gives the option buyer the right to buy the securities from the option writer at the strike price. Typically, the option buyer has the right, but not the obligation, to exercise the option contract. Options can be traded on exchanges or OTC. They can be physically-settled (i.e. settled by delivering the securities) or cash-settled (i.e. settled by making a cash payment equal to the difference between the strike price and the market price of the security times the number of securities specified in the contract).

78. 選擇權是一方（選擇權買方）同意以約定每股價格（履約價格）向另一方（選擇權賣方）購買約定數量證券的契約（反之亦成立）。選擇權賣方會收到預付款（權利金），交換承擔選擇權的義務。賣權選擇權，讓選擇權買方有權按約定價格出售證券給選擇權賣方。買權選擇權，讓選擇權買方有權按履約價格向選擇權賣方購買證券。通常情況下，選擇權買方有權、但無義務行使選擇權契約。選擇權可透過交易所或櫃買市場進行交易；得以實體交割（亦即：以交付證券的方式交割）

或現金交割（亦即：以支付現金款項的方式交割，其金額則等於履約價格與證券市場價格差額、乘上契約約定之證券數量）。

79. An OTC option presents a ML/TF vulnerability if one party agrees to enter into an options contract on terms worse than those available in a rational market to guarantee that the counterparty receives a net payment. In this respect, an OTC option can be used as a method of transferring funds.

79. 若一方選擇依據較理性市場不利之條件執行選擇權契約，以確保交易相對方可收取淨額款項，則櫃買（OTC）選擇權將存在洗錢／資恐弱點。就此方面，櫃買交易的選擇權可作為移轉資金的方法。

80. For example, assume Party A has funds in a brokerage account that he wants to transfer to Party B. Assume there is a security with a market price of \$7 per share. Instead of transferring the funds via a wire transfer or cheque, Party A may sell for a nominal premium to Party B, a cash-settled put option on the security with a strike price of \$15 per share for 10,000 shares. Party B exercises the option immediately, and because the option is cash settled, Party A pays Party B the difference between the strike price and the market price of the security, or \$80,000. In addition, funds transfers using options may be accomplished without exercising an option, such as by charging a high premium for a worthless contract (e.g. a call option with a strike price hundreds of times higher than the market price), by exercising an out-of-the money option, or through other options contract variations.

80. 舉例來說，假設 A 方的經紀帳戶中有一些資金想要移轉給 B 方；另假設證券的市場價格為每股 7 美元。A 不需透過電匯或開立支票的方式移轉資金，而可選擇按名目權利金出售 10,000 股證券之現金交割賣權選擇權給 B 方，每股履約價格為 15 美元。B 方立即行使了選擇權，且因為選擇權採用現金交割的方式，A 方支付 B 方等於履約價格與證券市場價格差額的款項，亦即 80,000 美元。此外，透過選擇權進行的資金移轉，可能在未行使選擇權的情況下達成，譬如對無價值的契約（譬如：履約價格高於市場價格數百倍的買權選擇權）收取高額權利金、透過行使價外（out-of-the-money）選擇權、或透過其他選擇權契約變化形式進行。

### 3.3 Markets and other Means of Access

#### 3.3 市場與其他進入方法

81. With the demise of the traditional trading floor located in a bricks-and-mortar securities exchange, many securities transactions are now effected electronically. In addition, some securities transactions are not conducted through an exchange at all. The following section examines the markets and mechanisms through which securities are sold and purchased.

81. 在交易實體證券的傳統交易所消失之後，許多證券交易現在都是以電子的方式進行。此外，部分證券交易則完全未透過交易所進行。下列章節討論證券買賣的市場與機制。

#### *Traditional Exchanges*

##### *傳統交易所*

82. The term securities exchange typically refers to centrally organised entities that operate as trading markets for publicly held securities. Exchanges generally have listing standards, such as minimum operating histories and revenue streams. While some exchanges only trade equity securities, other exchanges specialise in particular products, such as debt, options, and other types of derivative instruments. In addition, exchanges may require that intermediaries, such as broker-dealers, become exchange members and adhere to certain financial and operational standards.

82. 證券交易所一詞，通常係指作為交易公開發行證券的集中組織實體。交易所通常規範上市標準，譬如最少營運期間以及營收來源。雖然部分交易所僅交易股權證券，其他交易所則專精特定

產品之交易，譬如債券、選擇權以及其他種類衍生性金融工具。此外，交易所可能會要求中介機構（譬如經紀-經銷商）成為交易所會員，並遵守特定金融與營運準則。

### ***Over-the-Counter (OTC) Markets*** **櫃買 (OTC) 市場**

83. Many equity securities are traded in the OTC market and not on exchanges. The OTC market generally refers to all trading of securities otherwise than on an exchange, including various arrangements by which securities intermediaries arrange trades amongst themselves. Some OTC markets are organised and have automated quotation systems. Penny stocks, as discussed above and in Chapter 4, are also traded on the OTC markets, with their prices sometimes quoted on electronic bulletin boards.

83. 許多權益證券都是透過 OTC 市場進行交易，而非交易所。OTC 市場通常係指證券的交易不在交易所進行，而是在證券中介機構之間互相安排交易的各種安排。部分 OTC 市場是有組織的，而且具有自動化報價系統。如上以及後續第 4 章所述，低價股票也會在 OTC 市場進行交易，且其價格有時會在電子布告欄上報價。

84. Unlike traditional exchanges, organised OTC markets generally do not establish listing requirements and may not regulate issuers or trades, or have members. In some jurisdictions, however, there may be a regulator for the OTC markets as a whole. Securities traded on OTC markets may be more speculative than the securities listed on more traditional exchanges.

84. 與傳統交易所不同的是，有組織的 OTC 市場通常並未規範上市規定，且可能不會規範發行人或交易，亦可能不會成立會員組織。然而，部分地區也會針對整體 OTC 市場成立主管機關。在 OTC 市場交易的證券，可能比傳統交易所上市之證券更具投機性質。

### ***Alternative Trading Platforms (ATPs), Electronic Communications Networks (ECNs) and Internet-Based Trading Accounts*** **另類交易平台 (ATP)、電子通訊網路 (ECN) 以及網路交易帳戶**

85. While trading on exchanges and OTC markets typically requires the use of a securities intermediary, new technologies permit institutional investors and some retail investors to engage in securities transactions with limited involvement of an intermediary.<sup>21</sup> Alternative trading platforms and electronic communications networks can operate in a way that, in some instances, may permit investors to trade with relative or complete anonymity.

85. 透過交易所及 OTC 市場進行交易，通常需運用證券中介機構，而新科技則讓機構投資人與部分一般投資人，可選擇在中介機構介入有限下進行證券交易。<sup>21</sup> 在部分案例中，另類交易平台以及電子通訊網路可允許投資人在相對或完全匿名的前提下進行交易。

86. Broker-dealers and others institutions licensed to effect securities transactions offer their clients the ability to transfer securities held electronically (e.g. from broker to broker, or from one customer to the account of another, such as a spouse). Some jurisdictions have indicated that this service can be abused and poses a ML vulnerability. This vulnerability results from the relative ease of the instrument's transfer, the lack of transparency associated with some transfers, the ability to effect cross-border transfers, and even unjustifiable reliance on the CDD/KYC investigations done by others.

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<sup>21</sup> ATPs and ECNs, however, are traditionally registered as securities intermediaries.

<sup>21</sup> 然而，ATP 與 ECN 在傳統上也是登記為證券中介機構。



86. 經紀-經銷商以及其他獲核准執行證券交易的機構，為其客戶提供以電子方式移轉證券的服務（譬如：從經紀商到經紀商、或從一個顧客到另一名客戶的帳戶，譬如配偶）。部分地區顯示，此服務可能會被濫用，並因此存在洗錢弱點。此弱點來自此金融工具的移轉相對簡單、部分移轉缺乏透明度、執行跨國移轉的能力、甚至是不合理的信賴由他人執行的客戶審查/KYC 調查。

87. A particularly attractive feature (in some jurisdictions) to persons who wish to abuse this service for ML purposes is its lack of transparency. In some instances, a transfer can be effected without the individual having an account with the financial institution, for example through a breach in the financial institution's data security, or through the transfer of an instrument similar to a bearer security. Payment for the transferred securities can also be made in cash. As such, account statements may not reflect the fact that a share transfer has taken place. In some cases investigated, transfers of securities were confirmed to the customer by separate statements that were not consecutively numbered. Moreover, such statements were not included as part of the year-end bank reconciliation effort.

對希望濫用此服務進行洗錢的人來說，尤其具吸引力的特質（適用部分地區）是缺乏透明度。於部分案例中，移轉作業可在個人未持有金融機構帳戶的情況下進行。舉例來說，透過金融機構資料安全的漏洞、或透過移轉類似無記名證券的工具。移轉證券的對價，亦得以現金支付。因此，帳戶對帳單可能未反映已發生股份已移轉的事實。在所調查的部分案例中，證券的移轉，是透過未連續編號的獨立對帳單向顧客確認的。此外，該等對帳單也未納入銀行的年底對帳單中。

## Case study 2: Securities transfers

### 案例研究 2：證券移轉

<b>Offence:</b> 犯罪行為：	Tax evasion 逃漏稅
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	N/A 不適用
<b>Jurisdiction:</b> 地區：	The Netherlands 荷蘭
<b>Subject:</b> 主體：	Individuals and service providers 個人與服務提供商
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Transfer of securities held electronically 移轉以電子方式持有之證券
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>• Misuse of service provided by financial institutions;</li> <li>• 濫用金融機構所提供之服務；</li> <li>• Ante-dating of documents;</li> <li>• 文件提前填寫日期；</li> <li>• Transactions without an apparent economical rationale; and</li> <li>• 無明顯經濟合理性之交易；以及</li> <li>• Use of false documentation.</li> <li>• 運用虛假文件。</li> </ul>

## Case description

### 案例描述

The Tax Administration and the Fiscal Intelligence and Investigation Service has discovered methodologies involving the allocation of securities as a means to effect tax fraud. These activities involved the use of false documents, in violation of tax and criminal laws. To date, 14 cases have been detected, involving six different financial institutions. Seven cases have been investigated in greater depth. The key role played by the facilitating financial institutions in these cases was examined by the Dutch Central Bank and The Netherlands Authority for the Financial Markets.

稅務管理以及財政情報暨調查服務處（Tax Administration and the Fiscal Intelligence and Investigation Service），已經發現了以分配證券作為稅務詐騙的方法。此等活動牽涉了以違反稅法與刑法的方式，運用虛假文件。截至目前為止，已經發現了 14 個案例，牽涉六個不同金融機構。其中七個案例已經進行深入的調查。荷蘭央行以及荷蘭金融市場管理局（Netherlands Authority for the Financial Market），針對此等案例中協助執行的金融機構所扮演的關鍵角色進行了調查。

The cases investigated have in common the misuse of a normal and legitimate service provided by banks,

broker-dealers and other institutions licensed to trade in securities: the ability to transfer securities held electronically. 所調查的案例都有一個共同點，亦即濫用銀行、經紀-經銷商以及獲核准執行證券交易的其他機構（有能力移轉以電子方式持有之證券）所提供的正常與合法服務。

The misuse in the Dutch cases was triggered by a difference in the way capital gains and losses were treated for the income and corporate tax purposes. In short, capital losses are not deductible for income tax purposes, but are included in the tax base for corporate tax.

荷蘭案例中的濫用行為，主要係因所得稅與公司所得稅對資本利得與損失的處理方法不同所致。簡而言之，於申報所得稅時不得扣除資本損失，但卻可納入企業所得稅的稅基中。

In these cases, individuals transferred securities between their personal portfolio and a corporate securities portfolio over which they had control. Depending on what was necessary in the specific case, securities were transferred in either direction. In the case of a loss that occurred in the personal portfolio, the relevant securities were transferred to the corporate stock portfolio and vice versa.

於此等案例中，個人在其個人投資組合以及其具有控制力之企業證券組合間移轉證券。依據相關案例之不同需求，證券可能會在兩者之間往任一方向移轉。若個人投資組合發生損失，則證券將移轉至企業股票投資組合，反之亦然。

The attractive feature of the misuse of the securities-transfer service is its lack of transparency. In a transfer there is no mandatory current account relationship. As is the case with regular sale and purchase instructions, payment for securities transferred can be arranged by other means, such as cash payments. As a consequence, bank statements do not have to show that a share transfer has taken place. In the different cases that were investigated, transfers of securities were communicated to the client by separate statements that were not consecutively numbered and that did not have any connection with the year-end bank reconciliation.

濫用證券移轉服務的一個具吸引力的特點，在於缺乏透明度。因其移轉並未規定需在銀行開設活期帳戶。若屬一般買賣指示，則所移轉證券的款項，可透過其他方法加以安排，譬如以現金支付。因此，銀行對帳單不需顯示曾經發生股份移轉。在另一個所調查的案例中，證券之移轉是透過未連續編號的獨立對帳單與客戶溝通，且與年底銀行對帳單並無任何關係。

What was surprising in the cases investigated was:

在所調查案例令人驚訝的發現是：

1. The number of cases detected;  
1. 所發現的案例數；
2. The similarity of modus operandi;  
2. 犯罪手法的相似性；
3. The relative ease in which employees of financial institutions were persuaded to co-operate in the scheme;  
3. 金融機構員工相對較容易被說服加入共謀；
4. The fact that the cases took place at different players in the financial sector;  
4. 案例發生在金融產業的不同參與方；
5. The involvement of accountants and tax advisors;  
5. 會計師與稅務顧問的參與；
6. The lack of AML/TF monitoring for this specific kind of transactions; and  
6. 此特定種類交易缺乏防制洗錢／資恐監控；及
7. The possible AML/TF risks related to share transfers were perhaps not sufficiently familiar to supervisory bodies.  
7. 監理機構對與股份移轉有關的可能防制洗錢／資恐風險，也許不夠熟悉。

## Enforcement actions

### 執法行動

All cases investigated resulted in administrative or criminal sanctions. Some financial institutions also were required by financial regulators to amend their internal procedures.

調查的所有案例，都導致行政或刑法的制裁。金融主管機關也要求部分金融機構修改其內部程序。



88. Although case study 2 involved tax fraud, the transfer of securities can also play a role in insider trading. It is also a vulnerability in the context of money laundering, due to the relative ease of transfer, lack of transparency, lack of indicators and the international dimension.

88. 雖然案例研究 2 牽涉了稅務詐騙，證券的移轉在內線交易也扮演了重要的角色。從洗錢角度來看，這也是一個弱點，因為移轉的相對容易、缺乏透明度、缺乏指標以及牽涉國際交易。

89. It would be possible for criminals to approach individuals and offer them cash for their securities portfolio. Subsequently these individuals could transfer their securities from their securities portfolio to the securities portfolio of the criminal. This would give criminals access to the financial system while circumventing existing AML/CTF measures.

89. 罪犯可能會接近個別投資人，提議以現金購買其證券投資組合。之後，此等個人會將其證券自其證券投資組合移轉至罪犯的證券投資組合。因此讓罪犯能夠進入金融系統，並可規避防制洗錢／資恐措施。

### 3.3.1 Vulnerabilities Associated With Particular Types of Market Access

#### 3.3.1 與進入特定種類市場有關的弱點

90. Although the survey results did not identify actual abuses involving internet trading platform services, several areas of vulnerability were noted. For example, with the continued development of technology, the number of firms providing internet trading platform services has increased. Such firms offer trading in financial contracts (so-called contracts for difference or CFD) on their trading platform linked to different kinds of underlying reference points: mostly Forex but also market indexes, and commodities (such as oil and precious metals), as well as on shares of companies. The investors are typically required to pay a margin deposit into the bank account of the firm.

90. 雖然調查結果並未列出實際濫用網際網路交易平台服務的案例，卻也注意到了幾個弱點。舉例來說，隨著科技的持續開發，提供交易平台服務的公司數量已經增加。此等公司在其交易平台上，提供連結不同種類標的參考點之金融契約交易（稱為差價契約或 CFD）：大部分為 Forex，不過也有市場指數、大宗商品（譬如原油與貴金屬）、以及公司股份。投資人通常需支付保證金，並存入該公司的銀行帳戶。

91. Such website trading platforms are often designed for day trading, and can have substantial transaction volumes. As such, the trading platform could turn into a “black box” for the financial institution (often a bank) with which the trading platform firm holds its accounts, making it very difficult for the financial institution to understand transactions occurring in the account.

91. 此等網站交易平台通常係為執行日間交易所設計，且交易量可能非常龐大。因此，交易平台可能會轉變為金融機構（通常為銀行）的「黑盒子（black box）」，由交易平台公司持有其帳戶，，因此使金融機構非常難以瞭解帳戶執行交易之內容。

92. Moreover, obtaining a licence for a trading platform has become increasingly inexpensive. By providing a trading platform through a company registered in an unregulated jurisdiction, a criminal organisation could pose as a securities dealer and use this structure to launder money and/or defraud investors.

92. 此外，取得交易平台執照的成本已經變得越來越便宜。透過登記於未受監管地區的公司提供交易平台，罪犯組織可擔任證券經銷商角色，並運用此架構漂白金錢及／或詐騙投資人。

93. Internet-based securities trading accounts pose particular challenges to the implementation of CDD/KYC procedures because of the lack of face-to-face interaction between the intermediary and the customer when an account is opened. This can hamper the ability of a firm to establish an adequate

customer profile, which in turn can hamper the firm's ability to detect suspicious activity. Moreover, although investors must open accounts with intermediaries to access their systems, some of these accounts allow the investor to directly access an exchange or trading system, potentially hampering the ability of an intermediary to identify suspicious transactions and trading patterns. Because positive identification of an individual can be more difficult with internet-based account opening methods, identity thieves and other illicit actors have been known to open these types of accounts to engage in market manipulation, insider trading, securities fraud, or to deposit illicit assets that can be wire transferred out of that account.<sup>22</sup>

93. 網際網路證券交易帳戶，對執行客戶審查／KYC 程序具有一定程度的挑戰，主要係因中介機構與顧客間在開戶時缺乏面對面互動。因此將影響公司建立足夠顧客基本資料的能力，且將因此影響該公司發現可疑活動的能力。此外，雖然投資人必須向中介機構開戶才能運用其系統，部分此等帳戶卻允許投資人直接進入交易平台或交易系統，因此可能影響中介機構發現可疑交易以及瞭解交易模式的能力。網路開戶方法在正確辨識個人身份方面更加困難，因此身份盜竊罪犯以及其他非法行為人，會開設此等種類帳戶，以透過自帳戶進行電匯的方式，從事市場操縱、內線交易、證券詐欺、或存入非法資產等行為。<sup>22</sup>

94. In addition, legitimate internet-based brokerage accounts are often compromised by online intrusions from unauthorised persons. To cite one example, a criminal can effect an intrusion into multiple customer accounts. The intruder can liquidate securities in those accounts and use the proceeds to buy a penny stock. This has the effect of “pumping” up the price of the penny stock, which the intruder then liquidates at the inflated price, with profits transferred out of the intruded accounts.

94. 此外，合法網路經紀帳戶經常會因遭到未經授權人士線上入侵，而遭到破壞。舉例來說，罪犯入侵多個顧客帳戶。入侵者可結清該等帳戶的所有證券，並運用其犯罪所得購買低價股票。因此將造成「哄抬」低價股票價格的效果，且入侵者接著將會按哄抬後價格出售證券，並將獲利自遭入侵的帳戶轉出。

### Case study 3: Rapid transactions using an internet-based trading account

#### 案例研究 3：運用網路交易帳戶快速執行交易

<b>Offence:</b> 犯罪行為：	Money laundering 洗錢
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	Insider trading 內線交易
<b>Jurisdiction:</b> 地區：	Austria 奧地利
<b>Subject:</b> 主體：	Individuals 個人
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Internet-based trading account, shares 網路交易帳戶、股份
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>• High profits within one day; • 單日內獲得高利潤；</li> <li>• Rapid purchase and sale of shares; and • 快速買賣股份；及</li> <li>• Use of the same password by several clients. • 數個客戶使用相同密碼。</li> </ul>

<sup>22</sup> Please see Chapter 4 for a fuller discussion of market manipulation, insider trading and securities fraud.

<sup>22</sup> 有關市場操縱、內線交易與證券詐欺的完整說明，請參閱第 4 章。

### Suspicious transaction/activity report information

#### 可疑交易／活動報告資訊

The FIU was informed by an Austrian internet bank about suspicious bank accounts. The suspicions were prompted by the suspicious behaviour of several clients (high profits within one day, purchase of shares and sale of the shares one day later, purchase of calls, five different clients from the same country, use of the same passwords, the same shares/calls, etc).

金融情報中心收到一家奧地利網路銀行通報可疑銀行帳戶。其懷疑來自數個客戶的可疑行為（單日內獲得高利潤、一天之後買賣股份、買入買權、相同國家的五個不同客戶、使用相同密碼、相同股份／買權等）。

### Case description

#### 案例描述

A number of securities deals were made in connection with a company sale (takeover of shares) yielding a stock price gain of around US\$6 million. These sales were later found to have been facilitated by insider trading; Austrian accounts were used for buying and selling shares.

一些證券交易是與公司出售交易（收購股份）一同進行，創造了將近 600 萬美元的股價利得。此等銷售交易後來被發現牽涉了內線交易；奧地利帳戶被用來買賣股份。

Thorough investigations revealed that several accounts were linked to this securities deal, i.e. the account owners (Croatian nationals residing in Germany, Croatia, and the U.S.) obtained huge profits within a very short time by (almost simultaneously) buying and selling these shares.

調查發現，有幾個帳戶與此證券交易有關，亦即帳戶所有人（居住在德國、克羅埃西亞以及美國的克羅埃西亞國民）透過買賣此等股份，而在非常短的時間內（幾乎同時）賺取了鉅額利潤。

### Enforcement actions

#### 執法行動

The FIU initiated not only the necessary financial analysis but also analysis regarding the shares (company based in the U.S. press information – insider trading) and evidence regarding the involved persons.

金融情報中心不僅啟動了必要財務分析，也分析了股份（美國公司取得資訊 – 內線交易）以及與相關人員有關的證據。

It was rather urgent to secure evidence (including seizure of banking accounts and/or transmitting information to other agencies to trace the money flow) therefore the FIU met the FBI to cooperate in the case.

在保全證據的緊急必要之下（包括扣押銀行帳戶及／或傳送資訊給其他機構以追蹤資金流向），金融情報中心因此與聯邦調查局（FBI）合作調查此案件。

The FIU immediately informed the prosecutor of potential money laundering and insider trading charges.

金融情報中心立即通報檢察官，發生了潛在洗錢與內線交易的案件。

### *Suspicious Indicators and Case Studies Associated with Market Access*

#### 與進入市場有關的可疑指標及案例研究

95. The questionnaire responses did not specifically identify suspicious indicators associated with market types and other means of access. However, the suspicious indicators associated with market manipulation, insider trading and securities fraud may have some relevance in this area for detecting money laundering. Accordingly, Chapter 4 contains a fuller discussion, including case studies, regarding OTC markets and internet-based securities trading. In addition, the suspicious indicators related to Customer Due Diligence in Annex B are also generally relevant.

95. 問卷回覆並未明確列出與市場種類以及其他進入方法有關的可疑指標。然而，與市場操縱、內線交易及證券詐欺有關的可疑指標，在發現此等洗錢活動方面可能具有部分相關性。因此，第 4 章將完整說明（包括案例研究）OTC 市場與網路證券交易。此外，附錄 B 所列與客戶審查相關之可疑指標，通常也需納入參考。

### 3.4 Payment Methods Relating to Securities Transactions

#### 3.4 與證券交易有關的支付方法。

96. Many of the payment methods associated with securities transactions are not unique to the securities industry, and are to be found in other areas of the financial services industry. However, there are certain peculiarities in the purchase of securities which benefit from further elaboration.

96. 許多與證券交易有關的支付方法，並非證券業獨有，在其他金融服務產業領域也會使用。然而，購買證券的部分特質，可能需要進一步詳細說明。

#### *Cash*

#### *現金*

97. The questionnaire responses indicated that the use of cash in the securities industry is uncommon. However, in some jurisdictions cash is still a permissible payment method. In addition, in some jurisdictions securities can be purchased through depository institutions, where acceptance of cash is much more prevalent.

97. 問卷回覆指出，證券業運用現金非常罕見。然而，部分地區還是接受以現金作為支付方法。此外，部分地區也允許透過存款機構購買證券，且普遍接受以現金付款。

#### *Vulnerabilities and Suspicious Indicators for Cash*

#### *現金的弱點與可疑指標*

98. Depository institutions and securities intermediaries that permit the use of cash for the purchase of securities products can be used to place illicit assets in the securities industry, as well as integrate and layer the assets through securities trading and redemptions.

98. 允許以現金購買證券產品的存款機構與證券中介機構，可能會被用來將非法資產投入證券業，以及透過證券交易與贖回方式整合與分層化資產。

99. The following, which are not necessarily unique to the securities industry, were identified as suspicious indicators involving the use of cash:

99. 以下列出與運用現金有關的可疑指標（非證券業獨有）：

- The customer refuses to identify a legitimate source for the funds or provides the securities firm with information that is false, misleading, or substantially incorrect;
- 顧客拒絕說明資金的合法來源、或提供虛偽、誤導或顯著不正確的資訊給證券公司；
- The customer makes many small cash deposits that are eventually used to purchase a particular securities product which is sold or redeemed shortly thereafter;
- 顧客存入許多小額現金存款，且最後用於購買特定證券產品，並於短時間內賣出或贖回；
- The customer deposits a large amount of small-denomination currency to fund the account or make securities purchases;
- 顧客存入大筆小額貨幣，以將資金存入帳戶或購買證券；
- There are many incoming cash deposits into a customer's account from third parties that coincide with or are close in time to outgoing cheques or wire transfers to other third parties; and
- 另外有許多現金存款從第三方匯入顧客之帳戶，其時間與顧客開立支票或電匯給其他第三方的時間相同或接近；及

- The customer has accounts primarily used for deposits and other accounts primarily used for outgoing payments.
- 顧客有帳戶主要用於存款，也有其他帳戶主要用於對外付款。

#### Case study 4: Structuring of cash deposits 案例研究 4：拆分現金存款

<b>Offence:</b> 犯罪行為：	Money laundering (structuring) 洗錢（拆分）
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	Fraud 詐騙
<b>Jurisdiction:</b> 地區：	Australia 澳洲
<b>Subject:</b> 主體：	Individual 個人
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Cash deposits, contract for difference account 現金存款、差價合約帳戶
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>• Abuse of internet registration systems;</li> <li>• 濫用網際網路登記系統；</li> <li>• Multiple same day transactions;</li> <li>• 多筆同日交易；</li> <li>• Structuring of cash deposits; and</li> <li>• 拆分現金存款；及</li> <li>• Use of false identification documentation.</li> <li>• 運用虛偽身份識別文件。</li> </ul>

#### Suspicious transaction/activity report information

##### 可疑交易／活動報告資訊

D became the subject of a STR submitted to the FIU that detailed activity involving the structuring of cash deposits into an account.

D 是送交金融情報中心（FIU）的一份疑似洗錢或資恐交易通報（STR）的主角，報告詳述了他拆分現金存款到一個帳戶的活動。

#### Case description

##### 案例描述

A “contract for difference” (CFD) is a type of derivative where an agreement is made to exchange the difference in value of a particular security (or other financial instrument) between the time at which a contract is opened and the time at which it is closed. In this particular investigation, the profits were deposited in a major Australian bank.

「差價合約」（CFD）是一種衍生性商品，以簽訂合約的方式，交換特定證券（或其他金融工具）在簽約時與合約到期時之價值差異。在此調查中，相關獲利被存入一家大型澳洲銀行。

D used false identification documents, including a false citizenship certificate and driver's licence, to open a trading account over the internet.

D 使用虛偽身份識別文件，包括虛偽公民身份證以及駕照，透過網際網路開立一個交易帳戶。

The individual became the subject of an STR because of the structuring of cash deposits into an account. The STR highlighted that over an eight-day period, approximately AUD\$ 400,000 was deposited into the account in amounts below the jurisdiction's threshold reporting requirement (i.e. structuring), and in some instances deposits were made on the same day at branches in two different locations.

D 因為拆分現金存款到一個帳戶，而成為 STR 的標的。STR 指出，在八天期間內，共有約澳幣 400,000 元的款項，被以低於通報規定門檻的金額存入該帳戶（亦即：拆分），且部分交易甚至是在同一天透過兩個不同據點存入。

The investigation identified that the account had traded and increased in value to over AUD\$ 750,000, which was subsequently restrained by means of crime restraining orders.

調查指出，帳戶進行了這些交易，且其餘額增加至超過澳幣 750,000 元。最後這些款項被以刑事禁止令加以扣押。



### Enforcement actions

#### 執法行動

An investigation into this resulted in criminal restraining orders being placed on the individual's assets  
調查導致個人財產遭簽發刑事禁止令。

### *Cheques and Wire Transfers*

#### 支票與電匯

100. Questionnaire responses indicated that cheques can be used to fund a securities account with a securities intermediary or used to directly purchase some securities products without an intermediary. In addition, jurisdictions indicated that the use of cheques is not limited to those drawn from a depository account, but also can involve money orders, traveller's cheques, and cashier's cheques (i.e. bank drafts).

100. 問卷回覆指出，支票可轉入證券中介機構的證券帳戶、或用來直接購買部分證券產品而不需中介機構。此外，各地區也指出，可運用之支票不限於存款帳戶之支票，還包括匯票、旅行支票及銀行本票（銀行匯票）。

101. While many wire transfers occur through and between banks, in some jurisdictions a securities account can be used in lieu of a depository account to wire funds.

101. 雖然許多電匯交易是透過銀行或在銀行間進行，部分地區也容許以證券帳戶取代存款帳戶進行轉帳。

### *Vulnerabilities and Suspicious Indicators for Cheques and Wire Transfers*

#### 支票與電匯的弱點與可疑指標

102. Money launderers can purchase money orders, traveller's cheques, and/or cashier's cheques with cash over a period of time or through a series of transactions in order to avoid threshold currency reporting requirements. These cheques can then be deposited into securities accounts until a desired amount is reached and used to purchase a security, which is then sold or transferred. Alternatively, a money launderer can also wire the illicit assets out of a jurisdiction.

102. 洗錢行為人可透過於一段期間內、或透過一連串交易，以現金購買匯票、旅行支票及／或銀行本票，以規避貨幣通報規定門檻。此等支票接著可存入證券帳戶，直至達到預訂金額，並將其用於購買證券，以及進行後續的出售或移轉。或者，洗錢行為人亦可將非法資產轉出該地。

103. Cheques or wire transfers from a depository account also present an ML/TF vulnerability because they may unreasonably affect the securities intermediary's risk analysis, in particular with respect to CDD/KYC obligations. For example, if a cheque or wire transfer originates from another financial institution subject to an AML/CFT regulatory regime, a securities firm may not conduct a thorough CDD/KYC investigation because it believes that the originating financial institution has already conducted its own CDD/KYC investigation, or because the firm perceives a reduced risk because the customer was able to open an account at another financial institution. This vulnerability can become systemic if numerous securities intermediaries perceive a reduced risk based on the activities of others.<sup>23</sup>

<sup>23</sup> It is noted that reliance on CDD/KYC investigations undertaken by a foreign financial institution should also involve an assessment of the AML/CFT regime operating in the country from which the institution relied upon operates. Given the global nature of the securities industry, this issue may be of particular importance.

<sup>23</sup> 值得注意的是，採用外國金融機構所執行的客戶審查／KYC 調查，也必須包括評估外國金融機構營運所在國家的防制洗錢／打擊資助恐怖主義法規。考量證券業的全球性質，此議題可能特別重要。



103. 存款帳戶的支票或電匯，亦存在洗錢／資恐弱點，因其可能不合理的影響證券中介機構的風險分析，尤其是與客戶審查／KYC 義務有關的部分。舉例來說，若支票或電匯來自需遵守防制洗錢／打擊資恐法規的其他金融機構，證券公司可能因為認為原始金融機構已執行其客戶審查／KYC 調查、或該公司因顧客能夠在其他金融機構開立帳戶而降低風險評估，而未執行徹底的客戶審查／KYC 調查。若有許多證券中介機構因為其他機構的活動而降低風險評估，則此弱點將會成為系統性風險。<sup>23</sup>

104. In addition, even if the financial institution from which the cheque or wire transfer originated has conducted thorough CDD/KYC and not detected anything suspicious, there may still be an ML/TF risk that the securities intermediary, through its own knowledge of the investor, may be in a unique position to identify. In particular, CDD/KYC not only involves mere customer identification but establishing the purpose and intended nature of the business relationship.

104. 此外，即使開立支票或進行電匯的金融機構已經執行了徹底的客戶審查／KYC，且並未發現任何可疑情事，仍然有證券中介機構可透過其本身對投資人的瞭解，而另外發現洗錢／資恐風險。客戶審查／KYC 尤其不只包括顧客身份識別資料，還需瞭解顧客申請建立往來關係的目的，以及預計執行交易之性質。

105. Another vulnerability identified is the increasing use of the securities industry in offshore jurisdictions by criminals attempting to avoid domestic seizure of their assets. The ease by which funds could be transferred electronically facilitates this. The use of this method of disguising funds has resulted in a reduction in the effectiveness of domestic seizure/forfeiture actions, marking a change in the laundering techniques used by criminals. The advantage of this method over, for example, the purchase of domestic real estate is that it is more difficult for law enforcement to trace and seize assets held offshore.

105. 另外發現的一個弱點是，罪犯運用境外地區證券業的案例越來越多，以避免當地國扣押其資產。資金可輕鬆透過電子移轉的事實，更加促使這樣的情況發展。罪犯運用此方法隱匿資金，影響當地國扣押／沒收行動的效果，並因此導致罪犯所使用洗錢技巧的變化。此方法優於（舉例來說）購買國內不動產之處，在於執法機構較難追蹤與扣押海外資產。

106. The following, which may not be unique to the securities industry, have been identified as suspicious indicators involving the use of cheques and wire transfers:

106. 以下列出運用支票與電匯的可疑指標（可能並非證券業獨有）：

- Many small incoming deposits are made using cheques, money orders, traveller's cheques, and cashier's cheques;
- 許多小額匯入存款係以支票、匯票、旅行支票與銀行本票進行；
- Incoming payments are made by third-party cheques or cheques with multiple endorsements;
- 匯入支付款，係以第三方支票或有多人背書轉讓的支票；
- Money orders, traveller's cheques or cashier's cheques are sequentially numbered in denominations that avoid threshold reporting requirements (i.e. structuring);
- 匯票、旅行支票或銀行本票都是連續編號，且其金額都低於通報門檻規定（亦即：分拆）；
- Outgoing cheques to third parties coincide with or are close in time to incoming cheques from other third parties;
- 開立支票付款給第三方的時間點，與其他第三方匯入支票的時間點完全相同、或非常接近；

- Wire transfers are made to or from financial secrecy havens, tax havens or high-risk geographic locations (i.e. jurisdictions known to produce illegal narcotics/psychotropic drugs or are related to terrorism);
- 與金融保密天堂、租稅天堂或高風險地區（亦即：已知生產非法毒品／精神藥物或與恐怖主義有關的地區）之間的電匯往來；
- Wire transfers or payments are made to or from unrelated third parties (foreign or domestic) or where the name or account number of the beneficiary or remitter has not been supplied;
- 與無關第三方（外國或國內）、或未提供受益人或匯款人姓名或帳號之他方，進行電匯往來；
- Many small, incoming wire transfers are made, either by the customer or third parties, that are almost immediately withdrawn or wired out in a manner inconsistent with customer's business or history;
- 顧客或第三方進行許多小額轉帳匯入款交易，且以不符合顧客業務內容或歷史紀錄的方式，立即提款或匯出；
- There is wire transfer activity that is unexplained, repetitive, unusually large or shows unusual patterns or has no apparent business purpose;
- 電匯活動未加以說明、重複發生、異常大額或顯示出異常模式、或無明顯商業目的；
- The securities account is used for payments or outgoing wire transfers with little or no securities activities i.e. account appears to be used as a depository account or a conduit for transfers;
- 證券帳戶用於支付或對外電匯，而證券活動甚少或全無，亦即帳戶顯然被用做存款帳戶或轉帳工具；
- Funds are transferred to financial or depository institutions other than those from where the funds were initially directed, specifically when different countries are involved;
- 資金被轉帳到非原設定應接收資金的金融或存款機構，尤其當牽涉不同國家時；
- Transfers with no apparent business purpose are made between different accounts owned by the customer;
- 在顧客所擁有的不同帳戶之間進行轉帳，且無明顯商業目的；
- Wire transfer logs, when viewed over a period of time, reveal suspicious or unusual patterns;
- 若檢視電匯的長期記錄，會發現可疑或異常模式；
- The customer requests that certain payments be routed through nostro or correspondent accounts held by the financial intermediary instead of its own account; and
- 顧客要求透過由中介機構持有的銀行同業帳戶或往來帳戶支付特定款項，而非使用其本身的帳戶；及
- Outgoing wire transfers to third parties coincide or are close in time to incoming wire transfers from other third parties.
- 轉帳匯出款給第三方的時間點，與其他第三方轉帳匯入款的時間點完全相同、或非常接近。

**Case study 5: Use of foreign exchange broker**  
**案例研究 5：運用匯率經紀商**

<b>Offence:</b> 犯罪行為：	Money laundering 洗錢
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	N/A 不適用
<b>Jurisdiction:</b> 地區：	Mexico 墨西哥
<b>Subject:</b> 主體：	Individual 個人
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Deposits of cheques, currency exchange, wire transfers 存入支票、匯率、電匯
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>Activity reported by senders to financial institutions is not related in any way to the beneficiary of funds;</li> <li>匯款方向金融機構申報之活動，與資金受款人並無任何相關；</li> <li>Amounts transferred are not congruent with the purchase of products;</li> <li>轉帳金額與購買產品的金額不一致；</li> <li>FX dealer/broker or bureau de change order the transfers abroad (and not the senders);</li> <li>匯率交易商／經紀商或貨幣兌換處，要求自海外進行轉帳（而非匯款方提出要求）；</li> <li>Common beneficiaries with other customers using the same operating procedure; and</li> <li>與使用相同作業程序的其他顧客有相同的受益人；及</li> <li>Same day withdrawal of funds.</li> <li>同日資金提款。</li> </ul>
<b>Case description</b> <b>案例描述</b> <p>During the course of an investigation made by the FIU regarding proceeds from drug trafficking, an individual was identified acting as branch manager of a local foreign exchange broker involved in ML activities and, later on, acting as account executive for a broker-dealer who was arranging wire transfers for one of his customers.</p> <p>於金融情報中心針對非法販毒所得進行調查的過程中，發現有一名擔任當地匯率經紀商分公司經理的人涉入洗錢活動，且後來並擔任一家經紀-經銷商的帳戶主管，負責為他的一名顧客安排電匯。</p> <p>Accordingly, the FIU informed the broker-dealer of this activity, and it submitted an STR, with no specific information. Further investigations showed that an account at this broker-dealer was used to send money abroad in the following way:</p> <p>因此，金融情報中心將此活動通知經紀-經銷商，並提交不包括特定資訊的 STR。進一步調查顯示，此經紀-經銷商的一個帳戶被用於以下列方式將款項轉帳至海外：</p> <p>The broker/dealer received several cheques in local currency, in the name of different persons but all of them endorsed to the same account holder (the sender). Funds were withdrawn immediately (the same day) with a purchase of US\$ and a further wire transfer abroad was arranged for one single beneficiary (different from the sender). This money was ultimately used to partially pay for the acquisition of real estate properties in the USA.</p> <p>經紀商／經銷商收到以當地貨幣計價、以不同名義開立的數張支票，不過所有支票都由相同帳戶持有人（匯款方）背書。資金後來被立即提領（同日），用於購買美元以及進一步電匯至海外給單一受益人（非匯款方）。此款項最終被用於部分支付取得位於美國之不動產物業所需資金。</p> <b>Enforcement actions</b> <b>執法行動</b> <p>The outcome of this investigation was the seizure of many assets, including among others, bank accounts and aircraft, and the closing of the foreign exchange broker involved.</p> <p>調查結果扣押了許多資產，（尤其）包括銀行帳戶與飛機，以及要求相關匯率經紀商停業。</p>	

**Case study 6: Company director misused family trust**  
**案例研究 6：公司董事濫用家族信託**

<b>Offence:</b> 犯罪行為：	Tax evasion / False Invoicing 逃漏稅／開立虛偽帳單
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	N/A 不適用
<b>Jurisdiction:</b> 地區：	Australia 澳洲
<b>Subject:</b> 主體：	Individual / Company 個人／公司
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Purchase of shares in foreign jurisdiction 購買外國地區之股份
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>Several significant wire transfers into Australia from a tax haven.</li> <li>從租稅天堂鉅額電匯至澳洲。</li> </ul>
<b>Case description</b> <b>案例描述</b> <p>An Australian resident company that was receiving funds from a known tax haven was the subject of an audit. The director/shareholder of the company was also connected to a company established in a tax haven. This tax haven company had purchased shares in a U.K. company and then sold them for a substantial capital gain. Some of the profits were repatriated to Australia via the use of false invoices issued by the Australian resident company. The funds entered the country through large wire transfers.</p> <p>自己知租稅天堂收取款項之澳洲公司，成為稽核對象。該公司之董事／股東，亦與一家租稅天堂公司有所關聯。此租稅天堂公司購買一家英國公司的股份，接著賣出並賺取鉅額資本利得。部分獲利透過澳洲公司開立虛偽帳單的方式，被匯回澳洲。資金透過大額電匯進入澳洲。</p>	
<b>Enforcement actions</b> <b>執法行動</b> <p>The director/shareholder was assessed on income earned from world wide sources and agreed, as part of a settlement, to cease his involvement in the tax haven based company and repatriate all funds held in overseas jurisdictions.</p> <p>公司之董事／股東被核定應就其全球來源所得支付所得稅，並同意（和解條件之一）停止參與租稅天堂公司運作，並將海外地區持有之所有資金匯回。</p> <p>As a result, approximately AUD\$ 1.4 million in tax and penalties were raised.</p> <p>該公司因此支付約澳幣 140 萬元的稅金與罰款。</p>	

**Case study 7: Unlicensed securities intermediary**  
**案例研究 7：未獲核准的證券中介機構**

<b>Offence:</b> 犯罪行為：	Money laundering 洗錢
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	Providing investment services without a licence 在無執照的情況下提供投資服務
<b>Jurisdiction:</b> 地區：	Belgium 比利時
<b>Subject:</b> 主體：	Individuals, company 個人、公司
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Cross-border funds transfers, use of third parties 第三方的跨國資金轉帳及運用
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>Significant wire transfers by multiple individuals;</li> <li>多人進行的大額電匯；</li> <li>Messages accompanying the wire transfers referred to investments;</li> <li>電匯註記之目的為投資；</li> <li>Transactions happening shortly after opening of the bank account;</li> <li>交易在開設銀行帳戶後不久即執行；</li> <li>Account opened for personal use; and</li> </ul>

- 為個人用途而開立之帳戶；且
- Account not used as anticipated.
- 帳戶並未依原開戶目的進行使用。

#### **Suspicious transaction/activity report information**

##### **可疑交易／活動報告資訊**

X and Y were managers of company A, active in purchasing securities for third parties. Shortly after company A's establishment, X and Y opened an account in their name for personal use. A few days later this account was credited with several transfers by order of third parties for a total amount of several thousand EUR.

X 與 Y 是 A 公司的經理，活躍於為第三方購買證券。在 A 公司成立後不久，X 與 Y 以個人使用之名義開設了一個帳戶。幾天後，此帳戶收到來自第三方的數筆匯入款，總金額達數千歐元。

The parties to the transfers were not linked to the individuals in any way. Furthermore, the references of these transfers referred to an investment fund. The name of the account also referred to an investment fund. The debit transactions consisted of transfers to accounts opened abroad in tax haven countries and the registration to investment products.

轉帳各方與 X 及 Y 皆無任何連結關係。此外，此等轉帳之目的提及一檔投資基金。帳戶名稱也提及投資基金。匯出款交易則包括轉帳給開立於境外租稅天堂國家的帳戶，並登錄投資產品。

#### **Case description**

##### **案例描述**

Information from the supervision authorities showed that company A did not have a licence to offer investment services.

監理主管機關之資訊顯示，A 公司並未領有提供投資服務之執照。

The name of the individuals' personal account, the person receiving the transfers, the regularity and the references accompanying the transfers as well as the destination of the funds showed that the transactions were not performed for X and Y but for a third party. The money was laundered through transfers abroad and registration to investment products.

個人帳戶的名稱、收取電匯之人的名稱、轉帳的規律性以及轉帳註記之相關資料、及交易所列資金目的地，皆非與 X 及 Y、而係與第三方有關。相關資金透過海外轉帳以及登錄投資產品之方式，加以漂白。

#### **Enforcement actions**

##### **執法行動**

The case for providing investment services without a licence was referred in 2005 to the public prosecutor for ML. 此等提供投資服務但卻未領有執照的案例，已於 2005 年遭送檢察官偵辦洗錢犯罪。

### ***Exchange of Securities as Means of Payment***

#### **以交換證券作為支付方法**

107. One payment method that is unique to the securities industry is the use of securities in exchange for other securities. This can occur when shares of a different type are issued or new shares issued in a take-over. The exchange of shares is a potential way of moving value from one company to another, and the possibility for disguising the origin of funds is clear. For example, if illicit funds are used to purchase shares in the initial company, these may be harder to trace once the shares are exchanged for those in another company. The situation can be exacerbated when other factors are involved, such as shares traded off exchange or those from countries without robust AML/CFT controls.

107. 證券業有一種獨特的支付方式是，可利用證券來交換其他的證券。此方式是在發行不同類型的股票或接管發行新股時發生。交換股票的潛在方式是把一家公司的價值轉移到另一家公司的價值，並且顯然可以掩飾資金的來源。例如：若是利用非法資金來購買初始公司的股票，一旦這些股票交換成另一家公司的股票時，將難以追蹤。要是再涉及其他因素，情況會更糟，例如：非交易所交易或無健全防制洗錢（AML）／打擊資恐（CFT）的國家。



### 3.5 Entities Involved in the Offer, Sale, Advice, Management or Distribution of Securities (“Securities Intermediaries”)

#### 3.5 牽涉供應、出售、諮詢、管理或分銷證券的實體（簡稱為「證券中介機構」）

##### *Broker-dealers* 經紀商

108. One of the most active participants in the securities market is the broker or dealer in securities. A broker typically acts in an agency capacity for an investor, and enters the securities markets on behalf of an investor to buy or sell a security. In some jurisdictions, a dealer acts in a principal capacity and sells to investors from the dealer’s own inventory or buys from an investor in order to add to the dealer’s inventory. In buying and selling in this manner, some dealers also provide liquidity to the market.

108. 證券市場中最活躍的參與者之一是經紀商或自營商。經紀商通常係以投資人的代理機構身分行事，代表投資人進入證券市場進行買進或賣出證券。在某些地區，自營商係以主力身分行事；從自己的庫存中賣給投資人，或向投資人買進加到自己的庫存。在這些買賣中，有些自營商也提供市場流動性。

109. Based on the questionnaire responses, brokers and dealers exist in most of the jurisdictions that responded to the survey. However, they are often referred to using a variety of terminology such as:

109. 根據問卷調查的回應顯示，對本調查有作出回應的證券商和自營商當中，大多數都位在地區內。不過，他們通常引用各種術語來稱呼，例如：

- Financial Instruments Business Operator;
- 金融商品業務營運商；
- Firms for Placement in Orders in Financial Instruments;
- 金融商品下單公司；
- Investment Firms;
- 投資公司；
- Investment Service Provider; and
- 投資服務提供者；和
- Underwriters.
- 承銷商。

110. A common type of brokerage relationship involves an introducing broker-dealer and a clearing broker-dealer who allocate among themselves the tasks that would normally be performed by a single broker-dealer. Under this sort of relationship, the introducing broker-dealer typically interacts directly with the customer, opening and monitoring the customer’s account and accepting orders. The clearing broker provides securities record-keeping, trade execution, clearing and settlement services, custodial services, account statements and extensions of credit in margin accounts. In contrast to a clearing broker, an introducing broker usually cannot maintain custody of a customer’s cash and securities.

110. 經紀常見的關係類型包含一個中介經紀商和一個清算經紀商，他們通常會將給自己的任務交由單一經紀商來執行。在這種關係下，中介經紀商通常是直接與客戶互動，為客戶開戶並監控其帳戶，以及受理下單。清算經紀商提供證券記錄保存、交易的執行、清算暨結算服務、保管服務、帳目表，以及保證金帳戶的信用額度。與清算經紀商相比，中介經紀商通常不能保管客戶的現金和證券。



### ***Vulnerabilities Associated with Broker-Dealers*** **與經紀商有關的弱點**

111. A specific vulnerability associated with broker-dealers is their reliance on another financial institution's CDD/KYC investigation, as discussed in Section 3.4 regarding payment methods. A broker-dealer might assume that, because another financial institution has opened an account for a customer, the customer does not raise ML/TF issues. The CDD/KYC vulnerability is most problematic in relation to the funding of a securities account. If illicit assets are successfully placed at a depository institution, the broker-dealer may assume that, because the funds are from an institution which is subject to AML/CFT rules, the customer does not pose a ML/TF risk and therefore will accept cheques or wire transfers from that institution to fund a securities account. Once a securities account is funded, a customer can engage in a number of transactions that further conceal the source of his or her illicit funds, thereby successfully layering and integrating illicit assets that were placed through a depository institution.

111. 與經紀商有關的特定弱點是，他們相當依賴於另一個金融機構所作的客戶審查（CDD）／瞭解您的顧客（KYC），如第 3.4 節「付款方式」所述。經紀商可能認為，既然另一個金融機構已經為客戶開戶，因此該客戶不會有洗錢（ML）／資恐（TF）的相關問題。客戶審查（CDD）／瞭解您的顧客（KYC）的弱點，是證券帳戶中關於資金方面的最大問題。當非法資產成功的存放至存款機構，經紀商會認為，既然資金是來自於受防制洗錢（AML）／打擊資恐（CFT）規範要求的機構，則客戶不會構成洗錢（ML）／資恐（TF）的風險，因而就受理該機構的支票或電匯作為證券帳戶的資金。一旦證券帳戶有了資金，客戶即可進行一些交易來進一步掩蓋其非法資金的來源，從而成功透過存款機構將非法資產以分層化和整合方式進行存放。

112. With respect to introducing and clearing broker-dealers, in some jurisdictions introducing brokers delegate the responsibility of monitoring for suspicious transactions to their clearing brokers. However, it is important to note that in some jurisdictions, while a task may be delegated to another entity, responsibility for that task's execution cannot be. As a result, it may continue to be the responsibility of both the introducing broker and the clearing broker to monitor transactions for suspicious activity in brokerage transactions that occur through their respective institutions.

112. 有關中介和清算經紀商方面，在某些地區，中介經紀商會把可疑交易的監督責任委託給他們的清算經紀商。然而，值得注意的是，在某些地區，當委託一個任務給另一實體時，該任務的執行責任是不能委託的。因此，中介經紀商和清算經紀商得共同繼續擔負監督交易之責，並各自於交易發生時監督是否有可疑的活動。

113. Furthermore, some jurisdictions explicitly permit a clearing broker to rely on the introducing broker to conduct certain parts of the CDD/KYC process. Some of these jurisdictions may also extend this reliance to allow the clearing broker to rely on the CDD/KYC undertaken by a secondary introducing broker that has itself introduced accounts to the primary introducing broker. ML/TF vulnerabilities are amplified when any of the introducing brokers come from jurisdictions that have lax AML/CFT regimes, in particular with respect to correspondent or omnibus accounts, as discussed below. As a result, some jurisdictions allow reliance on another intermediary (whether foreign or domestic) only if that intermediary has in place adequate AML/CFT controls.

113. 此外，有些地區會明確允許清算經紀商，可依賴中介經紀商來進行部分的客戶審查（CDD）／瞭解您的顧客（KYC）程序。部分地區還會擴大允許，使清算經紀商可依賴次級中介經紀商（次級中介經紀商介紹客戶給主要的中介經紀商）進行客戶審查（CDD）／瞭解您的顧客（KYC）。任何中介經紀商如果是來自於對防制洗錢（AML）／打擊資恐（CFT）規範鬆散的地區，則洗錢（ML）／資恐（TF）的弱點將會擴大，特別是在代理帳戶或綜合帳戶方面，如下所述。因此，有些地區允許依賴另一個中介機構（無論是國外或國內），其前提是，該中介機構已適當落實防制洗錢（AML）／打擊資恐（CFT）防制措施。

114. Although most broker-dealers do not accept cash payments, some do. For those broker-dealers that do, the relevant suspicious indicators associated with cash have been addressed in Section 3.4. In addition, because most securities transactions require the use of a securities intermediary, the majority of the suspicious indicators listed in previous sections, as well as the indicators in Annex B, are applicable to broker-dealers. Accordingly, specific indicators are not listed here.

114. 雖然大多數的經紀商不接收現金支付，但有些會接受。針對會接收現金支付的經紀商，已在第 3.4 節載明關於與現金有關的可疑跡象。另外，由於大多數的證券交易都要求使用證券中介機構，因此前段所列的大部分可疑跡象，以及附件 B 所述的跡象，均適用於經紀商。因此，具體的跡象就不在這裡列出。

#### Case study 8: Account held by an institution located in a high risk area/jurisdiction 案例研究 8：機構持有的帳戶位在高風險地區

<b>Offence:</b> 犯罪行為：	Money laundering 洗錢
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	Proceeds of various crimes (including drug trafficking) invested in the securities industry 各種犯罪（包括販毒）的所得投資在證券行業
<b>Jurisdiction:</b> 地區：	Canada 加拿大
<b>Subject:</b> 主體：	Individuals (lawyers), bank and trust company 個人（律師）、銀行和信託公司
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Wire transfers, bank drafts 電匯、銀行匯票
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>Accounts used as pass-through;</li> <li>以帳戶作為傳遞；</li> <li>Involvement of several jurisdictions; and</li> <li>涉及數個地區；和</li> <li>Transactions below the reporting threshold.</li> <li>交易低於申報門檻。</li> </ul>

#### Suspicious transaction/activity report information 可疑交易／活動申報資訊

Securities dealers have identified transactions involving accounts in the name of what appeared to be a bank or a trust company incorporated in an island in the Pacific. Money was moving from the Asia-Pacific region to investment accounts in Canada then to beneficiaries in the U.S.

證券自營商已辨識涉及交易的帳戶名稱，是在太平洋島嶼上註冊成立的銀行或信託公司。金錢是從亞太地區轉移到加拿大的投資帳戶，然後再轉移給美國的受益人。

#### Case description 案例描述

The bank was incorporated in an island in the Pacific know for the ease of setting up financial institutions. 該銀行之所以會在太平洋島嶼上註冊成立，是因為瞭解在太平洋島嶼設立金融機構的便利性。

A securities dealer reported that the client (bank or a trust company)'s account was managed (activity of buy, sell, wire transfers, etc) by two individuals employed by a law firm in a major Asian city. The two individuals were suspected to be lawyers.

證券自營商提報客戶（銀行或信託公司）的帳戶，是由亞洲主要城市的律師事務所僱用的兩名人員進行管理（買進、賣出、電匯等活動）。這兩個人被推測是律師。

In a notice issued by a regulator of financial institutions, the Canadian public was warned that the bank or trust company was not authorised to conduct banking services in Canada.

由金融監管機構發出的通知函中，警示加拿大民眾該銀行或信託公司在加拿大境內沒有獲得授權從事銀行服務業務。

An analysis of the financial transactions involving the institution and information retrieved from public documents led to suspicions that the bank was facilitating deposits of funds generated by various criminal activities (particularly

heroin and opium trade in Asia), then transferring the money to accounts at securities dealers in Canada under the supervision of the two lawyers in Asia.

針對涉及金融交易的機構並從公開文件檢索的資料進行分析後，懷疑該銀行是為各種犯罪活動（尤指在亞洲進行的海洛因和鴉片買賣）所產生的資金提供存放，然後再將帳戶中的款項轉移到加拿大的證券自營商，此過程都在亞洲的兩名律師監督下進行。

The two individuals in Asia were ordering numerous wire transfers on behalf of the bank from accounts held at different locations in the Asia-Pacific region, to investment accounts in Canada and other beneficiaries. Once received, the money was transferred to different individuals whose addresses were at different locations in the United States. The purpose of the wire transfers and the relationship between the bank and the beneficiaries of the transactions could not be determined.

在亞洲的這兩個人藉由代表亞太地區不同地點的銀行帳戶，進行大筆匯款金額至加拿大的投資帳戶和其他受益人。一旦收到款項後，再將這些錢轉移給不同的人；這些人的地址都在美國的不同地點。電匯的目的，以及銀行和交易受益人之間的關係為何無法確定。

Although not mentioned by the securities dealers when reporting the suspicious activity, it was suspected that the primary purpose of the wire transfers from the Asia-Pacific region was to send funds to beneficiaries in the United States. The beneficiaries in Canada were just acting as intermediaries in the money laundering process; an analysis of the transaction flows revealed that they were in fact nominees.

雖然證券自營商沒有在申報可疑活動中提及目的和關係，但可以推測電匯的主要目的是要把放在亞太地區的資金匯回給美國的受益人。至於加拿大的受益人只是這樁洗錢過程中的中間人而已；從交易的流向分析，他們事實上是人頭。

#### Enforcement actions

##### 執法行動

The case was referred to law enforcement for investigation.

本案已提交給執法部門進行調查。

#### Case study 9: Use of margin account with little trading

##### 案例研究 9：利用交易量少的保證金帳戶

<b>Offence:</b> 犯罪行為：	Money laundering 洗錢
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	N/A 不適用
<b>Jurisdiction:</b> 地區：	Hong Kong 香港
<b>Subject:</b> 主體：	Individual 個人
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Deposit and withdrawals of funds 存款和取款
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>Client deposited funds into the broker's account and requested repayment of funds within a short period of time with no apparent reason;</li> <li>客戶將資金存入到證券商的帳戶，並在短時間內要求取款而無明顯的理由；</li> <li>Little or no trading was recorded during the period; and</li> <li>在這期間內，交易量少或無交易記錄；和</li> <li>The amount of funds deposited was not in line with the client's profile.</li> <li>存款金額與客戶的資料不相符。</li> </ul>

#### Case description

##### 案例描述

Profits from illegal bookmaking were transferred from the bank account of the syndicate head's wife and sister-in-law to the margin account of the syndicate head.

將非法賭注的收益，從組頭妻子和妯娌的銀行帳戶轉移到組頭的保證金帳戶。

Little or no trading occurred in the margin account.

保證金帳戶內交易量少或沒有交易。

Funds were then withdrawn as cashier's cheques and subsequently deposited into the bank account of the syndicate

head.

之後，再把資金提取作成銀行本票後，隨即再存入到組頭的銀行帳戶。

### Case study 10 : Activity of wash trading 案例研究 10：沖洗買賣活動

<b>Offence:</b> 犯罪行為：	Money laundering 洗錢
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	Stock manipulation 股票操縱
<b>Jurisdiction:</b> 地區：	Canada 加拿大
<b>Subject:</b> 主體：	Insiders 內線人士
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Securities accounts, wire transfers, cheques, bank drafts 證券帳戶、電匯、支票、銀行匯票
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>Insiders conducting similar transactions; and</li> <li>內線人士進行類似交易；和</li> <li>Purchases and sales involving stocks of specific companies in a short period of time.</li> <li>在短時間內涉及買進和賣出特定公司的股票。</li> </ul>

#### Suspicious transaction/activity report information

##### 可疑交易／活動報告資訊

A number of suspicious transaction reports were filed by securities dealers on three individuals suspected of involvement in wash trading. The individuals were purchasing and selling shares of three public companies for no apparent reason. The three individuals had accounts at different securities dealers.

從證券自營商提出的數份疑似洗錢或資恐交易報告中發現，有三個人涉嫌參與沖洗買賣。這些人買進和賣出三家上市公司的股票，其動機不明顯。這三個人在不同的證券自營商均設有帳戶。

#### Case description

##### 案例描述

Three individuals, who appeared to be associates, were purchasing shares of three companies (A, B, and C) and selling them a short time later.

這三個人似乎是合夥人，一起買進三家公司（A、B 和 C 公司）的股票後，又在短時間內賣出。

One of the individuals was listed as a CEO of Company A, the other two as members of the senior management team of Company B. According to public documents, Company A was linked to Company B and Company C.

其中一人被列為是 A 公司的執行長，另外兩人是 B 公司管理團隊的高級成員。根據公開的文件顯示，A 公司與 B 公司和 C 公司有關聯。

The group traded shares of the companies through personal accounts held at different securities dealers.

該集團透過不同證券自營商的個人帳戶買賣公司的股票。

The three individuals were conducting the same transactions at the same time. The activity was similar to a money laundering technique known as “structuring” since the three individuals in reality were dividing the purchase-sale scheme between them.

這三個人是在同一時間進行相同的交易。此行動方式與著名的「分拆」洗錢技術類似，因為這三個人確實分開進行他們之間的買賣策劃。

The proceeds of sales were deposited into personal securities accounts and moved shortly to bank accounts held by the same individuals or others that are suspected to be nominees.

賣出的犯罪所得先存入到個人的證券帳戶，之後再轉移到同一人或其他人（被懷疑是人頭）的銀行帳戶。

#### Proceeds of crime (wash trading) in the case

##### 本案為犯罪所得（沖洗買賣）

- Money from the sales of shares of Company A, Company B and Company C conducted by the three associates.
- 金額是由三名合夥人進行賣出 A 公司、B 公司和 C 公司股票的所有得。

### Specific money laundering transactions

#### 具體洗錢交易

- Movement of money from the securities account to bank accounts (that can be used to purchase other assets or make wire transfers).
- 金額從證券帳戶轉移到銀行帳戶（用於購買其他資產或進行電匯）。
- Movement of money to suspected nominees.
- 將款項轉移給可疑的人頭。

### Enforcement actions

#### 執法行動

The case was referred to law enforcement for investigation.

本案已提交給執法部門進行調查。

### Case study 11: Rapid purchase and sale of shares

#### 案例研究 11：快速買進和賣出股票

<b>Offence:</b> 犯罪行為：	Money laundering 洗錢
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	Stock manipulation 股票操縱
<b>Jurisdiction:</b> 地區：	Canada 加拿大
<b>Subject:</b> 主體：	Individuals, corporations 個人、企業
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Wire transfers, use of multiple securities accounts 電匯，使用多個證券帳戶
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>• Buying and selling securities with no discernible purpose in circumstances that appear unusual;</li> <li>• 買賣證券無法辨別目的，顯示並非尋常；</li> <li>• Use of multiple accounts at a single securities dealer for no apparent reason (movement of funds from one account to another); and</li> <li>• 在單一證券自營商使用多個帳戶而沒有明顯的理由（從一個帳戶轉移資金到另一個帳戶）；和</li> <li>• Proceeds of sale used to purchase monetary instruments payable to nominees.</li> <li>• 賣出的犯罪所得用於購買可支付給名義人的貨幣工具。</li> </ul>

### Suspicious transaction/activity report information

#### 可疑交易／活動申報資訊

A bank reported that large wire transfers ordered from a securities dealer were received into a business account administered by Person A. Once received, money was used to purchase bank drafts, and cheques were issued payable to various individuals and entities. The purpose of the transfers between the securities dealer and the bank is not known, since the individual has refused to respond to questions asked by the bank's anti-money laundering section. It was suspected, however, that the client was "dumping" in the market a large number of shares purchased earlier (evidenced by previous wire transfers sent to the securities dealer) once they reached a certain value. 依銀行的報告顯示，從證券自營商匯出去的大筆金額，是由 A 管理的商業帳戶接收。一旦收到款項後，即用於購買銀行匯票，並開支票支付給不同的個人和實體。證券自營商和銀行之間的轉帳目的不得而知，因為當事人拒絕回答銀行反洗錢部門所提問的問題。而可懷疑的是，客戶於股價達到一定的價格後，就將先前（可透過之前發送電匯給證券自營商的記錄為證）大量買進的股票「倒貨」在市場上。

The securities dealer that sent the wire transfers also reported the following on Person B:

發送電匯的證券自營商也有提報 B：

- Listed investment advisor: Person A;
- 列出的投資顧問：A；
- Was the signing authority of 24 accounts held by two corporations located in two Central American countries. The review of the accounts activity revealed movement of funds from one account to another;
- 為擁有權力簽署 24 個帳戶的簽字人，這 24 個帳戶由位在中美洲兩個國家的兩家公司所持有。從檢閱帳戶的活動發現，資金是從一個帳戶轉移到另一個帳戶；



- Was purchasing shares of specific companies, selling them a short time later and wiring the proceeds to bank accounts held by the corporations at financial institutions located in Central America and the Caribbean; and also to a bank account administered by Person A; and
- 為買進特定公司股票之人，並在短時間內再賣出股票，然後將所得匯至位在中美洲和加勒比金融機構的公司銀行帳戶，同時也匯至由 A 管理的銀行帳戶；和
- Never held stocks long enough to take advantage of future dividend distributions.
- 從未利用長期持有股票以獲得未來股利分配。

Another securities dealer reported that an individual, whose investment advisor was also Person A, purchased a large number of shares and sold them a short time later with no economic gain. When purchasing the stocks, the client never used wire transfers but rather cheques drawn on an account held in a financial institution located in a foreign country. The transactions always involved one particular company.

從另外的證券自營商報告中顯示，有一名投資顧問也是 A，他大量買進股票後，又在短時間內賣出，並無經濟利得。於買進股票時，客戶從未使用過電匯，而是利用位在國外金融機構的帳戶進行提款開立支票。交易總是涉及一家特定的公司。

### Case description

#### 案例描述

The case relates to eight individuals and two corporations involved in a stock manipulation scheme:

本案涉及股票操縱策劃的相關人員共有八個人和兩家公司：

- Person A was the investment advisor of a group of 7 individuals.
- A 是 7 人一組的投資顧問。
- Person B was listed as the signing officer of two corporations.
- B 為兩家公司的簽字高層。
- The two corporations had addresses in two different Central American countries but also held bank accounts in other Caribbean locations.
- 這兩家公司在中美洲兩個國家都有不同的地址，而且在其他加勒比地區也設有銀行帳戶。

According to information posted in a market regulator's website:

根據監管機構在其網站發布的資料顯示：

- Person A was the main subject of a stock manipulation investigation.
- A 是股票操縱調查的主要對象。
- One person of the group was under investigation for banking fraud in an Asian country; the fraud cost investors close to CAN\$100 million (awaiting extradition).
- 該組織的其中一人因為在亞洲國家涉及銀行詐騙，而正在接受調查；詐騙投資人的金額接近 1 億加拿大幣（等待引渡）。

Person A appeared to be providing information on when to purchase and sell stocks of specific firms to the rest of the group. The investors did not hold the stocks enough to take advantage of dividend distributions. Proceeds of stocks sold were:

A 似乎是提供訊息給該組織的其他人有關何時買進和賣出特定公司股票之人。投資人之持股期間未足以獲取股利分配。賣出股票的犯罪所得被：

- Wired to bank accounts held overseas;
- 匯至海外的銀行帳戶；
- Used to purchase bank drafts or to issue cheques payable to individuals and entities (it was suspected that the beneficiaries were nominees).
- 用於購買銀行匯票或開支票支付給個人和實體（推測受益人是名義人）。

Analysis of the financial transactions of the remaining individuals of the group revealed constant purchases and sales of securities whose proceeds were deposited in bank accounts followed by issuance of cheques or bank drafts payable to individuals and entities. Some transactions involved penny stocks and stocks traded on the pink sheets (which are less regulated, and therefore more easily manipulated).

針對其餘人的金融交易進行分析後發現，持續買賣證券的款項是存入至銀行帳戶，之後再開支票或銀行匯票支付給個人和實體。列在粉紅單上（監管較少，因此更容易操縱）的一些交易包括仙股買賣。



**Proceeds of crime (stock manipulation) in the case****本案為犯罪所得（股票操縱）**

- Wire transfers received into a business account administered by Person A.
- 由 A 管理的商業帳戶接收匯款。
- Money received from the sale of securities conducted by Person B and other members of the group.
- 賣出證券後所收到的款項由 B 和該組織其他成員進行管理。

**Specific money laundering transactions****具體洗錢交易**

- Funds wired by Person B to accounts held by the corporations in financial institutions located in Central America and the Caribbean.
- 資金由 B 匯至位在中美洲和加勒比金融機構的公司帳戶。
- Funds wired by Person B to the business account administered by Person A.
- 資金由 B 匯至由 A 管理的商業帳戶。
- Movement of funds between accounts (review of Person B's accounts activity).
- 資金在帳戶之間移動（檢閱 B 的帳戶活動）。
- Purchase of bank drafts and issuance of cheques payable to individuals and entities.
- 購買銀行匯票並開支票支付給個人和實體。

**Enforcement actions****執法行動**

The case is being investigated by law enforcement and a provincial securities regulator.

本案已由執法部門和證券監管機構進行調查。

***Investment Advisers and Wealth Managers*****投資顧問和財富管理人**

115. Brokers and dealers in securities can be distinguished from those securities intermediaries that are regulated as advisers and wealth managers. In some jurisdictions, the role of a broker and a dealer are clearly delineated from those of advisers or managers. In fact, different registration and regulatory standards may apply. Nonetheless, functions can be housed in the same entity by means of multiple registrations. In other jurisdictions, advisory functions and broker-dealer functions may be conducted under the same registration.

115. 證券中介機構中，證券經紀商和證券自營商與一般擔任顧問和財富管理人者有所區別。在某些地區，證券商和自營商的角色與顧問或管理人的角色有明確的界定，而適用不同的註冊和監管標準，然而，可透過數個註冊而於同一實體下共同運作。在其他地區，顧問和經紀商可在相同的註冊下共同運作。

116. Regardless of whether a jurisdiction has dual registration regimes, the role of the investment adviser and wealth manager is generally to advise on the composition of an investment portfolio or to manage the contents of investment accounts for retail or institutional clients.

116. 不論一個地區是否擁有雙重註冊制度，一般而言，投資顧問和財富管理人的角色是對投資組合的結構提供建議，對零售客戶或機構客戶的投資帳戶進行管理。

117. Wealth management typically involves the provision of financial services in a managed relationship with clients who are often of high net worth. The value and complexity of products offered to high net worth clients, together with the international nature of the business, make the provision of wealth management services potentially attractive to money launderers.

117. 財富管理通常是專注在與淨值高的客戶經營關係，並提供金融服務。具有價值且錯綜複雜的產品被提供給淨值高的客戶及國際性企業，對洗錢者而言，這樣的財富管理服務具有潛在的吸引力。

#### ***Suspicious Indicators Associated with Advisory Services/Wealth Management*** **與諮詢服務／財富管理有關的可疑跡象**

- Wealthy/powerful and PEP clients – who are reluctant to provide full CDD information, and who seek confirmation that their affairs will be kept confidential;
- 有錢／有權、擔任重要政治性職務人士（PEP）之客戶——通常是不願提供完整的客戶審查（CDD）資料，並且要求確認其相關事務應予以保密；
- Clients with multiple and complex accounts in more than one jurisdiction, either within the same firm or group, or with different firms;
- 這樣的客戶不論是在同一家公司、集團或是在不同的公司，都會在一個地區以上擁有數個複雜的帳戶；
- Clients using wealth management services in conjunction with offshore trusts/shell companies to disguise beneficial ownership;
- 使用財富管理服務與境外信託／空殼公司的客戶，以利掩飾實質受益人的身分；
- Wealth management activities in countries with a tradition of banking secrecy;
- 財富管理活動在一些國家具有銀行保密慣例；
- The transmission of funds and other assets by private clients that involve high value transactions, requiring rapid transfers to be made across accounts in different countries and regions of the world; and
- 涉及高價值交易的私人客戶，於轉移資金和其他資產時，都會在世界不同國家和區域的帳戶要求快速轉帳；和
- The use of pooled/omnibus type accounts that are used together to collect funds from a variety of sources and clients for onward transmission.
- 同時會一起使用合併／綜合型帳戶來收集從各種來源和客戶轉進的資金，以便繼續進行轉出。

#### ***Depository Institutions*** **存款機構**

118. The survey responses indicated that in some jurisdictions, depository institutions also serve as intermediaries for transactions in securities or provide investment advice/financial planning services.

118. 從調查回應指出，在某些地區，存款機構也擔任證券交易的中介機構，或提供投資諮詢／財務規劃等服務。

119. The most common vulnerability associated with depository institutions involves the placement of illicit assets into the financial system. Once these illicit assets are placed they can be wire transferred out of a jurisdiction or used to purchase different assets, such as securities products. The risk that illicit assets will be used to purchase securities products is increased in jurisdictions where customers can

purchase securities directly through the depository institution or through an affiliated securities intermediary. Moreover, as discussed above, if illicit assets are successfully placed at a depository institution, a securities intermediary, whether affiliated or not, may unjustifiably rely on the depository institution's CDD/KYC investigation and assume that the customer poses no ML/TF risk.

119. 存款機構最常見的相關弱點，包含存放非法資產到金融系統。這些非法資產一旦存放到金融系統即可被匯出該地，或用於購買不同的資產，如證券商品。利用非法資產來購買證券商品將提高地區的風險，因為客戶可透過存款機構或附屬證券中介機構直接購買證券。此外，如上所述，如果非法資產成功被存放在存款機構或證券中介機構（不論屬於附屬機構與否），外人將無法合理依賴存款機構所做的客戶審查（CDD）／瞭解您的顧客（KYC），而以為客戶不具有洗錢（ML）／資恐（TF）的風險。

120. In this regard, the vulnerabilities and suspicious indicators associated with payments methods, market access and securities intermediaries are all applicable.

120. 就這點上，與付款方式、市場通路和證券中介機構有關的弱點和可疑跡象均可適用之。

121. In addition, as discussed in Chapter 4, depository institutions may be in the best position to identify and report on securities fraud that may not necessarily require the use of a securities intermediary.

121. 另外，如第 4 章所述，存款機構可能是最能辨識並提報證券詐欺的機構，不一定需要利用證券中介機構。

### ***Insurance Companies***

#### ***保險公司***

122. Insurance companies issue products that in some jurisdictions are considered to be securities. The vulnerabilities and suspicious indicators associated with these products were discussed above in Section 3.2.1. In addition, where permitted, insurance companies can also serve as a securities intermediary. The vulnerabilities and suspicious indicators associated with payments methods and the previously discussed securities intermediaries are all applicable to insurance companies that engage in comparable activities.

122. 保險公司發行的產品在某些地區內被視為證券商品。與這些商品有關的弱點和可疑跡象，如前面第 3.2.1 節所述。另外，在獲得許可的情況下，保險公司也可以擔任證券中介機構。與付款方式和前述證券中介機構有關的弱點和可疑跡象，均適用於從事同等活動的保險公司。

### ***Use or Creation of a Financial Institution for ML/TF Purposes***

#### ***利用或建立一個金融機構從事洗錢（ML）／資恐（TF）***

123. The criminal use of a financial institution for the purpose of laundering money or financing terrorism is possible in any area of the financial services system. Criminal elements can either create or gain direct control of such an entity or seek to exert influence over the management or staff in furtherance of their aims.

123. 犯罪分子有可能在任何地區的金融服務體系，利用金融機構從事洗錢或資恐。犯罪分子能夠建立或直接控制一個實體，或試圖對管理階層或員工施加影響力，以便推進其目標。

124. It is possible for a securities broker-dealer, for example, to be created or used for the specific purpose of laundering funds/financing terrorism. The FATF 40 + 9 Recommendations require measures to prevent criminals or their associates from “holding or being the beneficial owner of a significant

controlling interest or holding a management function.”<sup>24</sup> Clearly the risk of criminal penetration of the securities market is heightened by opaque corporate structures, but also increases when dealing with other financial institutions from countries with lax AML/CFT measures.

124. 例如：為了洗錢／資恐的特定目的，而可能設立或利用一個證券經紀商。防制洗錢金融行動工作組織（FATF）40 + 9 在建議書中，要求從「持有或成為重大控股權益的實質受益人或持有管理職能者」採取防止犯罪分子或其同夥的相關措施。<sup>24</sup> 不透明的公司結構顯然會提高犯罪分子滲透證券市場的風險，此外，與防制洗錢（AML）／打擊資恐（CFT）規範鬆散國家的其他金融機構進行交易，也會增加風險。

### *Suspicious Indicators Associated with Criminal Influence in a Financial Institution:*

#### **犯罪分子在金融機構影響力的可疑跡象：**

- Corporate structures where beneficial ownership is difficult to determine; and
- 企業結構的實質受益人難以判斷；和
- Companies incorporated in countries without adequate AML/CFT controls.
- 公司註冊成立在沒有適當實行防制洗錢（AML）／打擊資恐（CFT）控管的國家。

### **Case study 12: Criminally-controlled securities intermediary**

#### **案例研究 12：由犯罪分子控制的證券中介機構**

<b>Offence:</b> 犯罪行為：	Money laundering 洗錢
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	N/A 不適用
<b>Jurisdiction:</b> 地區：	Canada 加拿大
<b>Subject:</b> 主體：	Individuals, companies 個人、企業
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Wire transfers, bank drafts (i.e. cashier's cheques) 電匯、銀行匯票（即銀行本票）
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>• “Shady” or criminally-associated or criminally-convicted officers, directors and/or major shareholders. One individual was associated with a South American criminal organisation;</li> <li>• 與「見不得光」、犯罪相關或經刑事定罪的公司高層、董事及／或主要股東。有一人與南美洲的犯罪組織有關聯；</li> <li>• Cash was used to pay dividends to investors;</li> <li>• 用現金支付股息給投資人；</li> <li>• Establishing multiple corporations: one individual was the administrator of several corporations, all located at the same address;</li> <li>• 成立多家公司：由一個人擔任幾家公司的管理人，所有的公司皆設在相同的地址；</li> <li>• Several transactions between associated and related companies: funds wired to associated entities and then quickly sent outside the group; and</li> <li>• 與關聯公司進行若干交易：電匯資金給相關實體後，隨即送往在外的集團；和</li> <li>• Minimal movement in share price: investment in an entity whose financial statements show no economic activity.</li> <li>• 股價極少有波動：投資在財務報表顯示不具經濟活動的實體。</li> </ul>

<sup>24</sup> FATF Recommendation 23.

<sup>24</sup> 防制洗錢金融行動工作組織（FATF）建議 23。

### Suspicious transaction/activity report information

#### 可疑交易／活動報告資訊

In 2004, a MSB reported to the FIU financial transactions that were conducted for the benefit of a securities company operating from a Caribbean country. Two individuals (a husband and a wife) were reported to have used cash to purchase two drafts payable to the securities company. The individuals appeared to be structuring the transactions to fall below the \$10,000 reporting threshold.

MSB 於 2004 年向金融情報中心 (FIU) 提出的報告顯示，為證券公司利益而進行的金融交易是從加勒比運作。根據報告得知，有兩個人（丈夫和妻子）使用現金購買兩張匯票支付給證券公司。這二人似乎將交易分拆，以降至 \$10,000 申報門檻以下。

A foreign FIU, law enforcement agencies in Canada and the United States and a Caribbean newspaper indicated that the securities company was incorporated by a Canadian citizen suspected of being involved in laundering, through stock markets, proceeds of a cocaine trafficking operation which was believed to be controlled by a South American criminal organisation.

國外金融情報中心 (FIU)、加拿大和美國的執法機構，以及加勒比報紙均指出，該證券公司是由一名加拿大公民註冊成立；此人涉嫌將古柯鹼販運的犯罪所得透過股票市場洗錢，該販運被認定由南美洲犯罪組織控管。

According to its website, the Caribbean securities company appeared to be operating worldwide; however information on the management, contact persons, names or phone numbers, and type of services offered, were not provided.

根據其網站資料顯示，加勒比證券公司似乎在全球操作經營，但卻沒有提供關於管理人、聯絡人、姓名或電話號碼，以及提供服務類型的資訊。

### Case description

#### 案例描述

According to information provided by law enforcement to the FIU:

根據執法機關提供給金融情報中心 (FIU) 的資訊：

- intelligence sources suspected that the South American criminal organisation had set up securities companies in the Caribbean and in Canada, and used nominees to run the operations;
- 情報部門懷疑南美洲犯罪組織已在加勒比和加拿大設立證券公司，並利用人頭運作；
- money generated by cocaine trafficking worldwide on behalf of the criminal organisation was deposited in bank accounts in Western Europe in a country known for its bank secrecy as well as in the Caribbean.
- 由犯罪組織在世界各地經營古柯鹼販運產生的金錢，被存放在西歐一個國家的銀行帳戶；該國和加勒比一樣，以其銀行的保密而著名。

In Canada, all methods used to launder the proceeds of cocaine trafficking for the organisation were not known, but one channel used to introduce the drug trafficking money into the system was the purchase of drafts at MSBs payable to the securities company in the Caribbean.

在加拿大，未能得知該組織如何將古柯鹼販運的收入完成洗錢的全部方法，但有一個管道是將販毒的所得引入至系統，即在 MSB 購買匯票支付給位在加勒比的證券公司。

Once in the system (in the Caribbean or in Europe), the drug money was transferred to securities companies in Canada.

販毒的所得一旦進入系統（加勒比或歐洲）後，就會被轉移到位在加拿大的證券公司。

Eight securities companies were found to be the beneficiaries of wire transfers totalling approximately US\$30,000,000.00 over a period of two years. These EFTs were ordered by the company in the Caribbean from accounts held in Western Europe and the Caribbean. The eight companies were sharing the same address and administered by the same person, who was listed as a lawyer. The suspicious movement of funds between the Caribbean company and the eight securities companies were reported by a number of financial institutions in Canada; examples of suspicious transactions or behaviours include:

在兩年之內共有八家證券公司被發現是電匯的受益人，總額大約為 30,000,000.00 美元。這些電子轉帳 (EFT) 係由位在加勒比的公司，從西歐和加勒比的帳戶進行轉帳。這八家公司共享相同的地址並由同一人（一名律師）管理。據加拿大的一些金融機構所作的報告顯示，可疑的資金是在加勒比公司和八家證券公司之間移動；可疑交易或行為的例證包括：

- the lawyer did not want to explain the relationship between the two companies and the purposes of the financial transactions from one entity to another;
- 律師不願意說明兩家公司之間的關係，以及從一個實體到另一個實體進行金融交易的目的；
- a securities company was the beneficiary of an EFT and the lawyer withdrew the full amount in cash and claimed that the money would be used to pay dividends to investors; and
- 有一家證券公司是電子轉帳 (EFT) 的受益人，律師提取全額現金並聲稱該金額是用於支付股息予投資人；和



- after receiving funds from the Caribbean, the eight companies issued cheques, bank drafts or ordered wire transfers payable to entities and other established securities companies in Canada but also in the United States and Asia: after receipt of a wire transfer, one securities company ordered a wire transfer (same amount) to the benefit of an oil and gas company that was operating in South East Asia. According to a database maintained by a non-governmental entity, the beneficiary did not have any assets or liabilities, changed name three times, was a medical equipment supplier, a music video producer and games wholesale distributor, and there was no movement in the share price for five years.
- 這八家公司於收到從加勒比轉進來的資金後，即開支票、銀行匯票或電匯給設立在加拿大、美國和亞洲的實體及其他證券公司：其中一家證券公司於收到匯款後，即電匯（相同金額）給在東南亞經營石油和天然氣的公司。根據非政府實體所維護的資料庫顯示，受益人沒有任何的資產或負債，有更改過姓名三次，為醫療設備供應商、音樂視頻製作人和遊戲批發商，股價已有五年沒有任何波動。

#### Enforcement actions

##### 執法行動

The case was referred to law enforcement for investigation.

本案已提交給執法部門進行調查。

### 3.6 Clients and Account Types

#### 3.6 客戶和帳戶類型

##### *Trust, Nominee, and Omnibus Accounts*

##### 信託、人頭及綜合帳戶

125. Trust and nominee accounts present ML/TF vulnerabilities in the layering and integration stages. A particular risk involves jurisdictions where the formation of a trust or nominee account does not require the collection of beneficial ownership information for individuals. Moreover, while some jurisdictions may require beneficial ownership information, the information required can be limited to information regarding non-natural persons. As with shell companies, a lack of beneficial ownership information regarding the individuals who benefit from the account may mask an individual's identity such that he or she would gain access to a financial system when such access would otherwise be restricted or forbidden.

125. 信託和人頭帳戶呈現洗錢（ML）／資恐（TF）在分層化和整合階段的弱點。特定風險包括於建立信託或人頭帳戶時，因為沒有規定須收集個別實質受益權資料。此外，雖然某些地區有要求實質受益權資料，但所要求的資料僅限於非自然人的訊息。和空殼公司一樣，缺乏個人（帳戶受益人）實質受益人的資料有利於掩蓋個人的身分，如此一來，該人即可使用金融系統（除非另有限制或禁止）。

126. An omnibus account is an account established for an entity that is acting as an intermediary on behalf of multiple individuals or entities. For example, a bank in jurisdiction X could open an omnibus account with a securities intermediary in jurisdiction Y through which the bank in jurisdiction X manages a portfolio for its clients. In this scenario, the ML/TF vulnerability is that the securities intermediary may not know who the beneficial owners of the investment portfolio are.

126. 綜合帳戶是為代表數人或多個實體建立的中介帳戶。例如：X 地區的銀行可以在 Y 地區的證券中介機構開立一個綜合帳戶，以管理其客戶的投資組合。在這種情況下，洗錢（ML）／資恐（TF）的弱點勢必會發生，因為證券中介機構不會知道投資組合的實質受益人是誰。

127. One jurisdiction reported that “hub and spoke” arrangements involving jointly held accounts posed a particular vulnerability. In these arrangements, the primary accountholder opens accounts with numerous others (secondary accountholders), who in turn open accounts with others (tertiary accountholders). This can give the primary accountholder access to dozens or hundreds of accounts,

decreasing transparency and making it difficult for a financial institution to determine exactly who is originating a transaction.

127. 有一個地區提報，安排涉及聯合帳戶的「軸輻式系統」構成了特定的弱點。在這些安排中，主要帳戶持有人和很多的其他人（第二線帳戶持有人）一起開戶，後者又與其他人（第三線帳戶持有人）一起開戶。如此可讓主要帳戶持有人存取數十個或數百個帳戶，從而降低透明度，使金融機構難以準確判定誰是交易發端者。

### ***Charitable and Other Non-Profit Organisations***

#### **慈善機構及其他非營利組織**

128. Whilst most charitable and non-profit organisations are reputable and provide legitimate services or funding for their causes, some organisations have been and can be used for ML/TF. Although not unique to the securities industry, a particular vulnerability involves organisations that may be used as a front for transferring funds to suspect beneficiaries located in high-risk areas/jurisdictions or conflict zones deemed to harbour or support terrorists. For example, legitimate funds may be used to purchase securities that are donated to a charitable organisation. The charity, in turn, could liquidate the securities or use the income generated by the securities to transfer funds to, or to purchase material for, individuals who further terrorists' activities.

128. 雖然大多數的慈善機構和非營利組織都信譽良好，並為其事業提供合法服務或資金，但有些組織已淪為並被利用為洗錢（ML）／資恐（TF）的單位。雖然非特別針對證券行業，但證券業特定的弱點會使組織被利用為轉移資金給可疑受益人的前線單位；這些可疑受益人均位在高風險地區、隱匿或支持恐怖分子的衝突區域。例如：利用合法資金購買證券捐贈給慈善機構。反過來，慈善機構也可以將證券或證券所產生的收入轉換成資金或購買物資，給從事恐怖分子活動之人。

### ***Shell Companies***

#### **空殼公司**

129. The term “shell company” often refers to a non-publicly traded corporation or limited liability company that might have no physical presence and generates little or no independent economic value. These companies are commonly organised in a way that makes their ownership and transaction information easier to conceal. Thus, transactions involving shell companies present a high ML/TF vulnerability.

129. 「空殼公司」一詞，通常係指沒有實體存在、幾乎沒有或無獨立經濟價值的非公開發行公司或有限責任公司，這些公司的組成使其所有人和交易資訊易於隱藏。因此，利用空殼公司進行交易存在較高的洗錢（ML）／資恐（TF）弱點。

130. Whilst publicly traded shell companies can be used for illicit purposes, ML/TF vulnerabilities associated with shell companies are heightened when the company is privately held, such that beneficial ownership can be more readily obscured.

130. 雖然公開發行的空殼公司也可被用於從事非法目的，但若公司為私有持有，就會提高空殼公司與洗錢（ML）／資恐（TF）的相關弱點，藉此讓實質受益人更容易獲得隱藏。

131. For example, a domestic or international shell company securities account can be used to evade CDD/KYC investigations regarding the beneficial owners of certain assets. In particular, individuals or entities in high-risk areas/jurisdictions or conflict zones can disguise their true identities through a series of shell companies located in various jurisdictions to participate in a financial system that they otherwise would not be able to access.

131. 例如：使用國內或國外空殼公司的證券帳戶來規避對實質受益人的某些資產進行客戶審查（CDD）／瞭解您的顧客（KYC）。特別是那些位在高風險地區或衝突區域的個人或實體，他們可

藉由位在各個地區的一連串空殼公司來加入金融體系（否則他們是無法加入的），以便掩飾其真實身分。

132. Shell companies can also be used to introduce illicit funds into a financial system and/or generate illicit funds through manipulative or fraudulent securities activities. For example, a brokerage account can be opened in the name of shell companies and used to engage in fraudulent conduct with regard to low priced, illiquid, low volume or privately placed securities. In addition, a shell company can be established to accept payments from criminal organisations for non-existent services. These payments, which appear legitimate, can be deposited into depository or brokerage accounts and either wire transferred out of a jurisdiction or used to purchase securities products that are easily transferable or redeemable.

132. 空殼公司也可用於引入非法資金至金融體系，及／或透過證券活動的操縱或欺騙來產生非法資金。例如：藉由空殼公司的名義來開立經紀帳戶，以便對低價、流動性不足、量少或私募等證券進行欺詐行為。此外，成立空殼公司可提供無中生有的服務以收受犯罪組織的付款。由於這些款項看似合法，因此可以存入到存款帳戶或經紀帳戶，並匯出地區或用於購買易轉讓或可贖回的證券商品。

#### ***Unregulated Investment Funds and Pools (i.e. Hedge Funds)*** **不受管制的投資基金和合併基金（即對沖基金）**

133. Generally, hedge funds are vehicles established to hold and manage investment assets. Because of the way they are structured, they may not be subject to regulatory oversight. Hedge funds may receive funds domestically or internationally, and some (feeder funds) are established to invest into other hedge funds. A hedge fund will often utilise the services of a regulated securities intermediary.

133. 一般來說，對沖基金是為了持有和管理投資的資產而成立的投資工具。由於其結構方式，故可能不受法令監管。對沖基金可接收國內或國外的資金，而且有些成立的基金（母子基金）是用來投資其他的對沖基金。對沖基金通常使用受監管證券中介機構的服務。

134. Hedge funds present an ML/TF vulnerability because the regulated entity that the hedge fund is using to effect transactions (e.g. a broker-dealer) may not know the identity of the underlying hedge fund investors. Typically, hedge fund investors are of higher net worth than other retail investors. This anonymity of ownership can also result from the opacity associated with some feeder funds.

134. 對沖基金存在洗錢（ML）／資恐（TF）的弱點，因為把對沖基金用於從事交易（如經紀商）的受監管實體可能不會知道對沖基金背後投資人的身分。一般而言，對沖基金投資人的淨值高於其他的零售投資人。所有權的匿名性也會造成一些母子基金的不透明。

135. In addition, some hedge funds may be used to perpetuate a securities fraud, such as a Ponzi scheme. Securities fraud is discussed in Chapter 4.

135. 此外，一些對沖基金可能被用來進行證券詐欺，如龐氏騙局。證券詐欺將在第 4 章討論。

#### ***Suspicious Indicators Associated with Trust, Nominee, and Omnibus Accounts, Charitable Organisations, Shell Companies and Hedge Funds***

**與信託、人頭、綜合帳戶、慈善機構、空殼公司和對沖基金有關的可疑跡象**

136. The questionnaire responses did not specifically identify any suspicious indicators associated with trust, nominee, and omnibus accounts, charitable organisations, shell companies and hedge funds.

However, the following general suspicious indicators (also appearing in Annex B) may be useful when evaluating risks posed by these types of accounts, organisations and entities:<sup>25</sup>

136. 從問卷調查的回應來看，並無識別與信託、人頭、綜合帳戶、慈善機構、空殼公司和對沖基金有關的任何具體可疑跡象。不過，在評估這類型帳戶、組織和實體所造成的風險時，可使用下列的通用可疑跡象（亦顯示在附件 B）：<sup>25</sup>

- During the account opening process, the person opening the account refuses to provide information to complete CDD/KYC (e.g. occupation, prior financial relationships, etc.), in particular with respect to beneficial ownership;
- 在開戶過程中，開戶的人拒絕提供資料來完成客戶審查(CDD)/瞭解您的顧客(KYC)（例如：職業、之前的財務關係等），尤其是在實質受益人方面的調查；
- The person opening the account is reluctant to provide complete information about the nature and purpose of the customer's business, prior financial relationships, anticipated account activity, the entities' officers and directors or business location; and
- 開戶的人不願提供有關客戶的業務性質和目的、先前的財務關係、預期的帳戶活動、該實體的高層和董事或營業地點等完整資訊；和
- The trust or beneficial owner of a nominee account is located in a high-risk area/jurisdiction or conflict zone.
- 人頭帳戶的信託或實質受益人是位在高風險地區或衝突區域。

#### Case study 13: Fictitious transactions involving publicly-traded shell company

#### 案例研究 13：虛假交易包括公開發行交易的空殼公司

Offence: 犯罪行為：	Money laundering 洗錢
Securities Related Predicate Offence (if any): 證券相關之前置犯罪（若有）：	N/A 不適用
Jurisdiction: 地區：	Israel 以色列
Subject: 主體：	Individuals, companies 個人、企業
Instruments, methods and techniques: 工具、方法與技巧：	Shell company, third parties 空殼公司、第三方
<b>Suspicious transaction/activity report information</b> 可疑交易／活動報告資訊	
<p>The STR indicated that there may have been a violation of the jurisdiction's money laundering law in relation to identifying the beneficial owner of a company.</p> <p>據疑似洗錢或資恐交易報告（STR）指出，在辨識公司實質受益人方面，可能已觸犯該地區的洗錢法令。</p>	
<b>Case description</b> 案例描述	
<p>The FIU detected a connection between D, a young businessman, and an organised crime group. Person A was</p>	

<sup>25</sup> In addition, the FATF typology entitled “The misuse of corporate vehicles, including trust and company service providers” published in 2006 contains relevant background information.

<sup>25</sup> 此外，防制洗錢金融行動工作組織（FATF）在 2006 年出版標題為「濫用公司投資工具，包括信託和公司服務業者」的類型中包含相關的背景資料。



active in local politics and owned several businesses. Together with another very wealthy businessman whose source of wealth is unknown, he purchased a public shell company X that traded on the local stock exchange for a small fraction of its true worth. D used a shell bank account managed by the wife of someone related to D. The shares of company X were transferred to several entities, none of which constituted a “party of interest” according to the stock exchange’s reporting threshold. Some of the shares were transferred on the same day they were credited to different accounts managed by related parties in what appears to be a fictitious transaction, since the debited account did not receive any funds in return. The owner of the account debited declared there were no beneficiaries.

金融情報中心（FIU）已偵測到 D、一個年輕商人和有組織的犯罪集團之間的關聯。A 活躍於地方政治，並擁有多家企業，其與另一位財富來源不明的富商，共同在當地股票交易所買進一家上市 X 空殼公司的股票，對價僅佔其真正價值的一小部分。D 使用某人妻子（與 D 有關係）所管理的空殼銀行帳戶，將 X 公司的股票移轉給幾個實體；根據股票交易所的申報門檻顯示，沒有一個構成「利害關係人」。有些股票是在同一天被移轉，並記入至由相關人士管理的不同帳戶，這看似是一個虛假的交易，因為借記帳戶並無收到任何資金的回報，借記帳戶的所有者則宣稱沒有受益人。

This public company later attempted indirectly to win a government bid regarding a natural resource.  
這家上市公司後來試圖間接獲得政府自然資源的投標案。

#### Case study 14: Securities intermediary failed to identify beneficial owners of offshore trust accounts 案例研究 14：證券中介機構未能辨識境外信託帳戶的實質受益人

<b>Offence:</b> 犯罪行為：	Regulatory violation 違反監管
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	N/A 不適用
<b>Jurisdiction:</b> 地區：	United States 美國
<b>Subject:</b> 主體：	Broker-dealer 經紀商
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Offshore trusts; wire transfers 境外信託；電匯
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>Offshore Trusts; and</li> <li>境外信託；和</li> <li>Wire Transfers.</li> <li>電匯。</li> </ul>

#### Suspicious transaction/activity report information

可疑交易／活動報告資訊

None  
無

#### Case description

##### 案例描述

An SRO found that an introducing broker-dealer failed to obtain beneficial ownership information relating to accounts for high risk offshore trusts, as required by the firm’s AML/CFT procedures. The accounts were used in millions of dollars of international wire transfers. In addition, even though the introducing broker-dealer’s clearing broker-dealer made repeated requests for information regarding the beneficial ownership of the accounts, the introducing broker-dealer did not obtain this information. It was also unable to analyse the transactions identified by the clearing broker-dealer for suspicious activity because it did not have information identifying the beneficial owners of the accounts.

自律團體（SRO）發現，中介經紀商未能取得與高風險境外信託帳戶有關的實質受益人資料，沒有遵守公司防制洗錢（AML）／打擊資恐（CFT）的程序要求。這些帳戶用於進行數百萬元的國際電匯。此外，即使中介經紀商的清算經紀商多次要求有關帳戶實質受益人的資料，中介經紀商還是沒有獲得該資料。故清算經紀商也無法對交易進行分析及辨識是否為可疑活動，因為沒有可以識別帳戶實質受益人的資料。

In addition, the introducing broker-dealer did not have sufficient procedures in place to ensure that there was adequate communication between the firm and its parent corporation, a bank, as to whether, in general, STRs should be filed and whether a particular STR had in fact been filed. Consequently, the firm’s processes did not make certain that its independent obligations regarding the filing of an STR were met. The firm was also unable to reliably incorporate the information that STRs had been filed into an ongoing risk assessment of its customers and to evaluate



account activity going forward.

再者，中介經紀商沒有落實足夠的程序來確認公司與其母公司和銀行之間是否有充分的溝通，一般來說，需要提交疑似洗錢或資恐交易報告（STR），而且須確認特定的疑似洗錢或資恐交易報告（STR）是否有確實提交。因此，公司的流程沒有確切落實其應有的義務，沒有遵守提出疑似洗錢或資恐交易報告（STR）。公司也無法將疑似洗錢或資恐交易報告（STR）中所提供的訊息，確實地整合到對客戶進行的持續風險評估，並對未來的帳戶活動進行評估。

#### Enforcement actions

##### 執法行動

The firm was censured and fined US\$3 million.

該公司遭罰款共計 300 萬美元。

### Case study 15: Purchase and sale of shares of a public shell company

#### 案例研究 15：買進與賣出上市空殼公司的股票

<b>Offence:</b> 犯罪行為：	Money laundering 洗錢
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	N/A 不適用
<b>Jurisdiction:</b> 地區：	Israel 以色列
<b>Subject:</b> 主體：	Individual; private company 個人；私有公司
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Cash deposits, shell company, use of a nominee 現金存款、空殼公司、利用人頭
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>Buying the shares of a shell public company using a bank cheque purchased with cash by a third party;</li> <li>藉由第三方以現金購買銀行支票，來買進上市空殼公司的股票；</li> <li>Reluctance to expose buyers of the shares to the bank;</li> <li>不願將買方的股票揭露給銀行；</li> <li>Shares bought using a straw man (i.e. a front for the true purchaser);</li> <li>利用稻草人（使真正買家得以隱藏幕後之人）買進股票；</li> <li>Shares resold after a very short period of time; and</li> <li>在很短時間內再賣出股票；和</li> <li>Withdrawing funds from the shell company by means of loans or deals with interested parties, sometimes via MSBs.</li> <li>藉由貸款或與利害關係人的交易從空殼公司提款，有時會透過 MSB 提款。</li> </ul>

#### Case description

##### 案例描述

Natural Person N is suspected of buying a public shell company (company A) traded on the stock exchange and hiding his involvement in the company for the purpose of money laundering.

自然人 N 涉嫌在股票交易所買進上市空殼公司（A 公司）的股票，並隱藏他在公司的參與以利達成洗錢的目的。

The FIU received an STR regarding N who previously held shares through a “straw man” in two public companies, “B” and “C”. N was suspected by the securities regulator of manipulating the share price in order to artificially push it upwards, and of transferring funds for no apparent legitimate purpose by crediting the accounts of companies B and C by transfers from related private companies and shortly afterwards withdrawing money from the accounts of B and C for no apparent legitimate purpose. Some of the funds were drawn as loans and transferred to MSBs.

金融情報中心（FIU）收到疑似洗錢或資恐交易報告（STR）關於 N 是先前透過「稻草人」在兩家上市公司，即「B 公司」和「C 公司」買進股票的持股人。證券監管機構懷疑 N 是為了推升股價而操縱股票，並且基於無明顯真實的目的，從相關私有公司將資金轉入 B 和 C 公司，然後又在短時間內無基於明顯真實目的從 B 和 C 公司的帳戶取款。所提取的資金當中，有些是作為貸款及轉帳給 MSB。

In order to purchase company A, N purchased two bank cheques using large amounts of cash: one written to the order of a law firm that was dealing with the acquisition and one written to the order of the public shell company A. N informed the bank that he represented the potential buyers and received the cash from them. He was reluctant to provide any information regarding the “investors”.

為了購買 A 公司，N 使用大筆現金購買兩張銀行支票：一張是給律師事務所用於處理收購事宜，另一張是給 A 上市空殼公司。N 向銀行說明他代表潛在買家並從他們獲得現金。他不願提供有關「投資人」的任何訊息。

A week after N purchased the bank cheques, 81% of company A shares were purchased by person M, who is believed to be a "straw man" for person N. Also, 50% of the shares were purchased by person M on behalf of unidentified third parties, none of whom were actually related to the transaction. Three weeks after the acquisition, N's wife was named Secretary of company A. Two months later, the remaining shares were again sold to person O and to another family member of N.

在 N 購買銀行支票後的一個星期，A 公司的 81% 股份被 M 購買，此人被認為是 N 的「稻草人」。另外，50% 的股份由 M 代表的第三方（身分不明）購買，M 與該第三方實際與交易均無關。收購後三週，N 的妻子被任命為 A 公司的秘書。兩個月後，剩下的股份再次出售給 O 和 N 的另一個家人。

During the first months after the acquisition of the company, several cash deposits (amounting to approximately one million dollars) were made. This was unusual for a company that was a public shell and was not performing any activity until the acquisition. Another pattern followed by firm A was the acquisition of shares of a foreign company whose activity was not related to the alleged activity of company A. Company A lent funds to the foreign company by means of an international transfer and the loan was repaid from an account abroad managed by the foreign company after a short period of time.

在公司收購後的頭幾個月，便有幾筆現金存款（共計約一百萬元）被存入公司，這對一家在收購之前沒有任何活動的上市空殼公司而言，是不尋常的。A 公司的另一個模式是收購國外公司的股份，此公司的業務活動與 A 公司的業務活動並無關聯。A 公司透過國際轉帳借款給這家國外公司，經過短時間後，國外公司透過其管理的海外帳戶償還該貸款。

Several months after the acquisition, the funds were drawn from the account by different means: Loans to related parties, transfers to MSBs (company A's financial reports showed as an asset on the balance sheet large amounts of money to be paid by factors other than clients).

收購後幾個月便以不同的目的從帳戶中提取資金：貸款給相關人、轉帳給 MSB（依 A 公司的財務報告顯示，在資產負債表上的資產所支付的大筆資金為客戶以外的因素）。

The company also reported the loss of millions of Israeli Shekels due to an investment in derivatives.

該公司在報告中亦認列由於投資衍生性金融商品，而損失數百萬元以色列謝克爾幣。

#### Case Study 16: Use of Omnibus accounts and fictitious account names to facilitate sanctions evasion

#### 案例研究 16：使用綜合帳戶和虛構戶名以規避制裁

Offence: 犯罪行為：	Money laundering 洗錢
Securities Related Predicate Offence (if any): 證券相關之前置犯罪（若有）：	N/A 不適用
Jurisdiction: 地區：	United States 美國
Subject: 主體：	Entity 實體
Instruments, methods and techniques: 工具、方法與技巧：	Omnibus account/fictitious account names 綜合帳戶／虛構戶名
Indicators: 指標：	

#### Suspicious transaction/activity report information

#### 可疑交易／活動報告資訊

References to "code names" in transactions processed through an omnibus account of a third country broker maintained at a securities firm in the United States.

透過第三國證券商的綜合帳戶（由美國某一證券商所維持），以「代碼名稱」進行交易。

#### Case description

#### 案例描述

An entity subject to an asset freezing order established an account with a securities firm in a third country. The third country firm agreed to use a fictitious name for the sanctioned party when processing stock trades on its behalf through its omnibus account held with a U.S. broker, thus disguising the identity of the beneficial owner of the stock held in the omnibus account.

遭受資產凍結的實體向第三國的證券公司開立帳戶。第三國公司同意透過其在美國證券商所持有的綜合帳戶，代表受制裁方使用虛假名稱進行股票買賣，從而掩飾綜合帳戶內持有股票實質受益人的身分。

#### Enforcement actions

##### 執法行動

The case is still being investigated.  
本案仍在調查中。

### Margin Trading

#### 保證金交易

137. One of the unique characteristics of the securities industry is that it can be used to both disguise the proceeds of criminal activity and to generate further profits. The use of margin account trading involves the investor borrowing funds to carry out trading. The securities themselves are used as collateral for the loan. By influencing the timing and value of trades (and leverage), a launderer can potentially use the proceeds of a scheme to generate more funds.

137. 證券業的獨特特徵之一是，既可掩飾犯罪活動的所得，又可產生更多的利潤。使用保證金帳戶交易，使投資人得以利用證券作擔保品而借款進行交易。藉由影響交易（和槓桿）的時機和價值，洗錢者可利用該收益計劃來產生更多的資金。

#### Case study 17: Margin accounts

##### 案例研究 17：保證金帳戶

Offence: 犯罪行為：	Money laundering 洗錢
Securities Related Predicate Offence (if any): 證券相關之前置犯罪（若有）：	N/A 不適用
Jurisdiction: 地區：	Malaysia 馬來西亞
Subject: 主體：	Individual 個人
Instruments, methods and techniques: 工具、方法與技巧：	Multiple trading and margin accounts, offsetting trades 多個交易帳戶和保證金帳戶、抵消交易

#### Case description

##### 案例描述

Mr. W opened five trading accounts and two margin accounts at five broker-dealers in various names. These accounts were opened under his name, his mother's name, Mrs. F, his girlfriend's name, Ms. V, and company XYZ, which was owned by Mr. W and Mrs. F. The scheme was carried out on four separate occasions, involving two cycles where the proceeds from the first cycle were used to facilitate the scheme carried out during the second cycle. During the first cycle, Mr. W placed odd lot buy orders using his trading account and Mrs. F's trading account and simultaneously placed odd lot sell orders through another broker-dealer to match the trades, but at exorbitant prices. Mr. W controlled both the selling and the buying parties.

W 先生以不同的姓名在五家經紀商開戶，即五個交易帳戶和兩個保證金帳戶。這些帳戶分別以他的姓名、他母親的姓名、F 女士、他女友的姓名、V 小姐，以及 XYZ 公司（由 W 先生和 F 女士所有）開戶。此計劃分四次、兩個循環進行，第一循環的收益，將於第二循環期間促成計劃的執行。在第一循環期間，W 先生使用他的交易帳戶和 F 女士的交易帳戶配置多筆買單，同時也在另一家經紀商配置多筆賣單，以使交易量相符，然而是以過高的價格。賣方和買方皆受控於 W 先生。

Mr. W then took out the proceeds at the selling brokers and defaulted on the buying brokers' side. This allowed him to raise huge amount of sales proceeds that were used to increase his margin and facilitate his scheme during the second cycle. During the second cycle, the same scheme was used but involved different broker-dealers, where he had used trading accounts of Ms. V and company XYZ.

之後，W 先生在銷售證券商帳戶提走收益，並在購買證券商帳戶拖欠款項。如此讓他可抬高大量的賣出收入，這些收入

用於增加他的保證金，並在第二循環期間促成他的計劃。在第二循環期間，他還是運用相同的計劃，差別在這次是利用 V 小姐和 XYZ 公司在不同經紀商的交易帳戶。

### 3.7 Determination of Value 3.7 價值的確定

138. Securities traded on exchanges tend to have a reasonable degree of price transparency. However, both on and off-market trades can be used to disguise value, especially where there are no traditional pricing mechanisms, and such trades can be used to transfer value in circumstances which are attractive to a money launderer. For example, a difficult to price instrument can be transferred at a pre-arranged, excessive price in order to transfer value from one person or entity to another.

138. 在交易所交易的證券往往具有合理的價格透明度。但是，場內和場外交易均可掩飾價值，特別是在沒有傳統定價機制的情況下，這種交易對洗錢者具有吸引力，因為可用於轉移價值。例如：難以定價的工具可預先轉移，讓過高的價格從一個人或實體轉移到另一個人或實體。

#### *Transfer Pricing* 轉移價格

139. Large capitalisation stocks are subject to a high degree of transparency and, subject to general market forces, generally fluctuate within an established price band. It is noted, however, that the market price on small capitalisation stocks, which may be rarely traded, can be subject to more extreme price movements. In addition, the price of such an illiquid stock may be substantially affected by relatively small transactions. This mechanism has been exploited for money laundering purposes where block trades of illiquid stocks are transacted at a pre-agreed price between two parties. In such transactions, parties agree to the initial purchase of an illiquid security at an artificially low price with the same security being bought back some time later by the original seller or an associate at a significantly higher price.

139. 大股本股票具有高度透明度、受一般市場的約束、通常是在既定的價格區間內波動。然而，須注意的是小股本股票的市價，由於交易量稀少，因此易受到極端的價格波動。此外，這種流動性不足的股價，低交易量就可能受到重大影響。這種機制已被用於洗錢，藉由鎖住流動性不足的股票，使雙方可用事先商定的價格交易。在此交易中，各方同意以低價初次買進流動性低的證券，經過一段時間後，再由原賣方或關係人以較高的價格買回該證券。

140. A variation on this occurs in the derivatives market where OTC derivatives can be structured to meet the requirements of a specific customer. Such transactions may be highly leveraged or arranged so that only a small movement in the value of the underlying securities can trigger disproportionately large payments. Furthermore, the pricing model on a bespoke or custom built derivative may be extremely difficult for anyone, other than a market expert, to understand. Such transactions have frequently been used to transfer profits from high-tax to low-tax jurisdictions and for the purposes of avoiding exchange control regulations.

140. 此變化發生在衍生性金融商品市場，其中場外交易（OTC）衍生性金融商品得以其架構滿足特定客戶的需求。此類交易被高度槓桿化或精心安排，讓附屬公司證券的價值只有小幅波動即可引起不成比例的大額支付。此外，衍生性金融商品的預定或定制價格模式對任何人都難以理解，除了市場專家以外。這些交易經常用於轉移高稅收至低稅收的地區，以及為了規避交易管制條例。

**Case study 18: Money laundering through transfer pricing**  
**案例研究 18：透過轉移價格來洗錢**

<b>Offence:</b> 犯罪行為：	Money Laundering/Tax evasion 洗錢／逃稅
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	N/A 不適用
<b>Jurisdiction:</b> 地區：	U.K. 英國
<b>Subject:</b> 主體：	Banking/securities corporation 銀行／證券公司
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Off-market prices on derivative contracts 衍生性金融商品在場外合約價
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>● Unnatural diminution in profits; ● 收益無端減少；</li> <li>● Unnecessarily complex transaction structure; and ● 不必要的複雜交易結構；和</li> <li>● Subsidiary companies established for no viable economic purpose in a low-tax jurisdiction. ● 子公司設立在無經濟發展且低稅收的地區。</li> </ul>
<b>Suspicious transaction/activity report information</b> 可疑交易／活動報告資訊 <p>No reports were filed at the time but subsequent investigations were undertaken by revenue authorities. 當時沒有提交報告，但後來由稅務機關承辦調查。</p>	
<b>Case description</b> 案例描述 <p>The investment banking arm of a global investment bank had made substantial profits on its derivative trading book. In order to transfer profits to a low-tax jurisdiction, a special purpose subsidiary company was established in that jurisdiction. A number of complex over-the-counter derivative contracts were entered into between the investment bank and the subsidiary. During the course of the contracts, variation margin payments were made to the subsidiary on each "revaluation" of the contract and a substantial loss was realised on liquidation of the contract. 全球投資銀行的投資銀行部門在其衍生性金融商品交易帳冊上獲利豐厚。為了轉移獲利到低稅收的地區，而在該區內設立特定用途子公司。投資銀行和子公司簽訂了一些複雜的場外交易衍生性金融商品合約。在合約期間，投資銀行向子公司因各合約的「重估」而支付價格變動保證金，並在合約清算時認列實質虧損。</p>	
<b>Enforcement actions</b> 執法行動 <p>Investigations by revenue authorities proved inconclusive due to the complexity of the transactions. 由於交易的複雜性，使稅務機關的調查毫無結論。</p>	

**Short selling**  
**賣空**

141. In the securities industry short selling generally involves the practice of selling securities that are not actually owned by the seller, or that will be borrowed for delivery. In a "naked" short sale, the seller does not borrow or arrange to borrow the securities in time to make delivery to the buyer within the standard settlement period. The investment strategy behind short selling is the hope that a profit will be made from the difference in price of the assets sold and those purchased (at a lower price) for return to the borrower.

141. 在證券行業中，一般來說，賣空係將非實際由賣方持有的證券賣出，或將證券借出作為交割。在「無保證」的賣空當中，賣方在標準結算期內，不用及時借券或安排借券向買方交割。賣空背後的投資策略是希望從賣出和買進（較低的價格）資產的差價中獲利，以便還給借出人。



142. Short selling is a trading vehicle that can be linked to market manipulation or insider trading, which are both predicate offences that could be the basis for ML/TF. One example cited involves “PIPES”, or private investment in public equities. A financial institution may solicit indications of interest from potential purchasers before committing to the deal. While potential investors are forbidden from trading on the information about the transaction, some disregard the prohibition and sell the associated public equity short, anticipating a price decline.

142. 賣空是一個可以和市場操縱者或內線交易者連結的交易工具，前述二者可為洗錢（ML）／資恐（TF）的前置犯罪。有個例子涉及「PIPES」——即私人投資上市公司股票。金融機構在交易之前可先徵求潛在買家的意願。雖然潛在投資人被禁止基於該訊息為交易，但有些人會不顧禁止而賣空該上市股票，期待股價下跌。

### 3.8 Rogue Employees 3.8 不良員工

143. While most AML/CFT regimes are designed to detect and report suspicion surrounding customer interactions, these programs are only as reliable as the people who implement them. To this extent, employees who assist customers in money laundering, terrorist finance may, and/or in predicate offences, pose a serious vulnerability to a financial institution.

143. 雖然大部分防制洗錢（AML）／打擊資恐（CFT）制度，旨在檢測與客戶的互動並提出相關的可疑報告，然而，這些制度須仰賴執行者落實才能起作用。在此基礎上，如果員工協助客戶洗錢、資恐及／或前置犯罪，則對金融機構將造成嚴重的弱點。

#### *Suspicious Indicators Associated with Rogue Employees* 與不良員工有關的可疑跡象

144. A number of jurisdictions identified the following as suspicious indicators that may be associated with employees vulnerable to assisting money launderers or terrorist financiers. These indicators are not necessarily unique to the securities industry or indicative of employee misconduct, but rather should be taken into account with other indicators:

144. 有些地區認定以下可疑跡象與員工協助洗錢或資恐有關。這些跡象非特別針對證券行業，也不一定表示員工行為不當，而應與其他跡象列入考量：

- The employee appears to be enjoying a lavish lifestyle inconsistent with his or her salary or position;
- 員工的生活方式似乎過得很奢華，與他／她的工資或職位不相符；
- The employee is reluctant to take a holiday or vacation;
- 員工不願度假或放假；
- The employee is subject to intense job-related demands, such as sales or production goals, that may make him more willing to engage in or overlook behaviour that poses ML/TF risks;
- 員工受到極大的工作相關要求，例如：銷售或生產目標，使他更願意從事或忽視造成洗錢（ML）／資恐（TF）風險的行為；
- The employee puts a high level of activity into one customer account even though the customer's account is relatively unimportant to the organisation;
- 員工專注服務某個客戶，即便該客戶對組織而言不是那麼重要；

- The employee is known to be experiencing a difficult personal situation, financial or other;
- 員工的個人、財務或其他狀況，正在面臨困難；
- The employee has the authority to arrange and process customer affairs without supervision or involvement of colleagues;
- 員工有權力安排和處理客戶的事務，而不需要同事的監督或參與；
- The management/reporting structure of the financial institution allows an employee to have a large amount of autonomy without direct control over his activities;
- 在金融機構的管理／報告結構下，允許員工擁有相當大的自主權而無需直接管制他的業務活動；
- The employee is located in a different country than his direct line of management, and supervision is only carried out remotely;
- 員工位在不同的國家（非直接管理的國家），僅被遠程監督；
- A management culture within the financial institution focuses on financial reward over compliance with regulatory requirements;
- 金融機構的管理文化著重在財務性報酬，不重視是否符合監管要求的規定；
- The employee's supporting documentation for customers' accounts or orders is incomplete or missing; and
- 員工對客戶的帳目或下單的相關文件，有不完整或遺漏；和
- Business is experiencing a period of high staff turnover or is going through significant structural changes.
- 企業正在經歷員工流失率高的時期，或組織結構發生重大變化。

**Case study 19: Employee of a securities intermediary assisting  
a politically exposed person (PEP) launder money**  
**案例研究 19：證券中介機構的員工協助擔任重要政治性職務人士 (PEP) 洗錢**

<b>Offence:</b> 犯罪行為：	Drug Trafficking, Bribery 販毒、賄賂
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	N/A 不適用
<b>Jurisdiction:</b> 地區：	United States 美國
<b>Subject:</b> 主體：	Individuals 個人
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Stock brokerage accounts, wire transfers, foreign shell companies 證券經紀帳戶、電匯、外國空殼公司
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>• PEP</li> <li>• 擔任重要政治性職務人士 (PEP)</li> <li>• Widespread news accounts regarding investigation of the PEP;</li> <li>• 大量有關調查該擔任重要政治性職務人士的新聞</li> <li>• Foreign wire transfers; and</li> <li>• 國外匯款，及</li> <li>• Shell companies.</li> <li>• 空殼公司</li> </ul>
<b>Suspicious transaction/activity report information</b> 可疑交易／活動報告資訊	
None Indicated. 無。	

### Case description

#### 案例描述

D, an investment representative at a large broker-dealer, helped a PEP from a foreign jurisdiction launder over US\$10 million that the PEP received from drug traffickers. The PEP received these illicit assets as payment for allowing drug shipments to safely pass through his jurisdiction. D helped the PEP establish numerous brokerage accounts at her firm in the name of various foreign shell companies and then deposited the illicit assets into these accounts. Weeks before the PEP was to lose prosecution immunity, D assisted the PEP in wire transferring the illicit assets out of the brokerage account and into a foreign account. D then set up a fictitious account for the PEP and wire transferred all of the assets back to her firm.

D 是大型證券經紀商的投資代表，協助一位外國擔任重要政治性職務人士洗錢，金源來自販毒份子且金額超過美金 1 億元。該擔任重要政治性職務人士允許毒品在其地區內安全順利運輸，以獲得這些非法資產。D 協助此擔任重要政治性職務人士在她公司內以多個外國空殼公司的名義建立多個經紀帳戶，之後再將非法資產存入這些帳戶。在此擔任重要政治性職務人士即將喪失起訴豁免權的前幾周，D 協助將經紀帳戶中的非法資產轉出匯入某國外帳戶。接著，D 為此擔任重要政治性職務人士建立虛假帳戶，並將所有的資產匯回她的公司。

### Enforcement actions

#### 執法行動

D was criminally indicted.

D 被控犯罪。

### Case study 20: Use of “friendly” broker to deposit funds and conduct stock market transactions

#### 案例研究 20：透過「熟識的」經紀人存入資金及進行股票市場交易

Offence: 犯罪行為：	Money laundering 洗錢
Securities Related Predicate Offence (if any): 證券相關之前置犯罪（若有）：	
Jurisdiction: 地區：	Brazil 巴西
Subject: 主體：	Individual 個人
Instruments, methods and techniques: 工具、方法與技巧：	Use of multiple accounts 利用多個帳戶
Indicators: 指標：	N/A 不適用

### Suspicious transaction/activity report information

#### 可疑交易／活動報告資訊

None indicated.

無。

### Case description

#### 案例描述

A businessman, M, wishes to “pay” another businessman J for “rendered services” without any apparent business relationship between them. M is a friend of N and a broker with “Stocks & Co”. M continuously deposits money of unknown origin into N’s current account with the broker.

商人 M 想「付費」請商人 J「提供服務」，但兩人之間沒有明顯的業務往來關係。M 是 N 的朋友，同時也是「Stocks & Co」的經紀人。M 長期將來源不明的金錢存至 N 經紀處的目前帳戶。

N keeps these deposits of money segregated from his own. These deposits are used in transactions carried out on the stock exchange without regard to profit or loss. In time, N made deposits of small amounts of money of unknown origin into several bank accounts belonging to J.

N 將這些存款和自己的存款分開保管。這些存款用於進行股票交易，且無顧慮損益。最後，N 再將少量來源不明的金錢存入 J 的多個銀行帳戶。

M, N, and J apparently believed that this procedure would minimise the possibility of detecting a link between the origin of the amounts “paid” by M to J. The jurisdiction observes that the securities account was being used to hide the

origin of the money that was deposited in J's bank accounts.

顯然 M、N 及 J 認為這種方式可大大降低發現金錢來源是由「M」支付給「J」的機會。法院發現此證券帳戶被用於隱藏存在 J 銀行帳戶中金錢的來源。

#### Enforcement actions

##### 執法行動

The two brokers involved were subject to an administrative penalty by the securities commission, as were the directors of the brokers, for failing to file STRs.

涉案的兩位經紀人被證券委員會處以行政懲罰，他們的主管也因為未提報疑似洗錢或資恐交易報告(STR)連帶受罰。

### Case study 21: Employee of a securities intermediary assisting in market manipulation

#### 案例研究 21：證券中介機構的員工協助操縱市場

<b>Offence:</b> 犯罪行為：	N/A 不適用
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	Market manipulation; securities fraud 市場操縱、證券詐欺
<b>Jurisdiction:</b> 地區：	United States 美國
<b>Subject:</b> 主體：	Individuals 個人
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Stock brokerage accounts; penny stocks; wash trades, shell companies 證券經紀帳戶、仙股、沖洗交易、空殼公司
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>• Accumulation of stock in small increments throughout trading day to increase price;</li> <li>• 利用交易日累積少量股票以提升價格；</li> <li>• Marking the closing price;</li> <li>• 標示收盤價；</li> <li>• Unauthorised buying of stock through customer accounts;</li> <li>• 未經授權即透過客戶帳戶購買股票；</li> <li>• Account activity not consistent with customer profile; and</li> <li>• 帳戶活動與客戶的個人檔案不符；及</li> <li>• Trading between numerous accounts controlled by the same people.</li> <li>• 在由同一人操控的多個帳戶間進行交易。</li> </ul>

#### Suspicious transaction/activity report information

##### 可疑交易／活動報告資訊

No STRs were filed. Securities intermediary faced liability for ignoring red flags and suspicious indicators and for failing to supervise a problem employee despite warning from compliance officers.

未被提報為可疑交易。證券中介機構面臨忽視紅旗及可疑指示，以及不顧法遵主管警告卻未盡職監管有問題員工的責任。

#### Case description

##### 案例描述

RR1, a customer and RR2 from another firm participated in scheme to manipulate the stock of a thinly traded security. They artificially inflated and maintained the price for the stock, marked the closing price, engaged in matched and wash trades, attempted to artificially create "downbids" to suppress short sales, and engaged in unauthorised and unsuitable trading in customer accounts. Certain senior executives allowed RR to operate with greater freedom than other RRs. The securities intermediary that RR2 worked for was aware of numerous red flags and suspicious indicators regarding the market manipulation but did not file an STR.

RR 1、一位客戶及別間公司的 RR 2 參加一個計劃，針對交易量低的股票進行操控。他們以人為方式操控升值並維持股價、標示收盤價、參與搓合及沖洗交易、企圖人為創造「downbids」以壓制賣空，並利用客戶帳戶進行未授權且不適當的交易。某位資深主管允許 RR1 擁有更多的操作自由。RR2 任職的證券中介機構注意到多筆市場操縱的紅旗及可疑指示，但未提出疑似洗錢或資恐交易報告。

#### Enforcement actions

#### 執法行動

A cease and desist order was filed against the firm and the firm was required to pay disgorgement.  
政府對該公司發出禁止令，並向該公司追還不當利益。

### 3.9 Terrorist Financing

### 3.9 資助恐怖份子

145. The replies to the questionnaire and the case studies gathered suggest that there is relatively little evidence of the securities industry being used to finance terrorism.

145. 綜合問卷的回答及個案研究，幾乎沒有跡象顯示證券業會資助恐怖份子。

146. However, this lack of evidence specific to the securities industry does not rule out the potential for terrorist financing in this sector.

146. 雖然沒有證據顯示證券業曾資助恐怖份子，但仍不能排除可能性。

147. Following the 9/11 attacks in the United States, various agencies worldwide engaged in studies to ascertain which sectors of the financial services industry had been used to finance the attacks. No empirical evidence was revealed to suggest that securities had been used either to finance the attacks or to generate funding from them (for example, through short selling of airline or hotel stocks).

147. 美國發生 911 攻擊事件後，世界各國的眾多機構合作研究查明金融業的哪個部門曾被利用於資助攻擊。目前沒有實際證據顯示證券被用於提供攻擊所需的資金、或賺取資金（例如賣空航空公司或旅館的股票）。

148. The lack of information on terrorist financing in this sector might, in part, be explained by the relative newness of the provisions on terrorist financing compared with those relating to money laundering. The 8 (now 9) FATF Special Recommendations came into effect in October 2001, and the effect of them in an industry which, in itself, is expanding quickly, may not have been fully felt.

148. 我們缺乏關於資恐的資訊，部分是因為相較於洗錢，對於資助恐怖份子這方面瞭解不多。FATF 的八項（現在為九項）特別建議已於 2001 年十月生效，快速擴張的產業可能尚未完全感受到其效力。

149. The information provided in Section 3.6, above, dealing with clients and account types details some of the TF threats in this and other sectors.

149. 上述 3.6 節中的資訊詳細說明此產業與其他產業中 TF（資恐）威脅的客戶與帳戶類型。

150. Specific indicators relating to the securities industry were not cited, but more common ones which are potentially relevant to this industry are found in the FATF typology on Terrorist Financing.<sup>26</sup>

150. 雖未提出證券業相關的特定指標，但在 FATF 對資恐的類型劃分中，可看到更多可能與此產業相關的共同點。<sup>26</sup>

<sup>26</sup> <http://www.fatf-gafi.org/dataoecd/28/43/40285899.pdf>

<sup>26</sup> <http://www.fatf-gafi.org/dataoecd/28/43/40285899.pdf>



## CHAPTER 4: PREDICATE OFFENCES FOR MONEY LAUNDERING LINKED TO SECURITIES 第 4 章：證券相關的洗錢前置犯罪

### 4.1 Introduction 4.1 前言

151. As previously mentioned, the securities industry is not only a vehicle through which illicit assets can be laundered; it is also vehicle for generating illicit assets that would eventually have to be laundered. Indeed, the FATF's definition of the "designated offences" that lead to money laundering include three securities-specific offences: insider trading, market manipulation, and fraud.

151. 如同前述，證券業不僅可用於將非法資產漂白；還可產生須經洗錢的非法資產。實際上，FATF 對洗錢「特定犯罪」的定義包括三種證券屬性的犯罪行為：內線交易、市場操縱及欺詐。

152. This section addresses these three securities-specific designated offences because: (1) a significant number of jurisdictions included these designated offences in their questionnaire responses; (2) the relatively low level of securities related STRs may be the result of the non-reporting of these offences;<sup>27</sup> and (3) in identifying and reporting these types of offences, jurisdictions may be in a position to better prevent money laundering.

152. 此節基於下列原因，探討三種證券屬性的特定犯罪行為：(1) 多個地區將這些特定犯罪列在問卷回答中；(2) 因為與證券相關的 STR 較低，因此可能造成這些犯罪行為未被通報；<sup>27</sup> 及 (3) 在發現與通報這類型的犯罪行為方面，各地區或許能更有效地預防洗錢。

153. This chapter is organised into topical sections that address each of the three designated offences that implicate the securities industry. Suspicious indicators and case studies are also included.

153. 此章各節分別探討影響證券業的 3 種特定犯罪。包含可疑指標及個案研究。

### 4.2 Insider trading 4.2 內線交易

154. Although insider trading is illegal conduct, this does not mean that company insiders, such as officers, directors and employees, can never trade shares of the company's securities. In some jurisdictions, certain circumstances require such transactions to be reported to regulators and the public. Insider trading, however, involves situations where the person who buys and sells securities, whether a company insider or not, does so in violation of a fiduciary duty or other relationship of trust and confidence, while in possession of material, non-public information about the security. In some jurisdictions, this includes situations where a person in possession of material, non-public information provides this information to someone else for trading where, depending on the circumstances, the recipient of the information can violate insider trading laws as well.

154. 雖然內線交易屬於非法行為，但不表示公司內部的人員，如高階主管、董事及員工絕對不

<sup>27</sup> This may also result from a perception that these securities-specific designated offences are not money laundering per se.

<sup>27</sup> 這可能是因為證券屬性的特定犯罪行為本身並不是洗錢。

可買賣公司的股票。在部份地區中，這類交易在某些情況下須向監管機構及大眾通報。然而，內線交易的情況是買賣證券的人（不論是否為公司內部人員）在擁有關於證券的資料、非公開資訊時，違反忠實義務或其他信任及保密之關係。在部份地區，擁有實質非公開資訊的人提供這些資訊給其他人以交換利益，也算是內線交易；接受這些資訊的人，視情況而也可能違反內線交易法規。

155. Insider trading is unique to the securities industry and generates illicit assets. As a predicate offence for money laundering, and an offence in its own right, this type of misconduct is reportable on STRs and has proven useful in assisting law enforcement and regulators prosecute such misconduct.

155. 內線交易為證券業獨有現象，會產生不法資產。這類型的犯罪屬於洗錢的前置犯罪，本身就是犯罪行為，可利用 STR 通報，已證實 STR 有助於執法單位及監管機構追訴這類犯罪行為。

156. The illicit assets generated by insider trading can be laundered through the securities industry itself or through other parts of the financial sector. The most common example of laundering would be the simple transfer of illicit proceeds to a bank account.

156. 因內線交易產生的非法資產可透過證券業或金融業其他部門漂白。最常見的洗錢案例為將非法所得直接轉至銀行帳戶。

### ***Suspicious Indicators Associated with Insider Trading*** **內線交易的可疑指標**

157. The following were identified as suspicious indicators that could implicate insider trading:

157. 下列為可能有內線交易跡象的可疑指標：

- The customer makes a large purchase or sale of a security, or option on a security, shortly before news is issued that affects the price of the security;
- 客戶在影響股票的消息發佈前，大量買入或賣出股票或有擔保選擇權；
- The customer is known to have friends or family who work at or for the securities issuer;
- 已知客戶有朋友或家人任職於證券發行公司；
- The customer lives in the locality where the issuer is located;
- 客戶居住在證券發行公司的所在地；
- The customer's purchase does not correspond to his or her investment profile. For example, the customer may never have invested in equity securities, but does so at an opportune time;
- 客戶的買入交易不符合其投資檔案。例如，客戶從未投資權益證券，但卻在恰好的時機買入；
- The customer's account is opened or significantly funded shortly before a purchase; and
- 客戶的帳戶在買入前為開放狀態或有大筆資金挹注；及
- The customer sells his or her position in a security in conjunction with a significant announcement about the security.
- 客戶在有重大證券消息宣佈時出售其證券部位。

**Case study 22: Insider trading and money laundering**  
**案例研究 22：內線交易及洗錢**

<b>Offence:</b> 犯罪行為：	Money laundering 洗錢
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	Insider trading 內線交易
<b>Jurisdiction:</b> 地區：	Belgium 比利時
<b>Subject:</b> 主體：	Individual, companies 個人、公司
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Shares, affiliated companies 股票、關係企業
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>• Unusual important transactions;</li> <li>• 不尋常的重大交易；</li> <li>• Suspicion of insider trading; and</li> <li>• 懷疑是內線交易；及</li> <li>• Securities sold a few months later.</li> <li>• 幾個月前出售證券。</li> </ul>
<p><b>Suspicious transaction/activity report information</b> 可疑交易／活動報告資訊</p> <p>In 2004, a Belgian bank reported several unusual important purchases of shares of two Belgian quoted companies, belonging to the same group, by company Y represented by Mr. X and a third party also in relation with company Y. Mr. X was manager in the two Belgian quoted companies, but also managed company Y. 2004 年時，比利時銀行通報多筆不尋常重大交易，X 先生代表的 Y 公司及與 Y 公司有關聯的第三方大量買入隸屬同集團的 2 間比利時上市公司的股票。X 先生是這 2 間比利時上市公司的經理，同時管理 Y 公司。</p> <p><b>Case description</b> 案例描述</p> <p>Mr. X, manager of an important group of companies, knew that a reorganisation of the group was going to be publicly announced. This could have a favourable effect on the share price of two companies of this group after the reorganisation was announced. X 先生是公司集團的重要管理者，知道即將要宣布公司重組的消息。該消息可能會對該集團的 2 間公司股價會造成有利的影響。</p> <p>Mr. X used this knowledge to purchase securities of these two companies through another company he managed and through a third party before the reorganisation was announced. X 先生利用此資訊宣布前，透過他管理的其它公司及第三方買入這 2 間公司的股票。</p> <p>Once the reorganisation was announced, the share price of these two companies rose sharply. The shares were sold at a high profit. 消息宣佈後，這 2 間公司的股價均急遽上漲。他賣出股票獲取高額收益。</p> <p>The profit made by Mr. X was then invested in other securities and part of the money was transferred to other bank accounts held by him. As such, the money obtained illegally (thanks to the insider trading) was laundered. X 先生將所得獲益投入其他證券，並將部份金錢轉入他持有的其它銀行帳戶。因此，非法獲得（藉由內線交易）的金錢就被漂白了。</p> <p><b>Enforcement actions</b> 執法行動</p> <p>The case was disclosed in 2005 to the public prosecutor for ML for insider trading. 此案例在 2005 年時遭人向檢察官告發其利用內線交易洗錢。</p>	

### Case study 23: Insider trading and money laundering 案例研究 23：內線交易及洗錢

<b>Offence:</b> 犯罪行為：	Money laundering 洗錢
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	Insider trading 內線交易
<b>Jurisdiction:</b> 地區：	Belgium 比利時
<b>Subject:</b> 主體：	Individuals 個人
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Shares, use of a nominee 股票，利用被提名人
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>• Unusual transaction; and 不尋常的交易；及</li> <li>• Purchases do not correspond to the customer's investment profile. 買入交易未符於客戶的投資檔案。</li> </ul>
<b>Suspicious transaction/activity report information</b> 可疑交易／活動報告資訊 <p>A Belgian bank reported that a significant purchase of shares of company M was carried out through the bank account of Mr. Y's wife. The transaction was unusual. 一間比利時銀行通報 Y 先生用太太的帳戶大筆買入 M 公司股票的交易。此交易很不尋常。</p>	
<b>Case description</b> 案例描述 <p>Mr. Y had insider information on company M, quoted on the stock exchange. Through relatives, he knew that company M would soon be acquired. Y 先生擁有 M 公司的內部資訊，即股票交易的價格。他經由親戚得知 M 公司即將被收購。</p> <p>To avoid attracting attention, he transferred his assets to his wife's account over which he had power of attorney, and purchased shares of company M prior to the announcement of the takeover. The bank knew that Mr. Y's spouse did not usually perform stock exchange transactions and was surprised to find out that funds were transferred from her husband's account. It is believed that Mr. Y's wife carried out the transactions on his behalf and tried to conceal the transactions by using her account. 為避免引起注意，他將資產轉到他擔任被授權人的太太帳戶下，並在宣佈收購前買入 M 公司的股票。該銀行知道 Y 先生的太太不常進行股票交易，當發現資金來自她先生的帳戶時感到十分驚訝。Y 先生的太太被認為代表 Y 進行交易，並試圖透過使用她的帳戶隱藏交易。</p> <p>After the takeover, his wife's account was credited with the proceeds of the securities sold. 該公司被收購後，出售股票所得的收益進到他太太的帳戶。</p> <p>Mr. Y then laundered the money by having the funds transferred to his personal account. Y 先生再將資金轉入他的個人帳戶進行洗錢。</p>	
<b>Enforcement actions</b> 執法行動 <p>The case was disclosed in 2006 to the public prosecutor for ML for insider trading. 此案例在 2006 年時遭人向檢察官告發其利用內線交易洗錢。</p>	

## 4.3 Market Manipulation

### 4.3 市場操縱

158. Market manipulation generally refers to conduct that is intended to deceive investors by controlling or artificially affecting the market for a security. In particular, the manipulator's purpose is to drive the price of a security up or down in order to profit from price differentials. There are a number of methods that manipulators use to achieve these results.

158. 市場操縱一般指經由控制或人為影響證券市場以意圖欺騙投資人的行為。特別是操控者的目的在於操控股價上下以從中獲利。操控者利用多種手法達到結果。

159. The most pervasive market manipulation method involves what is colloquially referred to as a “pump-and-dump” scheme. This scheme involves touting a company's stock with false or misleading statements, often in conjunction with securities trades that raise the price of the security or make it appear as if the securities trading volume is higher than it actually is. Therefore the security price is artificially raised (“pumped”); the security is then sold (“dumped”) for a profit. Often the underlying security is low priced, illiquid, and trades with little volume.

159. 最常見的市場操縱手法一般稱為「拉高倒貨」機制。此機制的運作方式為利用虛假或誤導的報告吹捧公司的股票，通常同時還會搭配抬升股價的證券交易，或讓證券交易量看似比實際的交易量還高。因此股價受到人為影響而上升（「拉高」），之後再出售股票（「倒貨」）即可獲利。標的證券通常為低價、很難轉換成現金，且交易量低。

### *Penny Stock Manipulations*

#### *仙股操控*

160. Penny stocks may represent equity interests in companies that are about to become public or that are already public. The issuers of these shares often, but not always, have legitimate business operations and revenue streams. Shares in these issuers may take the form of physical securities that can be deposited with a securities intermediary. Penny stocks are not likely to be traded on traditional exchanges, but in OTC markets or on bulletin boards. Penny stocks typically have very low trading volumes but, unlike bearer securities, ownership of these shares will often be registered with the issuer or a transfer agent.

160. 仙股可能代表即將公開或已公開的股權，這些股票的發行公司經常（但非總是）擁有合法的業務經營及營收源流。這些發行公司的股票可能可透過證券中介機構存入實體證券。仙股可能無法以傳統方式進行交易，而是經由場外交易市場（OTC）或布告欄交易。仙股的交易量通常很低，但與無記名證券不同，仙股的持有人通常會透過發行公司或股務代理人登記。

161. Illicit actors can acquire penny stocks in several ways. They can purchase already issued penny stocks in the OTC markets, acquire large blocks of shares as compensation for bringing a company public e.g. through a reverse merger into a private shell company, or issue the shares. These shares, which usually have little or no value, can then be deposited into brokerage accounts. Fraudulent promotion methods and wash trades may then be used to inflate the price of the security. After the manipulators exit the market, investors are often left with worthless securities. Penny stock pump-and-dump schemes have increasingly been conducted through internet-based accounts and through trading accounts held in the name of private shell companies.

161. 違法份子可透過多種管道取得仙股。他們可以購買已在 OTC 市場發行的仙股、收購大量的股票而使另一公司上市，例如：透過反併購私人空殼公司或發行股票。這些股票通常價值很低、甚至沒有價值，可存入經紀帳戶中，接著利用欺詐促銷手法及虛售交易抬升股價。待操控者離開市場後，通常投資人手上只剩下沒有價值的股票。有越來越多人利用網路帳戶或私人空殼公司名下的交易帳戶拉高和倒貨仙股。



### *Suspicious Indicators for Market Manipulation* 市場操縱的可疑指標

162. The following have been identified as suspicious indicators involving market manipulation in general and penny stock pump-and-dump schemes in particular:

162. 下列為一般市場操縱及拉高倒貨仙股的可疑指標。

- The customer engages in large or repeated trading in securities that are illiquid, low priced or difficult to price;
- 客戶多次進行大筆非流動性、低價或難以定價的證券交易；
- The issuing company has no apparent business, revenues or products;
- 發行公司缺乏明顯業務、收益或產品；
- The issuing company has experienced frequent or continuous changes in its business structure and/or undergoes frequent material changes in its business strategy or line of business;
- 發行公司經常或不斷改變營運結構，及/或營運策略或業務經常有重大改變；
- The officers or insiders of the issuing company are associated with other low priced, illiquid or low volume companies;
- 發行公司的高階主管或內部人員與其他低價、非流通性或交易量低的公司有關聯；
- The officers or insiders of the issuing company have a history of regulatory violations;
- 發行公司的高階主管或內部人員曾經違反法規；
- The issuing company has failed to make required regulatory disclosures;
- 發行公司未依規定進行揭露；
- The issuing company has been the subject of a prior trading suspension;
- 發行公司曾被暫停交易；
- A customer's transactions show a pattern of receiving physical securities or receiving incoming shares transfers that are then sold, with the proceeds wired out of the account;
- 客戶的交易模式顯示其接受實體證券或收受股票後接著售出，並將所得利益轉出戶頭；
- The customer deposits physical securities together with a request to journal the shares into multiple accounts that do not appear to be related, or to sell or otherwise transfer ownership of the shares;
- 客戶將實體證券存入帳戶並要求將股票紀錄在多個看似無關係的帳戶中，或出售、轉讓股票所有權；
- One party purchases securities at a high price and then sells them at a considerable loss to another party;
- 一方以高價購買股票，然後以極低的價格出售給另一方；
- A customer journals securities between unrelated accounts for no apparent business reason; and
- 客戶將股票紀錄在沒有明顯商業關係的非相關帳戶中；及

- A customer engages in prearranged or other non-competitive securities trading, including wash or cross trades of illiquid or low priced securities.
- 客戶進行事先安排好或其他無競爭性的證券交易，包括沖洗交易或交叉交易流動性低或低價的證券。

#### Case study 24: Stock price manipulation 案例研究 24：股價操控

<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	Embezzlement Market manipulation 盜用公款 市場操縱
<b>Jurisdiction:</b> 地區：	Korea 韓國
<b>Subject:</b> 主體：	Individuals 個人
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Shares, funds transfers, multiple securities accounts 股票、資金轉移、多個證券帳戶
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>• Unusually large transactions; and 不尋常的大筆交易；及</li> <li>• Repeated purchase and sale of shares. 重複買賣股票。</li> </ul>

#### Suspicious transaction/activity report information

##### 可疑交易／活動報告資訊

According to an STR, person A had frequent large fund transactions with unspecified persons, including B and C, and securities accounts at three brokers. In light of repeated selling and buying of shares of U Co. Ltd in large volumes through a certain computer IP, it was suspected that A was manipulating the market price using embezzled money and a borrowed bank account using an assumed name.

根據疑似洗錢或資恐交易報告，A 經常與不特定人士進行大筆資金的交易，包括 B 和 C 及 3 間經紀商的證券帳戶。因為利用特定的電腦 IP 多次大量買入後立即售出 U 公司的股票，因此懷疑 A 盜用公款及利用假名借入銀行帳戶操控市場價格。

#### Case description

##### 案例描述

Analysis revealed that B, a company director of U Co. Ltd, embezzled corporate funds deposited as payment for shares and was manipulating the market price using a securities account in the name of unspecified persons with the embezzled funds.

調查結果顯示 B 為 U 公司的董事，他盜用公司的資金做為支付股票的款項，並透過以不特定人士名義開設的證券帳戶操控市場價格。

The executives, including the former representative director and the present representative director of U Co. Ltd and a former branch manager of the broker, conspired to manipulate the share price more than 10 times through false stock trading orders and wash sales with embezzled money and gained illegal proceeds worth 35 billion won. As a result, private investors were severely damaged. It is of significance that relevant crimes were detected and further damage was prevented because an STR was sent to law enforcement authorities.

這些主管包括 U 公司的前常務董事及現任常務董事以及經紀商的前分行經理，共謀利用盜用的公款，透過虛假交易及沖洗交易操控股價達 10 餘次，犯罪所得共計 350 億韓元。私人投資者因此受到嚴重傷害。重要的是因為執法單位收到疑似洗錢或資恐交易報告，才能發現相關犯罪並避免更多的傷害。

#### Enforcement actions

##### 執法行動

B was prosecuted for violation of the Securities Exchange Act and bribery (sentenced to 2 years of imprisonment, stay of execution for 4 years at the first trial). C was prosecuted for violation of the Act on the Aggravated Punishment, Etc. of Specific Economic Crimes (Embezzlement and Breach of Trust) and the Act on External Audit of Stock Companies

(sentenced to 5 years imprisonment and a fine of 2 billion won). Other related persons were also prosecuted. B 因違反證券交易法及賄賂被起訴（一審判決 2 年監禁、4 年緩刑）。C 因違反特定經濟犯罪加重處罰法（盜用公款及背信）及股份公司外部審計法被起訴（判決 5 年監禁及 20 億韓元罰金）。其他相關人士也被起訴。

### Case study 25: Market manipulation involving the use of private shell companies 案例研究 25：利用私人空殼公司操控市場

<b>Offence:</b> 犯罪行為：	Money laundering 洗錢
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	Market manipulation 市場操縱
<b>Jurisdiction:</b> 地區：	United States 美國
<b>Subject:</b> 主體：	Individuals 個人
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Stock brokerage accounts; penny stocks; wash trades, false promotional methods; foreign accounts 證券經紀帳戶、仙股、沖洗交易、虛假促銷手法、外國帳戶
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>Individuals subject to previous securities related injunctions;</li> <li>曾被禁止進行證券相關交易的個人；</li> <li>False and misleading disclosure documents; and</li> <li>虛假或具誤導性的揭露文件；及</li> <li>Brokerage accounts opened using private shell companies.</li> <li>利用私人空殼公司開設的經紀帳戶。</li> </ul>
<b>Suspicious transaction/activity report information</b> 可疑交易／活動報告資訊  N/A 不適用	
<b>Case description</b> 案例描述  <p>Individuals, some of whom were previously subject to securities misconduct injunctions, conspired to acquire controlling interests in a public company trading on the OTC markets. In perpetuating the conspiracy, the individuals acquired restricted stock of the companies and used fabricated and backdated corporate records that made it appear as if the restricted stock certificates had satisfied minimum holdings periods. The individuals then used false attorney opinion letters to get the transfer agents to issue freely tradable shares. Thereafter, the individuals prepared and distributed false and misleading disclosure documents for the companies and engaged in promotional campaigns to create demand. The individuals used brokerage accounts opened through private shell companies to sell shares of the companies in conjunction with the promotional campaigns.</p> <p>曾經因違法被禁止進行證券交易、共謀在 OTC 市場取得上市公司控制權益的人，為長久實施密謀，取得公司的限制性股票，並利用偽造及可回溯既往的公司紀錄，讓限制性股票看似符合最低持有期限；接著再利用偽造的律師函，讓股務代理人發售可自由交易的股票，之後準備及發佈偽造及具誤導性的公司揭露文件，並進行促銷活動以創造需求。再透過以私人空殼公司名義設立的經紀帳戶搭配促銷賣出公司股票。</p>	
<b>Enforcement actions</b> 執法行動  N/A 不適用	

**Case study 26: Securities intermediary expelled for inadequate AML/CFT policies and procedures**  
**案例研究 26：因 AML/CFT（防制洗錢／打擊資恐）政策及程序不足而被除名的證券中介機構**

<b>Offence:</b> 犯罪行為：	Regulatory violation 監管違規
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	N/A 不適用
<b>Jurisdiction:</b> 地區：	United States 美國
<b>Subject:</b> 主體：	Broker-dealer 經紀商
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Penny stocks; wire transfers; journaling 仙股、電匯、紀錄
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>• Stock Promoters; • 股票推廣人；</li> <li>• Penny Stocks; • 仙股；</li> <li>• Customers with money laundering convictions and regulatory actions against them; • 有洗錢前科及違法行為的客戶；</li> <li>• Wire transfers to well known tax havens; and • 匯款至知名的避稅天堂；及</li> <li>• Journaling of securities between accounts followed by immediate liquidation. • 變現後立即製作證券帳面記錄</li> </ul>
<b>Suspicious transaction/activity report information</b> 可疑交易／活動報告資訊	
N/A 不適用	
<b>Case description</b> 案例描述	
<p>A broker-dealer agreed to an expulsion from SRO membership for systematic and repeated violations of AML/CFT rules and regulations, including failure to investigate and report numerous suspicious transactions. 經紀商同意因其多次計畫性地違反防制洗錢／打擊資恐法律規定而被開除其「自律團體」（SRO）會員資格，包括未調查及未通報多筆可疑交易者。</p> <p>The SRO found that, at various times from February 2004 to September 2006, the broker-dealer's customers included notorious stock promoters and others who had been barred by the SRO, disciplined by the country's primary securities regulator, or had criminal histories, including one customer who had been convicted for the sale of an illegal controlled substance and money laundering. The same individual had been previously convicted for his role in a "smurfing" scheme, a commonly-used money laundering technique involving the splitting of a large financial transaction into smaller transactions to avoid scrutiny by regulators and law enforcement. 自律團體在 2004 年 2 月到 2006 年 9 月間多次發現經紀商的客戶（包括惡名昭彰的股票推廣人及禁止加入自律團體、受國家首要證券監管機構管控或曾有犯罪歷史的其他人，包括因販售非法管制物品和洗錢的客戶）。同一人因參與「化整為零」的活動而被定罪，這是一種常見的洗錢手法，將大筆金融交易拆成較小的交易以避免受到監管機構及執法單位的注意。</p> <p>The SRO further found that in at least a dozen instances, the broker-dealer's customers sold large blocks of penny stocks that were linked to allegedly fraudulent schemes. The country's securities regulator had filed at least two enforcement actions charging federal securities law violations involving penny stocks that were later sold through the broker-dealer and other firms. In one instance, an individual who had previously been barred by the SRO delivered over 1.8 billion shares of a penny stock issued by a company that was contemporaneously the subject of a pending, and publicly released, complaint by the securities regulator alleging manipulation and other securities laws violations. In the following 10-month period, this customer sold the shares for approximately US\$8 million in 155 separate sales, wiring the proceeds out of his account after each sale. 自律團體進一步發現至少有數十起案例，經紀商的客戶出售大量與欺詐相關的仙股。國家證券監管機構至少採取 2 項執法行動，控告其透過經紀商及其他公司事後出售仙股而違反聯邦證券法。在其中一個案例中，先前曾被禁止參加自律團體的某人移交當時仍在審查的公司發行的 18 億仙股並將其公開發行，證券監管機構提出證券操控及違反其他證券法的</p>	

控訴。在接下來的 10 個月，此客戶分 155 次交易售出約 8 百萬美金的股票，並在每次交易後將所得轉出帳戶。

#### Enforcement actions

##### 執法行動

The broker-dealer agreed to an expulsion from SRO membership.  
經紀商同意被開除自律團體會員資格。

## 4.4 Securities Fraud

### 4.4 證券詐欺

163. Securities fraud broadly refers to deceptive practices in connection with the offer and sale of securities. In this regard, securities fraud encompasses insider trading and market manipulation.

163. 證券詐欺泛指與提供與銷售證券有關的欺騙行為。在這方面，證券詐欺包含內線交易及市場操縱。

164. For example, illicit actors can engage in confidence or boiler room schemes the structure of which would make the scheme a “security” for the purposes of a jurisdiction’s securities laws. However, the actual sellers of these (mostly worthless) shares are often based in a separate country from the purchaser, making access to perpetrators of the fraud difficult.

164. 例如，違法份子可利用保密或鍋爐室騙局，建構難以受該地區證券法管理之機制。實際銷售這些股票（通常沒價值）的人通常在與購買人不同的國家設立基地，讓詐欺犯很難被找到。

165. In a Ponzi scheme, a fraudster lures investors with the promise of high returns that are to be generated through the investment or business efforts of the fraudster. Instead of generating actual profits, the fraudster creates the illusion of profits by paying investors returns from their original investment or paying returns from the money that new investors contribute to the fraud. This type of scheme tends to collapse when the number of new investments into the scheme do not satisfy the payment obligations for previous investors.

165. 在龐氏騙局中，詐欺犯承諾投資或與其合作業務可獲得高額利潤以吸引投資人。詐欺犯利用投資人原本的投資金錢支付投資人利潤，或從新投資人投入的金錢支付利潤，創造有獲利的假象，但其實沒有實際獲利。當新投資數額不足以支付先前投資人時，這類型的騙局就會瓦解。

166. Although many Ponzi schemes do not necessarily involve the direct use of securities intermediaries or markets, the way these schemes are marketed often causes sales of interests in the scheme to be classified as securities, and thus subject to the jurisdiction of securities regulators.

166. 雖然龐氏騙局不一定直接利用證券中介機構或市場，這些機制的運作方式通常會使銷售利益被歸類為證券，因此屬於證券監管機構的管轄範圍。

#### Securities Offering Fraud Indicators

##### 證券發行詐欺指標

167. The following have been identified as suspicious indicators associated with a securities offering fraud:

167. 下列為與證券發行詐欺相關的可疑指標：

- The customer opens numerous accounts for different legal entities that the customer controls;
- 客戶以其控管的不同法律實體名義設立多個帳戶；



- The customer receives many incoming cheques or wire transfers from unrelated third parties;
- 客戶收到多張匯入支票或不相關的第三方匯款；
- The customer allocates incoming third-party deposits among numerous accounts;
- 客戶將轉入的第三方存款分散至多個帳戶；
- The customer makes numerous outgoing payments to third parties close in time to when the customer receives many incoming third-party cheques or wire transfers;
- 客戶收到多張匯入支票或電匯後，立即轉帳給第三方；
- The customer's profile does not suggest a legitimate business reason for receiving many third party deposits; and
- 根據客戶檔案，客戶並沒有合法的業務原因可接受如此多的第三方存款；及
- The cheques or wire transfers note that the funds are for an investment.
- 支票或匯款註記資金為投資用途。

#### Case Study 27: Securities fraud

#### 案例研究 27：證券詐欺

<b>Offence:</b> 犯罪行為：	Money laundering 洗錢
<b>Securities Related Predicate Offence (if any):</b> 證券相關之前置犯罪（若有）：	Securities fraud 證券詐欺
<b>Jurisdiction:</b> 地區：	United States 美國
<b>Subject:</b> 主體：	Individual 個人
<b>Instruments, methods and techniques:</b> 工具、方法與技巧：	Cheques, wire transfers, monetary transactions 支票、電匯、金錢交易
<b>Indicators:</b> 指標：	<ul style="list-style-type: none"> <li>• D established various businesses and bank accounts under his name;</li> <li>• D 以他的名字設立多個公司及銀行帳戶；</li> <li>• Monetary transfers between various bank accounts controlled by D (or D's businesses);</li> <li>• 金錢在 D（及 D 的公司）控管的多個銀行帳戶間流動</li> <li>• Authorities had imposed cease and desist order against D and D's business;</li> <li>• 有關當局已對 D 及 D 的公司發出禁止令；</li> <li>• D promised substantial guaranteed returns and secure principal investment; and</li> <li>• D 承諾高額回饋及保證資本投資的安全；及</li> <li>• Deposited investment monies into bank account controlled by D.</li> <li>• 投資的金錢存入 D 控管的銀行帳戶中。</li> </ul>
<b>Case description</b> <b>案例描述</b> <p>The individual generated illicit assets within the securities industry by operating two Ponzi schemes. Under the first scheme, D told investors that their money would be used to purchase equipment that would be leased and resold. Under the second scheme, D sold promissory notes that were purportedly secured by stock in D's associated legal entity and by precious metal production contracts. Both schemes promised investors high rates of return and guaranteed the principal investment. In actuality, the defendant used investor funds for his personal expenses. 該人利用操作 2 個龐氏騙局，在證券業中產生非法資產。在第一個騙局中，D 告訴投資人金錢將用於購買可出租及轉賣的設備。在第二個騙局中，D 販售由 D 的相關法律實體及貴重金屬生產契約所擔保的本票。這 2 個騙局都承諾投資人高額利潤，並保證投資不會有損失。事實上，被告利用投資人的資金做為個人開銷。</p> <p>Investors would either wire, hand deliver or mail their investments (via cheques) to D or one of his businesses (legal entities) and the funds were deposited into bank accounts controlled by D. D would then transfer the funds among various bank accounts that he controlled in order to disguise the origin of the proceeds and to further perpetuate the fraud. After receiving the funds, D would use them to pay for personal expenses, promote another business, and to</p>	

make periodic payments to investors. The periodic payments to investors were made to legitimise and disguise the underlying schemes and to avoid reporting to and detection by law enforcement.

投資人可能匯款、親手交付或郵寄投資款項（利用支票）給 D 或他的其中一間公司（法律實體），這些資金會存入 D 控管的銀行帳戶中。之後 D 在他所控管的多個銀行帳戶間進行轉帳，以假裝是收益的來源，並進一步繼續詐騙。收到資金後，D 會將金錢用於個人開銷、推廣其他業務並向投資人定期付款。他定期付款給投資人以正當化地掩飾這個機制，並避免執法單位通報或偵查。

#### **Enforcement actions**

##### **執法行動**

A U.S. state investigated the investments offered by D under the first program, and issued an order against D and his related business to cease and refrain from further offer or sale of such investments in the state.

美國某州調查 D 在第一個計畫中的投資，並對 D 及相關公司發出禁止令，禁止他在該州繼續提供或銷售這類投資。

A federal action has been filed against D alleging violations of federal laws related to mail fraud, securities fraud, and money laundering.

之後聯邦政府也對 D 採取行動，控訴其違反郵件詐欺、證券詐欺及洗錢相關的聯邦法。

## CHAPTER 5: SUSPICIOUS TRANSACTION REPORTING AND ENFORCEMENT ACTIONS

### 第 5 章：疑似洗錢或資恐交易報告及執法行動

#### 5.1 Suspicious Transaction Reports

#### 5.1 疑似洗錢或資恐交易報告

168. A review of the published STR reporting figures from some of the Third Round Mutual Evaluation Reports suggests that STR reporting in the securities industry is relatively low, compared with the banking industry. A selection of comparative statistics is set out below:

168. 回顧部份〈第三輪相互評鑑報告〉中公開的 STR 通報數據，可發現與銀行業相比，證券業的 STR 相對較少。部份比較統計數據如下：

#### Country A

A 國

Financial Institution 金融機構	2001	2002	2003	2004
Banks 銀行	911	1 128	1212	1 698
Money Exchange 貨幣兌換商	21	28	199	330
Securities 證券	24	4	3	3

#### Country B

B 國

Financial Institution 金融機構	2001	2002	2003	2004
Banks 銀行	680	549	685	921
Money Exchange 貨幣兌換商	102	106	39	20
Securities 證券	10	12	3	5

#### Country C

C 國

Financial Institution 金融機構	2001	2002	2003	2004
Banks 銀行	193	177	288	349
Money Exchange 貨幣兌換商	0	0	0	0
Securities 證券	0	0	1	1

*Country D*  
*D 國*

Financial Institution 金融機構	2001	2002	2003	2004
Banks 銀行	272 823	288 343	381 671	522 655
Money Exchange 貨幣兌換商	5 723	209 512	269 284	383 567
Securities 證券	0	4 267	5 705	6 936

169. The STR reporting disparity between the banking and securities industries is not surprising in light of the relative size of the banking industry in most countries compared to the securities industry. In addition, in some countries STR reporting in the securities industry is a newer legal requirement than that for submitting STRs in relation to banking activities. Nevertheless, the figures might be indicative of under-reporting in the industry, and it is suggested that the issue be examined further.

169. 在大多數國家，比較銀行業與證券業的規模，就瞭解銀行業與證券業的 STR 數量落差並不讓人意外。此外在某些國家，與銀行活動相比，證券業的 STR 是較新的法規要求。儘管如此，這些數據可能也顯示產業中低報的情況，建議應進一步審視此議題。

170. It is also worth noting that some jurisdiction's reporting requirements are narrower than others', which results in the inconsistent capture of data for the same event or activity.

170. 此外，值得注意的是部份地區的通報要求有較多限制；因此，於取得資料時，同樣的事件或活動的資料會不同。

171. The securities typology questionnaire (see Annex D) requested information on the amount and nature of the STRs received in the securities sector. Of the 40 questionnaire responses received, 31 provided responsive data.

171. 證券類型問卷（請參見附錄 D）要求證券業提供收到的 STR 數量及性質資訊。在收到的 40 份回覆問卷中有 31 份提供相應的資料。

172. In contrast, a number of jurisdictions reported that their STR tracking and/or reporting mechanisms were not conducive to quantitative breakdowns regarding the number of securities related STRs filed. This appears to be a reporting gap, in that data is simply not available in certain jurisdictions to enable an assessment of the potential risks in the sector.

172. 相反地許多地區回報，他們的 STR 追蹤及/或通報機制無法量化分析 STR 的證券數量。這似乎是通報落差，某些地區就是無法取得資訊，以進行產業的潛在風險評估。

173. One FIU reported that STRs were categorised based on the institution making the filing. Accordingly, figures for the securities business of larger banking groups are potentially being categorised as banking STRs.

173. 某金融情報中心表示 STR 是根據提報的機構而分類。因此，較大型金融集團的證券業務數據，可能會被歸類為銀行 STR。

**Number of Securities Related STRs**  
**STR 的相關證券數量**

174. Questionnaire responses represent the number of securities related STRs filed between 2005 and 2008 (see the summary at Annex C, Table 1). Of significance, most jurisdictions evidenced yearly

increases in securities related STRs between 2005 and 2008, with a particular increase in 2007. It should be noted that most questionnaires were submitted in late 2008, making final 2008 figures unavailable for some respondents.

174. 回卷回答顯示 2005 到 2008 年間提報的證券相關 STR 數量（請參閱附錄 C 表 1 的摘要）。重要的是大部分地區 2005 年到 2008 年間證券的 STR 數量有逐年增加，其中以 2007 年的增長最多。需注意大部分的問卷是在 2008 年年底時提出，因此某些受訪者無法取得 2008 年的最終數據。

### ***Breakdown of STRs Based on Type of Security*** **根據證券類型分析 STR**

175. Fourteen of the forty questionnaire responses provided a breakdown of STRs filed by securities type. The most common type of securities product subject to an STR filing were equities, mutual funds, money market mutual funds, bonds and similar debt instruments, foreign exchange contracts, and certificates of deposit. It should be noted that not all jurisdictions consider certificates of deposit and foreign exchange contracts to be securities. Furthermore, with reference to the type of product referenced in an STR, some jurisdictions permit the designation of “any other.” This may mean that the suspicious activity was related to the securities markets, even though the STR did not explicitly identify it as such.

175. 40 份回覆的問卷中，有 14 份根據證券類型分析提報的 STR，最常被提報為 STR 的證券產品類型為股票、共同基金、貨幣市場共同基金、債券及類似的債務工具、外匯契約及定期存單。需注意，並非所有地區都認為定期存單及外匯契約屬於證券的一種。此外，根據 STR 中提到的產品類型，某些地區允許將其稱為「任何其他」類。這可能表示雖然 STR 未明確指出，但可疑的活動確實與證券市場有關。

### ***STRs Filed By Type of Institution*** **依機構類型歸類的 STR**

176. The overall trend for STR reporting was upwards in all areas, with broker-dealers submitting the most. It is not clear if there is any incidence of double reporting amongst institutions.

176. 所有地區的 STR 通報整體趨勢都是向上增加，其中以經紀商提報數量最多。目前還不清楚機構間是否有重複提報的問題。

### ***Emerging Issues*** **問題**

177. Discussions with representatives of FIUs, law enforcement and the private sector suggest that there is a need for greater understanding of the expectations of all parties who file STRs. Reports of poor quality are often thought to hamper enforcement action. This phenomenon is not peculiar to the securities industry, and is one which greater dialogue between the competent authorities and the private sector might help to resolve. Guidance and feedback to those required to report suspicious transactions is part of the package of measures that competent authorities should provide under the FATF Recommendations.

177. 與金融情報中心、執法單位及私部門的代表討論之後，認為有需要更加瞭解提報 STR 各方的期待。一般認為品質不佳的報告會妨礙執法行動。這個現象不是證券業獨有，權責機關及私部門若能深入討論可能有助於解決此問題。權責機關應根據 FATF 建議，提供指引及回饋意見給依規通報 STR 的機構。

178. Conversely, there is often a perception that the products and methodologies used in the securities industry are extremely complex. This, in turn requires specialist knowledge, which relatively few FIUs and law enforcement agencies currently have.

178. 反過來說，一般認為證券業使用的產品及方法都非常複雜。因此需要專業知識，目前只有



非常少數的金融情報中心及執法機關具備。

179. The complexity of the products and methodologies, coupled with the ability to move funds/value internationally also gives rise to practical considerations as to how best to bring actions to seize and freeze criminal assets. Again, mechanisms to share expertise between agencies and jurisdictions are to be encouraged.

179. 複雜的產品及方法加上在國際間移動資金/價值的能力，讓人考量實際上應如何採取最佳行動以扣押及凍結犯罪資產。再次強調，應鼓勵建立機構與各地區間分享專業知識的機制。

180. In some jurisdictions a separate reporting regime exists for suspicions of money laundering and those of the predicate offences where the securities market can be used, such as insider trading and market manipulation. Under these circumstances, it is not always clear that the reporting institution is aware of the possibility that there might also be a requirement to report a suspicion of money laundering. This is a potential gap in the system, and might partially explain the relatively low levels of ML/TF STR reporting in the securities sector. Again, greater awareness between competent authorities and amongst the industry is to be encouraged.

180. 某些地區中有另一套通報機制，通報洗錢及透過證券市場進行的前置犯罪，例如內線交易及市場操縱。在這些情況下，不太清楚通報機構是否知道有通報可疑洗錢活動的規定。系統中潛在的弱點可能有部份原因是因為證券業中洗錢/資恐 STR 通報相對較少。再次強調，應鼓勵權責機關與產業間更深入瞭解彼此。

### ***STR Referrals to Law Enforcement***

#### **轉介 STR 給執法單位**

181. The questionnaire responses did not give uniform results, and thus the trends, rather than the figures, are reported here.

181. 問卷回覆並沒有一致的答案，因此此處報告與其說提供數據，不如說是趨勢。

182. The number of reported STR referrals to law enforcement, and subsequent criminal prosecutions remain relatively low. Due to the dual nature of STR reporting for ML/TF cases and predicate offences, such as insider trading and market manipulation in some jurisdictions, conclusion trends on numbers are difficult to determine.

182. 通報 STR 轉介給執法單位及之後犯罪起訴的數量相對較低。這是因為通報為洗錢/資恐的 STR 及前置犯罪（如在某些地區內進行內線交易及市場操縱）的雙重性質，很難判斷其數量趨勢。

## **5.2 Enforcement actions**

### **5.2 執法行動**

#### ***Referrals from the FIU made to Law Enforcement***

#### **金融情報中心轉介給執法單位的案例**

183. Out of 31 countries that reported receiving STRs involving securities, 18 reported referrals to law enforcement based on these STRs. The number of referrals in specific countries generally represents a small fraction of the number of STRs (less than 10%). Only 7 countries reported money laundering prosecutions in respect to these referrals and 3 reported convictions. It should be noted however, that a number of countries reported that statistics associating prosecutions and convictions to specific STRs or sectors were not available.

183. 在 31 個通報收到證券 STR 的國家中，有 18 個通報根據 STR 轉介給執法單位。特定國家

的轉介數量通常只是 STR 中的一小部份（低於 10%）。只有 7 個國家通報根據這些轉介案成立的洗錢起訴，並有 3 案定罪。然而需注意的是許多國家回應缺乏特定 STR 或各業別的起訴及定罪數據。

184. Eighteen countries reported no enforcement action from 2005 to 2008, either because none were taken in the securities sector or because data was unavailable.

184. 18 個國家回報 2005 年到 2008 年間未採取執法行動，有的是未對證券業採取行動，有的是因為無法取得資料。

185. Among the 21 countries that reported at least one action in that period, the large majority reported regulatory actions (i.e. actions against financial institutions or intermediaries that failed to comply with their AML obligations, including AML program requirements, CDD and reporting); five countries reported at least one criminal enforcement action (i.e. actions for criminal violations using the securities sector), and one reported joint regulatory/criminal enforcement actions.

185. 通報在這段期間內至少採取一項行動的 21 個國家中，大多數回報採取監管行動（即針對未履行反洗錢義務的金融機構及中介機構採取行動，包括反洗錢計畫規定、客戶審查及通報）；有 5 個國家回報至少採取一項犯罪執法行動（針對利用證券業從事違法行為者採取行動），有 1 個國家回報同時採取監管/犯罪執法行動。

186. Most countries noted that the enforcement actions provided no information on areas of high risk or vulnerability in the securities sector, since the action related to deficiencies in AML procedures. However, the following vulnerabilities were noted:

186. 大多數國家注意到執法行動無法對證券業的高風險區或弱點提供資訊，因為這些行動與反洗錢程序的缺失相關。但注意到下列弱點：

- Fictitious companies;
- 虛設公司；
- Off market trading under conditions that were not “at arms length”;
- 於場外交易進行非常規交易；
- Trading in penny stocks;
- 以仙股交易；
- Trading in thinly-traded or illiquid shares; and
- 以交易量低或流動性低的股票交易；及
- Wire transfers.
- 電匯。

## CHAPTER 6: CONCLUSION AND RECOMMENDATIONS FOR FURTHER WORK 第 6 章：提供日後工作的結論與建議

### 6.1 General 6.1 總章

187. The primary goal of this study was to consider and raise awareness of the vulnerability of the securities industry to money laundering and terrorist financing. With the help of the jurisdictions and international organisations that participated in the typology, a comprehensive set of red flags and indicators and relevant case studies have been gathered for the first time in a global study.

187. 本研究的主要目的為考量及提升對證券業洗錢及資恐方面弱點的注意。在各地區及參與分類的國際組織協助下，這是首次研究收集所有全球的紅旗指標、徵兆與相關案例之研究。

188. Such a study is, by its very nature, limited by the number of practical examples that have been experienced by the participants, and some threats remain theoretical rather than actual. However, in an industry which, by its very nature, facilitates the movement and investment of funds worldwide into an ever-changing array of products, often very rapidly, knowledge of the threats goes some way to raising awareness of the potential issues.

188. 這類的研究本身囿於參與者遇到的實際範例數，有些威脅仍然停留在紙上談兵的階段，並未實際出現。然而，在以促進資金全球流動及投資瞬息萬變的多樣產品為目的的產業中，對威脅的知悉通常很快會讓人注意潛在問題。

189. In a dynamic environment, the risks will evolve, and the project team hopes that this study will form the catalyst for further work on this topic by industry organisations, supervisory bodies and law enforcement. In particular, further cooperation in endeavouring to understand the risks and methodologies involved in a complex and fast-moving environment would enhance the effectiveness of the global effort to fight ML/TF.

189. 在不斷變化的環境中，風險也會改變，專案團隊希望此研究能促使產業組織、監管機關及執法單位日後對此主題進一步研究。特別是進一步合作努力瞭解在這複雜與快速步調環境相關的風險及方法，如此可提升全球打擊 ML/TF（洗錢/資恐）的功效。

190. In countries with less developed securities markets, some of the typologies and indicators might not currently be readily recognisable. However, given the rapid expansion of the securities industry globally in the past 25 years, it is hoped that the information provided will be of use as markets in developing economies expand.

190. 在證券市場較不發達的國家，有些類型和指標可能還無法被立即辨識。但過去 25 年來全球證券業快速擴張，希望在此提供的資訊會隨著開發中經濟體的市場擴張而變得更加有用。

### 6.2 Terrorist Financing 6.2 資助恐怖份子

191. Although the literature review and the responses to the questionnaire do not readily suggest that the securities industry lends itself to terrorist financing, it remains a serious risk. In particular, the possibility that the use of opaque corporate structures and/or charities, combined with the transfer of value via securities and transactions at securities firms is a potential vulnerability. In addition, the FATF Special

Recommendations relating to terrorist financing are newer than those for money laundering, and thus further trends may become apparent as suspicious transaction reporting regimes mature.

191. 雖文獻回顧及問卷回覆未立即顯示證券業資助恐怖份子，但仍是嚴重的風險。特別是不透明的企業結構及/或慈善團體可能被利用，結合證券移轉和證券交易，而存在潛在的弱點。此外，與資恐有關的 FATF 特別建議比洗錢的相關建議更新，因此隨著 STR 通報機制的成熟，日後的趨勢會更明顯。

## 6.3 Money Laundering

### 6.3 洗錢

192. Case studies and other intelligence gathered for this report show that the use of the securities industry to launder money constitutes an actual threat. The industry itself can be uniquely used to generate illicit proceeds from proceeds which might have had a legitimate origin. These illicit proceeds lead to almost “automatic” laundering when they are realised. This phenomenon can be contrasted with the more traditional use of the securities sector to disguise the origin of illicit funds derived from outside the sector.

192. 案例研究及為此報告蒐集到的其他情報顯示，利用證券業進行洗錢已變成現實威脅。此產業很特別，可將來源可能合法的收益用於產生犯罪所得。變賣這些犯罪所得時，就會「自動」洗錢。此現象可與利用證券業掩飾其他產業所得的非法來源資金之傳統用途相比較。

193. As defences in areas more traditionally associated with ML/TF, such as banking, are tightened, the use of the securities industry may become a greater temptation to those seeking to disguise illicit proceeds, or indeed to generate them.

193. 由於以往與洗錢/資恐關係密切的領域（如銀行業）已加強防護，因此企圖掩飾犯罪所得或實際上產生犯罪所得者，可能更傾向轉向利用證券業。

194. The use of cash in the securities industry does not appear to be widespread, and funds are very often introduced via other regulated sectors. Whilst reliance on other parts of the financial sector to conduct certain aspects of CDD can be a perfectly acceptable way to facilitate transactions in the global financial system, it is important that the industry and its regulators take appropriate steps to ensure that reliance is only placed on third parties with adequate AML/CFT systems and controls. CDD itself is more than just customer identification, and ascertaining the purpose and intended nature of a transaction with funds from another part of the financial sector remains an important consideration.

194. 在證券業中，現金的使用似乎不廣泛，也很少透過其他受管制的產業引進資金。雖然透過金融業的其他部門進行客戶審查（CDD）是促進全球金融系統交易方式是普遍被接受的，但該產業及其監管機構務必要採取適當的步驟確保只信賴有適當防制洗錢／打擊資恐系統與控管機制的第三方。客戶審查不僅是識別客戶而已，重要的是確認來自其他金融部門的資金用於進行交易之交易目的及性質。

## 6.4 STRs, Law Enforcement and Co-operation

### 6.4 STR、執法及合作

195. The recorded figures for STRs in the securities industry suggest that reporting in this area remains relatively low. Comparisons with the banking sector do not provide much in the way of conclusive findings, given the difference in size between the relative sectors in most countries.

195. 證券業 STR 的記錄數據顯示該領域的通報率仍然相對（銀行業）較低。由於在大多數國家這兩個相關產業的規模差異極大，因此即使與銀行業比較，也不會有太多確實的發現。

196. There is no one factor behind the relatively low figures for STR reporting, but the following appear to play a part:

196. 似乎沒有理由可以解釋 STR 通報率相對低的原因，但下列因素似乎都造成影響：

- The reporting requirement for securities has only been relatively recently introduced in some jurisdictions;
- 某些地區近日才引進證券的通報規定；
- The separate reporting requirements for insider trading, market manipulation and securities fraud in some jurisdictions might mean that ML STRs are not being submitted to the FIU;
- 在某些地區，內線交易、市場操縱及證券詐欺有其他通報規定，因此可能未向金融情報中心提報洗錢 STR；
- Most securities intermediaries do not accept cash;
- 大部分的證券中介機構不接受現金；
- The definition of “security” is not consistent;
- 「證券」的定義不同；
- Securities in some jurisdictions can be sold by participants in other industries, such as banking and insurance companies;
- 在某些地區，其他產業的人員可銷售證券，如銀行及保險公司；
- Because the securities markets are fast paced and transaction times are of critical importance, intermediaries are required to act quickly on a client’s behalf, thus potentially affecting an intermediary’s ability (and perhaps inclination) to scrutinise and submit STRs;
- 因為證券市場步調快速且交易時間十分重要，中介機構需代表客戶迅速地採取行動，因此可能影響到中介機構的監管及提報 STR 的能力。
- Some in the industry may not understand STR requirements; and
- 產業中某些人可能不了解 STR 的規定；及
- There may be a perception that the securities industry is not attractive to those wanting to launder money/finance terrorism.
- 可能有人認為證券業不吸引企圖洗錢/資助恐怖主義的人。

197. The relative lack of referrals of STRs to law enforcement and the corresponding figures for securities-related criminal money laundering cases globally raises several issues.

197. 因未將 STR 轉介給執法單位及缺乏全球證券犯罪洗錢案例的相對數據造成許多問題。

198. Law enforcement in some jurisdictions report that STRs received from the securities sector do not contain a sufficient level of detail to enable them to take further action. Conversely, the products and schemes used within the industry are often complex and require specialist expertise to understand the full nature of the flows of funds. In addition, the global nature of the securities industry makes the ability to trace and seize assets more complex than more tangible domestically based assets.

198. 部份地區的執法單位指出證券業的 STR 內容描述不夠詳細，因此無法採取進一步的行動。相反地，該產業中使用的產品及機制通常都很複雜，需要專業知識才能瞭解金流的性質，此外，因證券業本身的全球性，因此比國內有形資產更難追蹤與扣押資產。

199. Several of the case studies presented in this report suggest that the indicators of predicate offences such as securities fraud or market manipulations are similar to those for money laundering and that the transactions involved in both categories are closely linked, if not the same.



199. 此報告中的許多案例研究顯示，前置犯罪的指標（如證券詐欺或市場操縱）與洗錢類似，這兩類的交易即使非同一也彼此密切相關。

200. Liaison between law enforcement, regulators, FIUs, and the industry is to be encouraged, as each has relevant experience which can increase awareness of the vulnerabilities in this sector. In particular, obtaining direct private sector input and feedback in developing case studies is essential to ensure they are useful tools to the industry.

200. 我們鼓勵執法單位、監管機構、金融情報中心及產業之間多加聯繫，因為各方都有相關經驗，可提升對此領域相關弱點的注意。特別是取得私部門對案例開發研究的直接想法及回饋意見，對於幫助該產業非常重要。

## 6.5 Definitions

### 6.5 定義

201. This study has not attempted to produce a global standard definition of “security”. It is, however, clear from the questionnaire responses that a variety of terms are used worldwide to match the financial activities specified in the FATF glossary. This might give rise to some overlap or even gaps where different regulatory authorities have responsibility for traditional activities thought to fall within the banking or securities sectors.

201. 此研究並不打算建立「安全」的全球標準定義。而是根據問卷回覆，顯然許多專有名詞是全世界通用於描述 FATF 詞彙中的金融活動。其中可能有重複或不足的地方，而不同的監管機關可能負責銀行或證券業中不同的活動。

202. In addition, several jurisdictions note that securities products are traded by participants in other markets, such as banking, and products traditionally seen as insurance-related are in turn traded by those in the banking or securities markets, because they contain an investment element. Co-operation between the competent authorities responsible for each core sector is to be encouraged to address any potential vulnerabilities.

202. 此外，許多地區注意到銀行等其他市場參與者交易證券產品，而以往被視為保險相關的產品因內含投資要素，反而由銀行或證券業的參與者所交易。負責個別核心產業的權責機關應合作處理任何潛在的弱點。

## *Securities and the “financial institution” category*

### 證券及「金融機構」類別

203. The definition of the financial institutions in the FATF standards is broad and encompasses a variety of financial sectors, including banks, credit unions, insurance, and securities broker-dealers. Given the overlap among these sectors, it may be impractical to effectively establish mutually exclusive categories applicable to each sector in the 40+9 Recommendations and the Methodology. Nonetheless, representatives of the securities industry consulted during the development of this report have noted that they do not fully recognised themselves in the term “financial institution”, which they tend to associate with the banking sector. In the future, consideration could therefore be given, when practical, to producing securities-specific material or sections in FATF documents (e.g., best practices paper or interpretative notes).

203. FATF 標準定義的金融機構範圍很廣，包括多種金融產業，包括銀行、信用合作社、保險及證券經紀商。由於這些產業間有重疊的部份，因此無法有效建立適用「40+9 建議及方法」中每個產業的互相獨立的類別。儘管如此，在編輯這份報告時曾諮詢過的證券業代表表示，他們不完全

認同自己是「金融機構」，他們認為「金融機構」會令人聯想到銀行業。因此未來應考量，可行的話，在 FATF 文件中製作證券專屬的資料或章節（例如：最佳實務報告或註釋）。

### ***Scope of “financial institution” definition***

#### **「金融機構」的定義範圍**

204. This report refers to a broad range of products and intermediaries that may not be fully captured under the FATF standards. The recent financial crisis has brought the world’s attention to certain products and areas where a lack of regulation has been cited as one of the causes of the turmoil. It is suggested that the FATF keep the definition of “financial institution” under review, to ensure that all products and intermediaries are captured.

204. 本報告提及多樣可能沒有完全符合 FATF 標準的產品及中介機構。最近的金融危機讓全世界注意到缺乏法規約束的某些產品及地區，這被視為此次動盪的原因之一。建議 FATF 應隨時檢討「金融機構」的定義，確保包含所有產品及中介機構。

### ***RBA Guidance***

#### **風險基礎方法指引**

205. Unlike DNFBPs, MSBs and life insurers, the securities sector has not been the object of a risk-based approach (RBA) guidance document by the FATF. Given the particular complexity of securities products, and continuing difficulties for the sector in identifying money laundering, they may be merit for the FATF in producing such guidance.

205. 不同於指定之非金融事業或人員 (DNFBP)，金融服務商 (MSB)、人壽保險公司，證券業尚無 FATF 風險基礎方法 (RBA) 的指引文件。由於證券產品的特殊複雜性以及該產業對發現洗錢犯罪之持續困難性，FATF 製作這類指引對他們應該會有幫助。

### ***CDD/reliance***

#### **客戶審查 (CDD)/信賴**

206. There are a number of synergies between the securities industry and other parts of the financial services industry. In particular, this report notes a trend to rely on customer due diligence information gathered from the banking sector which is then relied upon to fulfilling the CDD/KYC obligations of the securities industry. This is an area which would benefit from further investigation, possibly in the context of more general work being undertaken in relation to FATF Recommendation 9.

206. 證券業和其他金融服務業合作可帶來多種綜效。特別是此報告提到趨勢為依賴銀行業蒐集的客戶審查資訊，之後再利用此資訊履行證券業的客戶審查/KYC 義務。可能因有更多與 FATF 建議 9 相關的工作進行，這方面值得進一步調查。

### ***Sector/product specific vulnerabilities***

#### **產業/產品特有的弱點**

207. Whilst foreign exchange trading is an activity covered by the FATF definition of activities conducted by a “financial institution”, it remains somewhat unclear what the ML/TF risks are, and there appears to be scope for some cross-over between the securities and banking sectors. Further work to clarify the risks and identify any potential gaps in supervisory responsibility would be beneficial.

207. 雖然外匯交易屬於 FATF 定義為「金融機構」進行的活動範圍，但洗錢/資恐風險是什麼仍然不清楚，而且證券業和銀行業有部分重疊。進一步釐清風險並找出監管責任間任何可能的弱點，將有助於解決此問題。

208. Similarly, some securities products, most notably those with insurance elements, involve synergies within the insurance industry. It is recommended that further work (possibly work looking at the insurance industry) be undertaken to look at any potential specific risks in this sector.

208. 同樣地，某些證券產品，特別是有保險要素的產品需要保險業的合作。建議採取更深入地（可能觀察保險業）找出此產業中任何可能的特有風險。

209. Whilst several ML/TF vulnerabilities associated with derivatives were identified in this report, further work, perhaps involving the private sector, could address this issue in greater depth.

209. 本報告中發現衍生性產品相關的許多洗錢/資恐弱點，應繼續努力深入處理此問題（可能需私部門合作）。

### *Suspicious transaction reporting*

#### *疑似洗錢或資恐交易通報*

210. The categorisation of suspicious transaction reports by some FIUs means that some STRs relating to the securities industry are being categorised in a way that may not fully capture the full picture of the risks in this area. It is recommended that thought be given to further work to improve the categorisation of STRs, where this is necessary.

210. 某些金融情報中心的 STR 分類表示，部份與證券業相關的 STR 分類方式可能無法完全掌握此領域中完整的風險面貌。建議須採取進一步行動改善 STR 的分類，這是有必要的行動。

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ANNEX A:  
GLOSSARY OF TERMS<sup>28</sup>  
附錄 A：專有名詞字彙表<sup>28</sup>

**Annuities:** Form of contract sold by life insurance companies that guarantees a fixed or variable payment to the annuitant at some future time, usually retirement.

**年金：**人壽保險公司銷售的契約形式，保證未來某個時間（通常是退休）支付固定或變動款項給領年金者。

**Bearer form:** Securities that are not registered with the issuer and payable to the person who is in possession. Bearer bonds have coupon attachments that the holder can present on the interest date for payment. Bearer securities are negotiable without endorsement, can be transferred by delivery and can pay dividends upon presentation of a coupon.

**無記名形式：**未登記發行人且付款給持有人的證券。無記名債券附有票券，持有人可在付款利息日出示。無記名證券無需背書即可轉讓，可在交付時轉讓及在出示票券時支付股利。

**Bearer bonds:** Bond issued with detachable coupons that must be presented to a paying agent or the issuer for interest payment.

**無記名債券：**債券會隨著可分割票券一起發行，支付利息時務必要一起出示給代理人或發行人。

**Bearer securities:** Securities that are completely negotiable and entitle the holder to the rights under the security (e.g. to payment if it is a debt security, and voting if it is an equity security). They are transferred by delivering the instrument from person to person. In some cases, transfer is by endorsement, or signing the back of the instrument, and delivery.

**無記名證券：**可完全轉讓並根據證券賦予持有人權利的證券（例如，債務證券之受償權，股權證券之投票權）。證券從一個人交予另一個人持有即可完成轉讓。在某些情況必須背書或在於證券背面簽名並交付才能轉讓。

**Beneficial owner:** the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.

**實質受益人：**最終擁有或控制客戶的自然人及/或由他人代為進行交易的人。亦包含對法人或約定有最終有效控制權的人。

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<sup>28</sup> To reflect their common usage, the terms in this glossary were derived, in part, from: (1) Barron's Dictionary of Finance and Investment Terms (6th Ed. 2003); (2) Oxford's Dictionary of Finance and Banking (3rd Ed. 2005); and from the FATF Glossary.

<sup>28</sup> 為呈現常見用法，此字彙表中的專有名詞有部份來自：(1) Barron's Dictionary of Finance and Investment Terms（2003 年，第六版）；(2) Oxford's Dictionary of Finance and Banking（2005 年，第三版）；及防制洗錢金融行動工作組織字彙表。

**Bills of exchange:** An unconditional order in writing, addressed by one person (the drawer) to another person (the drawee) and signed by the person giving it, requiring the drawee to pay, on demand or at a fixed or determinable future time, a specified sum or money to, or to the order of a specified person (the payee) or to the bearer.

**匯票：**為無條件書面支付命令，由一人（發票人）發出給另一人（付款人）並由提供人簽名，要求付款人在未來的指定或固定或決定時間支付特定的金額或金錢給特定人士（收款人）、或特定人士指定的人的或持有人。

**Boiler rooms:** Refers to dishonest broker-dealers who set up a group of high-pressure salespeople who use banks of telephones to make cold calls to as many potential investors as possible. These salespeople urge investors to buy "house stocks"; stocks that the firm buys or sells as a market maker or has in its inventory. Boiler room operators typically sell penny stocks.

**鍋爐室：**指成立一組銷售人員以高壓銷售、用電話盡可能開發陌生潛在投資人的不誠實經紀商。這些銷售人員會力勸投資人購買「公司精選股票」、公司以造市商身份買賣或庫存的股票。鍋爐室接線生通常銷售仙股。

**Bonds:** An IOU issued by a borrower to a lender. Bonds often take the form of fixed interest securities issued by governments, municipalities, or companies. A bond typically obligates the issuer to pay the bondholder a specified sum of money, usually at specific intervals, and to re-pay the principal amount at maturity.

**債券：**借方發給貸方的借據。債券通常為政府、市政當局或公司發出的固定利息證券。一般而言，債券要求發行人在特定時間支付債券持有人指定的金額，並在到期時償還本金。

**Broker:** A person who acts as an intermediary between a buyer and seller of securities, usually for a commission.

**經紀人：**做為證券買方與賣方中介的人，通常會收取佣金。

**Block trade:** Refers to a large trade that is usually at least 10,000 shares of a stock or \$200,000 of bonds. It can also refer specifically to large trades that occur between institutional parties at a fixed or pre-determined price.

**大宗交易：**通常指 10,000 股以上的股票或 \$200,000 以上債券的大筆交易。也可特別指機構間的固定或事先協議價格的大筆交易。

**Bulletin boards:** Electronic inter-dealer quotation system that displays real-time quotes, last-sale prices, and volume information for many over-the-counter securities that are not listed on a national securities exchange.

**公告牌：**交易商間的電子報價系統，會顯示許多未在國家證券交易所上市的櫃檯買賣證券的即時報價、最後銷售價格及交易量資訊。

**Call options:** Call options give the buyer the right, but not the obligation, to buy the underlying currency or a security at a particular price by a particular date.

**買權：**買權讓買方有權利但沒有義務在特定日期以特定價格購買標的貨幣或證券。

**Cashier's cheque:** A cheque that draws directly on a customer's account, making the bank the primary obligor. Customers requiring a cashier's check must pay the amount of the cheque to the bank. The bank will then issue a cheque to a third party named by the customer.

**銀行本票：**直接從客戶帳戶提領的支票，銀行為第一債務人。若客戶想開銀行本票，必須先支付支票上的金額給銀行，之後銀行會以客戶指定的對象發出支票給第三方。

**Certificates of participation:** Certificates showing the level of participation in a business.

參與證明：顯示參與某業務程度的證書。

**Certificate of deposit (CDs):** A negotiable certificate that usually pays interests and is issued by a bank in return for a term deposit (ranging from months to years).

存單 (CD)：為可轉讓憑證，通常會支付利息並由銀行發行的定期存款（數月到數年不等）。

**Cheques:** A bill of exchange, or draft on a bank drawn against deposited funds to pay a specified sum of money to a specified person on demand.

支票：票據的一種，銀行根據存入資金發出依要求支付指定金額給指定人士的票據。

**Closed-end companies (Units in Collective Investment Schemes (UCIS)):** A fund set up by an investment trust that issues a fixed number of shares to its investors.

封閉式公司(集體投資計畫的單位, UCIS)：由發出固定股份給投資人的投資信託公司設立的基金。

**Commercial paper:** Short-term debt obligations with maturities ranging from 2 to 270 days issued by banks, corporations and other borrowers to investors with temporarily idle cash.

商業票據：銀行、企業及其他借款人利用暫時性閒置現金發給投資人的短期債務憑證，到期日從 2 天到 270 天不等。

**Contracts for difference (CFD):** A type of derivative where an agreement is made to exchange the difference in value of a particular security (or other financial instrument) between the time at which a contract is opened and the time at which it is closed. The CFD allows a trader to buy and sell in any market and make profit from rising and falling prices, and to establish a deposit or margin to gain exposure to markets without tying up capital.

差價合約 (CFD)：為一種衍生性產品，對某一特定股票（或其他金融工具）在合約開放時與合約關閉時的價差進行交易的約定。CFD 允許交易人在任何市場購買及銷售，並從上漲及下跌的價格中獲利，如此無需利用資本也可進入市場賺到利潤。

**Correspondent account:** An account whereby one financial institution regularly performs services for another financial institution in markets that may be inaccessible to the latter. Many correspondent relationships involve the wire transfer of money.

代理帳戶：一間金融機構定期為另一間可能無法進入市場的金融機構提供服務的帳戶。許多代理關係都涉及金錢匯款。

**Credit-default swaps (CDS):** Financial contract whose value is based on underlying debt obligations. A CDS can be tied to the performance of the debt obligations of a single entity or security, or, with more complex CDS, an index of several such entities or securities.

信用違約交換 (CDS)：仰賴債務為其價值依據的金融合約。CDS 可能與單一實體或證券的債務履約相牽連，或與更複雜的 CDS（多個這類實體或證券的指標）相關。

**Dealer:** A person who acts as a principal in a financial transaction rather than as a broker or agent.

交易人：在金融交易中為當事人，而非經紀人或代理人角色者。

**Debenture:** General debt obligation backed only by the integrity of the borrower and documented by an agreement called an indenture (e.g. an unsecured bond).

公司債券：僅由借款公司誠信背書的一般債務憑證，並以債券契約協議（無擔保債券）為文件證明。

**Dematerialisation of securities:** The transfer of physical, hard-copy security certificates to book entry credits of a security holder's interest.

**證券無實體化：**實體的紙本證券憑證，演進成由帳面紀錄證券持有人的權益。

**Depository institutions:** Financial institutions that take deposits and extend loans. This definition includes banks and credit unions.

**存款機構：**接收存款及延長貸款的金融機構。此定義包含銀行與信用合作社。

**Derivatives:** A financial instrument whose price is related to an underlying commodity, currency, economic variable, financial instrument or security. The different types of derivatives include futures contracts, forwards, swaps, and options. They can be traded on exchanges or over-the-counter (OTC). Market traded derivatives are standard, while OTC trades are specific and customised.

**衍生性產品：**價格與標的商品、貨幣、經濟變數、金融工具或證券有關的金融工具。不同類型的衍生性產品包括期貨合約、遠期合約、金融交換交易及選擇權。可在交易所或場外 (OTC) 交易。市場交易的衍生性產品為標準產品，而 OTC 交易的產品為特殊與客製化產品。

**Downbid:** Generally refers to a current bid less than a previous bid.

**Downbid：**一般指目前出價比先前出價低。

**Electronic communications networks (ECN):** Electronic trading systems that automatically match buy and sell orders at specified prices. Subscribers, which are typically institutional investors, broker-dealers, and market-makers; they can place trades directly with an ECN.

**電子通訊網路 (ECN)：**自動以特定價格配對購買與賣出指令的電子交易系統。訂購者通常為機構投資人、證券經紀商與造市者；他們直接利用 ECN 交易。

**Equities:** Ownership interest possessed by shareholders in a corporation. Often called stocks.

**股權：**企業中股東持有的所有權權益。經常稱為股份。

**Exchanges:** Any organisation, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such an exchange.

**交易所：**建立、維護或提供市場或設施，以讓證券的買方與賣方聚集在一起，發揮大眾理解股票交易所常見的證券相關功能，包含交易所維護的市場及市場設施的任何法人或非法人組織、協會或團體。

**Foreign exchange contracts:** Futures and options contracts based on foreign currencies. The buyer of a currency futures contract acquires the right to buy a particular amount of that currency by a specific date at a fixed rate of exchange and the seller agrees to sell that currency at the same fixed price.

**外匯合約：**外幣計價的期貨及選擇權合約。匯率期貨合約的買方有權在特定日期以固定匯率購買特定金額的外匯，而賣方同意以固定價格銷售貨幣。

**Forward rate agreements:** Purchase or sale of a specific quantity of a commodity, government security, foreign currency, or other financial instrument at the current or spot price, with delivery and settlement at a specified future date.

**遠期匯率合約：**以目前或現貨價格購買或出售特定量商品、政府公債、外匯或其他金融工具，並在未來特定日期交付與結帳。

**Fraud:** Intentional misrepresentation, concealment, or omission of the truth for the purpose of deception or manipulation to the detriment of a person or organisation.

**詐欺：**為欺騙或操控而刻意歪曲、隱瞞或忽略真相以傷害個人或組織。

**Free look period:** A contractual provision that provides the contract owner the right to return the contract within a specified period for a refund.

**審閱期：**讓契約所有人有權在特定期限內退貨並獲得退款的合約條文。

**Futures contract:** An agreement to buy or sell a fixed quantity of a particular commodity, currency, or security for delivery at a fixed date in the future at a fixed price. Unlike an option, a futures contract involves a definite purchase or sale and not an option to buy or sell.

**期貨合約：**購買或出售固定數量的特定商品、貨幣或證券，並在未來的固定日期以固定價格交付的合約。與選擇權不同，期貨合約涉及明確的購買或銷售，而非購買或銷售的選擇權。

**Hedge funds:** Hedge funds pool investors' money and invest those funds in financial instruments in an effort to make a positive return. Many hedge funds seek to profit in all kinds of markets by pursuing leveraging and other speculative investment practices that may increase the risk of investment loss. Hedge funds typically issue securities in "private offerings" that are usually not required to be registered with a securities or financial regulator.

**避險基金：**避險基金匯集投資人的金錢，投入金融工具的資金以獲得正報酬。許多避險基金追求可能會增加投資損失風險的槓桿及其他投機性投資做法，企圖在各類型的市場獲利。避險基金通常無需向證券或金融管理機關登記，以「私募」方式發行證券。

**Insider trading:** Buying or selling a security, in breach of a fiduciary duty or other relationship of trust and confidence, while in possession of material, non public information about the security. Insider trading violations may also include "tipping" such information, securities trading by the person "tipped," and securities trading by those who misappropriate such information.

**內線交易：**違反忠實義務或其他信任與信賴關係購買或出售證券，並擁有關於證券的資料及非公開資訊。內線交易違法行為可能還包括「洩漏」這類資訊、由「洩漏資訊」者進行的證券交易及濫用這類資訊的人進行的證券交易。

**Investment adviser:** Any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.

**投資顧問：**任何為了報酬直接或發表或以書面方式提供關於證券價值建議或建議投資、購買或出售證券給他人，或為了報酬及例行業務而發表關於證券的分析或報告的人。

**Investment trusts:** Refers to firms that, for a management fee, invest the pooled funds of small investors in securities appropriate for its stated investment objectives. See also **Unit Trusts**.

**投資信託：**指為了管理費將小額投資人的匯集基金，並投入投資標的證券的公司。請參見**單位信託**。

**Journaling:** A book entry system where assets are debited from one account and credited to another.

**紀錄：**從帳戶中扣除資產計入另一個帳戶的帳面系統。



**Margin:** Arrangement whereby an investor pays for part of a securities purchase and borrow the rest from a securities intermediary. For example, an investor may buy \$5,000 worth of stock in a margin account by paying for \$2,500 and borrowing \$2,500 from the securities intermediary.

**保證金：**證券投資人支付部份並向證券中介機構購買或借用剩餘部份的協議。例如，投資人可能支付 \$2,500 並向證券中介機構借 \$2,500，以保證金帳戶購買價值 \$5,000 的股票。

**Money manager:** See **Portfolio manager**.

**資金管理人：**請參閱**投資組合經理**。

**Market manipulation:** A deliberate attempt to interfere with the free and fair operation of the market and create artificial, false or misleading appearances with respect to the price of, or market for, a security, commodity or currency.

**市場操縱：**刻意企圖介入市場的自由公平運作，並建立人為虛假或誤導的證券、商品或貨幣價格或市場。

**Money orders:** A financial instrument that can be easily converted into cash by the payee named on the money order. The money order lists both the payee and the person who bought the instrument, known as the payor. Money orders are issued by a variety of entities to people presenting cash or other forms of payment.

**匯票：**匯票上的收款人可輕鬆轉換成現金的金融工具。匯票會顯示收款人及購買此工具的人（稱為付款人）。匯票可由多個實體發出，收款者出示以獲得現金或其他支付形式。

**Mortgage bonds:** Bond issue secured by a mortgage on the issuer's property, such as the lien on which is conveyed to the bondholders by a deed of trust.

**抵押債券：**由抵押財產所擔保的債券，例如根據信託契約轉讓給債券持有人的留置權。

**Mutual funds (Open-end investment company):** See definition of **unit investment trust**.

**共同基金（開放式投資公司）：**請參見**單位投資**。

**Nominee accounts:** An account under which a person, a nominee named by another, acts on his or her behalf often to conceal the identity of the nominator.

**代理帳戶：**由被指名人開設的帳戶以代表本人操作，通常目的為隱瞞指名人的身份。

**Nostro:** Account established by a domestic banking institution to receive deposits from, make payments on behalf of, or handle other financial transactions for a foreign financial institution, usually in the foreign financial institution's currency. See also **correspondent account**.

**外國同業：**國內金融機構為外國金融機構建立用於接受存款、代為付款或處理其他金融交易的帳戶，通常以國外金融機構的貨幣進行交易。請參閱**代理帳戶**。

**Note:** A written promise to pay a specified amount to a certain entity on demand or on a specified date.

**票據：**同意在要求或指定日期支付指定金額給某實體的書面承諾。

**Omnibus accounts:** Account opened in the name of one financial institution at another financial institution comprised of multiple individual accounts whose names are not disclosed to the former.

**綜合帳戶：**以一個金融機構名義在另一間金融機構設立的帳戶，其內包含多個個人帳戶，卻未予揭露。

**Options:** The right to buy or sell a fixed quantity of a commodity, currency, or security at a particular date at a particular price (the exercise price). Unlike futures, the purchaser of an option is not obligated to buy

or sell at the exercise price. If the option lapses, the purchaser only loses the initial purchase price of the option.

**選擇權：**在特定日期以特定價格（執行價格）購買或出售固定商品數量、貨幣或證券的權利。與期貨不同，選擇權的買方沒有義務要以執行價格購買或出售。若選擇權失效，買方僅喪失選擇權的初次購買價格。

**Over-the-counter (OTC) markets:** A market in which securities are bought and sold outside of established securities markets.

**櫃檯買賣 (OTC) 市場：**在已制定證券市場外購買及出售證券的市場。

**Penny stocks:** Securities with very low market price, volume and/or liquidity that are traded on a securities exchange or on the OTC markets. These shares are usually issued by companies with a short or erratic history of revenues and earnings, and therefore such stocks are more volatile than those of well established companies trading on major securities exchanges.

**仙股：**證券交易所或場外交易市場中市場價值、交易量及/或流動性極低的證券。這些股票通常由成立不久或盈餘與收入不穩定的公司發行，因此這類股票比在大多數證券交易所中結構穩健的公司變動性更大。

**Pink sheets:** an electronic quotation system that displays quotes of many securities traded over the counter.

**粉紅單：**顯示櫃檯買賣交易中眾多證券報價的電子報價系統。

**Politically exposed person (PEP):** Individuals who are or have been entrusted with prominent public functions in a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, and important political party officials. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves. The definition is not intended to cover middle ranking or more junior individuals in the foregoing categories.

**擔任重要政治性職務人士 (PEP)：**在國外現任或曾經擔任著名公職的個人，例如：國家元首、資深政客、高階政府官員、司法或軍事官員、國營企業的高階主管及重要政黨官員。與擔任重要政治性職務人士的家人或親近的朋友有業務關係，就像與擔任重要政治性職務人士本身有業務往來般牽涉到名譽風險，此定義並不包含前述類別的中階或資淺的個人。

**Ponzi scheme:** A type of fraud names after Charles Ponzi, who operated such a scheme in the U.S. in the 1920s. Under the scheme, investors are offered unsustainably high rates of interest and are initially paid their interest from a fund consisting of new deposits. When the deposits dry up, the scheme collapses. Also referred to as **pyramid schemes**.

**龐氏騙局：**以查爾斯·龐茲命名的詐欺類型，此人在 1920 年代美國操作此機制。在此機制中，投資人有一陣子可獲得高利率，一開始他們會收到由新存款的資金支付的利息。存款用盡時，此機制就會瓦解。請參閱**金字塔式騙局**。

**Portfolio manager:** A professional responsible for the securities portfolio of an individual or institutional investor. In return for a fee, the manager has the responsibility of choosing and managing assets.

**投資組合經理：**負責個人或機構投資人證券投資組合的專業人員。此經理負責選擇及管理資產並收取費用。

**Pump-and-dump:** “Pump and dump” schemes, also known as “hype and dump manipulation,” involve the touting of a company’s stock (typically **penny stocks**) through false and misleading statements to the marketplace. After pumping the stock, fraudsters profit by selling their cheap stock into the market.

**拉高倒貨：**「拉高倒貨」機制也稱為「套殺操控」。透過發出虛假或誤導的報告給市場以銷售公司股票（通常為仙股），抬高股價後，詐欺者出售不值錢股票至市場以從中獲利。

**Put options:** Put options give the buyer the right to sell underlying currencies or securities at a specific price and date.

**賣權：**賣權讓買方有權在特定日期以特定價格出售標的貨幣或證券。

**Reverse merger:** A method through which a private company can go public without an initial public offering (IPO). This occurs when a private company acquires or merges with a public shell company that is listed on a stock exchange or traded on the OTC markets.

**反向購併：**私人公司無需初次公開發行（IPO）即可上市的方法。私人公司購併在股票交易所上市或在 OTC 市場交易的上市空殼公司。

**Shell bank:** a bank incorporated in a jurisdiction in which it has no physical presence and which is unaffiliated with a regulated financial group.

**空殼銀行：**在設立地區沒有實體存在且不附屬於任一受監管金融集團的銀行。

**Shell companies:** Company that often has no physical presence and generates little or no independent economic value. These companies are commonly organised in a way that makes ownership and transactions information of the company easier to conceal, particularly when the shell company is private.

**空殼公司：**沒有實體存在且獨立經濟價值極低、甚至沒有價值的公司。這些公司的組織通常會讓公司容易隱瞞所有權與交易資訊，特別是私人空殼公司。

**Short sale:** Generally, the sale of a stock that an investor does not own. Investors who sell short believe the price of the stock will fall. If the price drops, the investor can buy the stock at the lower price and make a profit. If the price of the stock rises and the investor buys it back later at the higher price, he or she will incur a loss. When an investor sells short, a securities intermediary loans the investor the stock. The stock the investor borrows comes from either the intermediary’s own inventory, the margin account of another of the intermediary’s clients, or another securities intermediary.

**賣空：**通常指出售投資人無持有的股票。賣空的投資人認為此股票的價值會下跌。若價值下跌，投資人可在低價時買入股票並獲利。若股價上揚，投資人之後以高價買回則會引發損失。投資人賣空時，證券中介機構會出借股票給投資人。投資人借來的股票來自中介機構自己的庫存、其他中介機構客戶的保證金帳戶或其他證券中介機構。

**Subscription rights:** A privilege granted to existing shareholders of a corporation to subscribe to shares of a new issue of common stock before it is offered to the public; better known simply as a right. Such a right normally lasts two or three weeks, are freely transferable and entitles the holder to buy the new public stock below the public offering price.

**認購權：**給予現有企業股東在公開銷售前認購新發行普通股股份的權利。這個權利通常維持 2 或 3 週有效，可自由轉讓，並可讓持有人以低於公開發行的價格購買新公開股票。

**Transfer agents:** Companies that have publicly traded securities typically use transfer agents to keep track of the individuals and entities that own their stocks and bonds. Many transfer agents are banks or trust companies, but sometimes a company acts as its own transfer agent. Transfer agents perform three main functions: issue and cancel certificates to reflect changes in ownership; act as an intermediary for the company; and handle lost, destroyed, or stolen certificates.

**股務代理人：**公開交易證券的公司通常利用股務代理人追蹤持有他們股票與債券的個人與實體。許

多股務代理人為銀行或信託公司，但有時公司自己也會扮演股務代理人的角色。股務代理人執行 3 種主要功能：發行及取消憑證以反應所有權的變動；扮演公司中介機構的角色；及處理憑證遺失、損毀或遭竊。

**Traveller's cheques:** A preprinted, fixed-amount cheque designed to allow the person signing it to make an unconditional payment to someone else as a result of having paid the issuer for that privilege.

**旅行支票：**事先列印出來的固定金額支票，且已為此權利付費給發行人，因此簽署人可用旅行支票無條件付款給其他人。

**Trust accounts:** An arrangement enabling property to be held by a person or persons (the trustees) for the benefit of some other person or persons (the beneficiaries). The trustee is the legal owner of the property but the beneficiary has an equitable interest in it.

**信託帳戶：**為受益人的利益，讓財產由受託人持有的約定。受託人為財產的法定持有人，但受益人擁有其權益。

**Underwriting:** The process of agreeing to purchase a new issue of securities from an issuer and distribute it to investors. The underwriter makes a profit between the price paid to the issuer and the public offering price.

**承銷：**同意向發行人購買新發行證券，之後再分給投資人的過程。承銷商從付款給發行人的價格及公開發行的價格中獲利。

**Unit investment trusts or unit trusts:** An investment trust formed to manage a portfolio, in which investors can buy units. Open-end investment companies are often organised as unit investment trusts.

**單位投資或單位信託：**成立用來管理投資組合的投資信託，投資人可購買其單位。開放式投資公司的組織通常為單位投資信託的形式。

**Variable annuity:** A contract issued by an insurance company under which an investor provides the insurer with a lump-sum payment or series of payments. In return, the insurer agrees to make periodic payments to the investor beginning immediately or at some future date. The investor is usually permitted to invest the purchase payments in a range of investment options. The value of the account in a variable annuity will vary depending on the performance of the investment options that have been chosen.

**變額年金：**保險公司發行的契約，根據此契約，投資人以一次付清或分期付款的方式付費給保險公司。保險公司則因此同意立即或自特定未來日期起定期付款給投資人。投資人通常可將其付款投入眾多投資選項。變額年金帳戶的價值會隨著選擇的投資選項績效而變動。

**Warrants:** A security that offers the owner the rights to subscribe for ordinary shares of a company at a fixed date, usually at a fixed price. Warrants can themselves be bought and sold on stock exchanges and are equivalent to stock options.

**權證：**提供持有人在固定日期（通常以固定價格）認購公司普通股的證券。權證本身也可在證券交易所買入及出售，等同於股票選擇權。

**Wealth managers:** See **Investment adviser** and **Portfolio manager**.

**財富經理：**請參閱**投資顧問**及**投資組合經理**。

## ANNEX B: SUSPICIOUS INDICATORS 附錄 B：可疑指標

### Introduction 前言

211. This annex is divided into two sections. Section I lists suspicious indicators that have been identified in the questionnaire responses as indicating possible ML/TF in the securities industry. Section II lists suspicious indicators and red flags that are pertinent for evaluating whether a customer may be engaged in activities that would come under the FATF's list of "designated categories of offences" that are: (i) predicate offences to money laundering and (ii) offences that are unique to the securities industry, namely insider trading, market manipulation, and other forms of securities fraud.

211. 此附錄分為兩節。第一節列出問卷回覆中顯示證券業中可能洗錢/資恐的可疑指標。第二節列出評估客戶是否可能參與 FATF「特定犯罪類型」清單中活動的可疑指標及紅旗，即：(i) 預測洗錢犯罪及 (ii) 證券業特有的犯罪行為，即內線交易、市場操縱及其他形式的證券詐欺。

1. The suspicious indicators listed in these two sections are being provided here to give law enforcement, regulators and the private sector an overview of the types of activities that can be suspicious. We caution however, that this list is non-exhaustive and that some of these ML/TF suspicious indicators and red flags may be not be applicable in all jurisdictions. Furthermore, some of the suspicious indicators and red flags with respect to the designated offences may be more useful for banks in identifying securities specific illicit activities that may not necessarily require the use of a securities intermediary or markets per se (i.e. securities offering fraud).

1. 在此提供這兩節中的可疑指標供執法機構、監管機構及私部門了解可疑的活動類型全貌。然而請注意，此清單並非詳盡無疑，某些洗錢/資恐的可疑指標及紅旗可能不適用所有地區。此外，與特定犯罪有關的某些可疑指標及紅旗可能更容易由銀行發現，並非專屬透過證券中介機構或市場（即證券發行）才能運作的非法活動。

2. We also note that the occurrence of one or more of these indicators/red flags may be a warning sign of unusual activity that may be indicative of ML/TF and/or the occurrence of a securities specific designated offence. However, this does not necessarily mean that money laundering, terrorist financing or any other illicit activity is occurring. Further investigation should be conducted if any of these indicators/red flags are present during the course of a transaction or customer interaction.

2. 我們也注意到若出現一個或多個指標/紅旗可能是有洗錢/資恐及/或證券特有特定犯罪跡象的不尋常活動警示。但這不表示一定有洗錢、資恐或任何其他非法活動發生。若交易或與客戶互動時出現任何這些指標/紅旗，請進一步調查。



**Section I:**  
**Suspicious Indicators for Money Laundering and**  
**Terrorist Financing in the Securities Industry**

第一節：  
證券業中洗錢與資助恐怖份子的可疑指標

***Customer Due Diligence***  
**客戶審查**

- The customer provides the securities firm with unusual or suspicious identification documents that cannot be readily verified or are inconsistent with other statements or documents that the customer has provided. This indicator may apply to account openings and to interaction subsequent to account opening, such as wire transfers.
- 客戶提供證券公司無法立即確認、或與之前提供的其他報告或文件不相符的、不尋常或可疑的識別文件。此指標可能僅適用於開設帳戶及後續與開設文件有關的互動（如電匯）。
- During the account opening process, the customer refuses to provide information to complete CDD/KYC (e.g. occupation, prior financial relationships, etc.).
- 在開設帳戶過程中，客戶拒絕提供完成客戶審查/KYC 所需的資訊（例如職業、先前的財務關係等）。
- The customer, whether a person or entity, is reluctant to provide the securities firm with complete information about the nature and purpose of the customer's business, prior financial relationships, anticipated account activity, the entity's officers and directors or business location.
- 客戶（不論是個人或實體）不願提供證券公司有關客戶業務性質與目的、先前財務關係、預計帳戶活動、實體的高階主管或業務所在地的完整資訊。
- The customer, whether a person or entity, is located in a jurisdiction that is known as a bank secrecy haven, a tax shelter, or high-risk geographic locations (e.g. narcotics producing jurisdiction).
- 客戶（不論是個人或實體）位於著名銀行保密天堂、避稅地或高風險地理區（生產毒品）的地區。
- The customer is reluctant to meet personnel from the securities firm in person, is very secretive and/or evasive or becomes defensive when asked to provide more information.
- 客戶不願親自與證券公司的人會面，行事非常隱密及/或規避或被要求提供更多資訊時就變得防衛心很強。
- The customer refuses to identify a legitimate source for funds or provides the securities firm with information that is false, misleading, or substantially incorrect.
- 客戶拒絕確認資金的合法來源或提供證券公司虛假、誤導或本質上錯誤的資訊。
- The customer engages in frequent transactions with money services businesses.
- 客戶經常與金融服務商交易。
- The customer's background, whether a person or entity, is questionable or does not meet expectations based on business activities.
- 客戶的背景（不論是個人或實體）十分可疑或不符合業務活動的預期。

- The customer has no discernable reason for using the firm's service or the firm's location (e.g. customer lacks roots to the local community or has come out of his or her way to use the firm).
- 客戶沒有利用該公司服務或地點的明確理由（例如，客戶未紮根於當地社區或未以自己的方式利用公司）。
- The customer refuses to provide information regarding the beneficial owners of an account opened for an entity, or provides information that is false, misleading or substantially incorrect.
- 客戶拒絕提供關於為實體開設帳戶的實質受益人資訊，或提供虛假、誤導或本質上錯誤的資訊。
- The customer's address is associated with multiple other accounts that do not appear to be related.
- 客戶的地址與多個看似無關的其他帳戶相關。
- The customer has a history of changing financial advisors and/or using multiple firms or banks. This indicator is heightened when the customer uses firms located in numerous jurisdictions.
- 客戶曾經更換財務顧問及/或使用多間公司或銀行。當客戶利用位於多個地區的公司時，會突顯此指標。
- The customer is known to be experiencing extreme financial difficulties.
- 已知客戶曾經歷過嚴重的財務困難。
- The customer is, or is associated with, a PEP or senior political figure.
- 客戶為擔任重要政治性職務人士或高階政治人物，或與其有關聯。
- The customer refuses to invest in more appropriate securities when those securities would require a more enhanced CDD/KYC procedure.
- 證券需要強化客戶審查/KYC 程序時，客戶拒絕投資更適合的證券。
- The customer with a significant history with the securities firm abruptly liquidates all of his or her assets in order to remove wealth from the jurisdiction.
- 客戶曾經突然透過證券公司清算所有資產，以將資產從該地區中撤離。
- The customer appears to be acting as a fiduciary for someone else but is reluctant to provide more information regarding for whom he or she may be acting.
- 客戶似乎曾擔任過其他人的受託人，但不願提供本人的詳細資訊。
- The customer is publicly known to have criminal, civil or regulatory proceedings against him or her for crime, corruption or misuse of public funds or is known to associate with such persons. Sources for this information include news items or Internet searches.
- 已知客戶曾因犯罪而有刑事、民事等涉訟於貪污或濫用公共資產案件，或與這類罪犯有關聯。此資訊的來源包括新聞或網路搜尋。
- The customer inquires as to how quickly he or she can liquidate accounts or earnings without explaining why or provides suspicious reasons for doing so.
- 客戶詢問能多快清算帳戶或收入，但未解釋原因或提供可疑的動機。
- The customer opens an account or purchases a product without any regard to loss, commissions or other costs associated with that account or product.
- 客戶不考慮帳戶或產品的相關損失、佣金或其他成本，即開設帳戶或購買產品

- The customer has commercial or other types of relationships with risky persons or institutions.
- 客戶與高風險人士或機構有商業或其他類型的關係。
- The customer acts through intermediaries, such as money managers or advisers, in order not to have his or her identity registered.
- 客戶透過中介商（例如基金經理或顧問）操作，以避免登記其身份。
- The customer exhibits unusual concern with the securities firm's compliance with government reporting requirements and/or the firm's AML/CFT policies.
- 客戶對證券公司是否合乎政府通報要求及/或公司的防制洗錢／打擊資恐政策表現出異常的關心。
- The customer is reluctant to provide the securities firm with information needed to file reports or fails to proceed with a transaction once asked for documentation or learns of any recordkeeping requirements.
- 客戶不願提供證券公司提報所需的資訊，或一旦要求提供文件，或知道會有任何紀錄規定，即不繼續交易。
- The customer is interested in paying higher charges to the securities firm in order to keep some of his or her information secret.
- 客戶對於支付證券高額費用以換取資訊保密十分有興趣。
- The customer tries to persuade an employee of the securities firm not to file a required report or not to maintain required records.
- 客戶企圖說服證券公司不要依法提出報告或保存紀錄。
- The customer funds deposits, withdraws or purchases financial or monetary instruments below a threshold amount in order to avoid any reporting or recordkeeping requirements imposed by the jurisdiction.
- 客戶進行低於門檻金額的存款、提款或購買金融或貨幣工具，以規避該地區的任何通報或紀錄要求。
- The customer requests that account openings and closings in his or her name or in the name of family members be done without producing a paper trail.
- 客戶要求以其名義或以家庭成員的名義開設或關閉帳戶，並且不得產生書面軌跡。
- Law enforcement has issued subpoenas regarding a customer and/or account at the securities firm.
- 執法機關對客戶及/或證券公司的帳戶發出傳票。

### ***Fund Transfers and/or Deposits***

#### **資金轉移及/或存款**

- Wire transfers are sent to, or originate from, financial secrecy havens, tax shelters or high-risk geographic locations (e.g. jurisdictions known to produce narcotics/psychotropic drugs or to be related to terrorism) without an apparent business reason or connection to a securities transaction.
- 沒有明顯業務理由或與證券交易關聯卻匯款金融保密天堂、避稅天堂或高風險地區（例如，已知為生產毒品/精神藥物或與恐怖主義有關聯的地區）或有來自以上地區的匯款。

- Wire transfers or payments to or from unrelated third parties (foreign or domestic) or where the name or account number of the beneficiary or remitter has not been supplied.
- 電匯或付款給不相關第三方（國外或國內），或來自不相關第三方的匯款或付款，或未提供受益人或匯款人的名字或帳戶號碼。
- Many small, incoming wire transfers or deposits are made, either by the customer or third parties, using cheques, money orders or cash that are almost immediately withdrawn or wired out in a manner inconsistent with customer's business or history.
- 客戶或第三方利用支票、匯票或現金分成許多小筆匯入或存入款項，匯入或存入後幾乎立即被提領，或以不合乎客戶業務或過往記錄的方式轉出。
- Incoming payments made by third-party cheques or cheques with multiple endorsements.
- 進來的款項是由第三方支票或多人背書的支票存入。
- Deposit of large amount of small-denomination currency to fund account or exchanges of small notes for bigger notes.
- 將大量小單位貨幣存入資金帳戶或將小票據換成較大的票據。
- Wire transfer activity that is unexplained, repetitive, unusually large or shows unusual patterns or with no apparent business purpose.
- 未說明的多筆匯款活動，通常為大筆金額或顯示不尋常的模式，或沒有明顯的業務原因。
- The securities account is used for payments or outgoing wire transfers with little or no securities activities (e.g. account appears to be used as a depository account or a conduit for transfers).
- 證券帳戶用於付款或轉帳，而幾乎沒有證券活動（例如，帳戶似乎被用來當存款帳戶或轉帳途徑）。
- The controlling owner or officer of a public company transfers funds into his personal account or into the account of a private company that he or she owns or that is listed as an authorised signatory.
- 上市公司的控制所有人或高階主管將資金轉入個人帳戶，或轉入自己持有的私人公司或列為被授權簽名人的帳戶。
- Quick withdrawal of funds after a very short period in the account.
- 短時間內快速提款。
- Transfer of funds to financial or banking institutions other than those from where the funds were initially directed, specifically when different countries are involved.
- 將資金轉入源頭以外的金融或銀行機構，特別是涉及多國時。
- Transfers/journals between different accounts owned by the customer with no apparent business purpose.
- 客戶持有的不同帳戶間，在沒有明顯的業務目的情況下進行轉帳/紀錄。
- Customer requests that certain payments be routed through nostro or correspondent accounts held by the financial intermediary or sundry accounts instead of its own account.
- 客戶要求透過外國同業或金融中介機構持有的代理帳戶或同業帳戶，卻不用自己的帳戶進行付款。

### ***Bearer Securities***

#### **無記名證券**

- The customer requests cashing bearer securities without first depositing them into an account or frequently deposits bearer securities into an account.
- 客戶未將無記名證券先存入帳戶即要求兌現，或經常將無記名證券存入帳戶。
- The customer's explanation regarding the method of acquiring the bearer securities does not make sense or changes.
- 客戶對於取得無記名證券方法的解釋不合理或有所改變。
- The customer deposits bearer securities together with a request to journal the shares into multiple accounts that do not appear to be related, or to sell or otherwise transfer ownership of the shares.
- 客戶存入無記名證券並要求將股份計入在看似無關的不同帳戶，或要求出售或轉讓股份所有權。

### ***Unusual Securities Transactions and Account Activity***

#### **不尋常的證券交易與帳戶活動**

- Transaction where one party purchases securities at a high price and then sells them at a considerable loss to another party. This may be indicative of transferring value from one party to another.
- 一方以高價購買證券後在以極低的價格出售給另一方的交易。這顯示可能從一方轉讓價值給另一方。
- A customer's transactions include a pattern of sustained losses. This may be indicative of transferring value from one party to another.
- 客戶的交易出現持續性的損失。這顯示可能從一方轉讓價值給另一方。
- The purchase and sale of non-listed securities with a large price differential within a short period of time. This may be indicative of transferring value from one party to another.
- 在短時間內以極大的價差購買與出售未上市證券。這顯示可能從一方轉讓價值給另一方。
- Payments effected by administrators and asset managers in cash, bearer cheques or other transferable instruments without indentifying who they are for or providing very little information regarding the underlying account holder or beneficiary.
- 管理者及資產經理支付現金、無記名支票或其他可轉讓工具，卻未辨識身份或提供極少關於標的帳戶持有人或受益人的資訊。
- A company uses cash to pay dividends to investors.
- 公司利用現金支付股利給投資人。
- Use of shell companies to purchase public company shares, in particular if the public company is involved in a cash intensive business.
- 利用空殼公司購買上市公司的股票，特別是上市公司涉及現金密集的業務。
- Transfer of assets without a corresponding movement of funds, such as through journaling or effecting a change in beneficial ownership.
- 轉移資產但對資金卻沒有相對的動作，例如紀錄或變更實質受益權。



- A dormant account that suddenly becomes active without a plausible explanation (e.g. large cash deposits that are suddenly wired out).
- 靜止帳戶突然變得活躍卻沒有合理的解釋（如存入大筆現金後立即匯出）。
- A customer's transactions have no apparent economic purpose.
- 客戶的交易沒有明顯的經濟目的。
- A customer who is unfamiliar with a financial product's performance and specifications but wants to invest in it nonetheless.
- 不熟悉金融產品的績效與特性但仍想投資的客戶。
- Transactions that show the customer is acting on behalf of third parties.
- 顯示客戶代替第三方操作的交易。
- The purchase of long term investments followed by a liquidation of the accounts shortly thereafter, regardless of fees or penalties.
- 購買長期投資產品後，不顧費用或違約金立即清算帳戶。
- Transactions involving an unknown counterparty.
- 涉及未知交易對手的交易。
- Large sum cash purchases of financial instruments and mutual funds holdings followed by instant redemption.
- 以大額現金購買金融工具及共同基金持股後立即贖回。

***Insurance Products (applicable to jurisdictions where some insurance products can be considered securities)***

**保險產品（適用將某些保險產品視為證券的地區）**

- The customer cancels an insurance contract and directs that the funds be sent to a third party.
- 客戶解除保險契約並將資金轉給第三方。
- The customer deposits an insurance annuity check from a cancelled policy and immediately requests a withdrawal or transfer of the funds.
- 客戶存入因解除保單而獲得的保險年金支票，並立即要求提領或轉移資金。
- The customer cancels an annuity product within the free-look period. Although this could be legitimate, it could also signal a method of laundering funds if accompanied with other suspicious indicators, such as purchasing the annuity with several sequentially numbered money orders and/or having a history of cancelling annuity products during the free look period.
- 客戶在審閱期內解除年金產品。雖然可能是合法，但若有其他可疑指標（使用多張連續序號的匯票購買年金及/或曾在審閱期解除年金產品）也可能是洗錢手法。
- The customer opens and closes accounts with an insurance company only to reopen a new account shortly thereafter with the same insurance company, but with new ownership information.
- 客戶開立及關閉保險公司的帳戶，之後在同一間保險公司立即重新開立帳戶，但使用的是新的所有權資訊。

- The customer purchases an insurance product with no concern for investment objective or performance.
- 客戶購買保險產品但未考量投資目的或績效。
- The customer purchases an insurance product with unknown or unverifiable sources of funds, such as cash, official cheques or sequentially numbered money orders.
- 客戶使用未知或未確認來源的資金購買保險產品，如現金、本行支票或連續序號的匯票。
- Securing a policy loan against the cash value soon after the policy is issued and repaying the loan with various monetary instruments or cash.
- 取得保單後立即根據現金價值取得保單貸款，之後以多種貨幣工具或現金償還貸款。

***Activity that is Inconsistent with the Customer's Business Objective or Profile***  
**與客戶商業目的或檔案資料不符的活動**

- The customer's transaction patterns suddenly change in a manner that is inconsistent with the customer's normal activities or inconsistent with the customer's profile.
- 客戶的交易模式突然改變，與客戶平常的活動或檔案資料不符。
- There are unusual transfers of funds or journaling (i.e. book entries) among accounts without any apparent business purpose or among apparently unrelated accounts.
- 沒有任何明顯商業目的的帳戶間，或明顯無關的帳戶間，出現資金不尋常的轉移或紀錄（即轉帳）。
- The customer maintains multiple accounts, or maintains accounts in the names of family members or corporate entities with no apparent business or other purpose.
- 客戶在沒有明顯商業或其他目的下，維持多個帳戶或以家人、公司實體名義維持帳戶。
- The customer's account is not used for its intended purpose (i.e. used as a depository account).
- 客戶的帳戶未用於預期用途（如當作存款帳戶）。
- The customer enters into a financial commitment that appears beyond his or her means.
- 客戶簽署超過其收入的金融合約。
- The customer begins to use cash extensively.
- 客戶開始大量使用現金。
- The customer engaged in extremely complex transactions where his or her profile would indicate otherwise.
- 客戶參與非常複雜的交易，而不同於其個人檔案顯示的情況。
- Customer's credit usage is in extreme amounts that do not correspond to his or her financial status or collateral, which is provided by an unrelated third-party.
- 客戶使用極高信用額度與其本身財務狀況不符，或使用由不相關第三方提供的抵押品。

- The time zone in customer's location is not consistent with the times that the trades were executed, with no apparent business or other purpose, or there is a sudden change inconsistent with the customer's typical business activity.
- 客戶所在時區與執行交易的時間不一致，但沒有明顯的業務或其他目的，或突然有變動而與客戶以往的業務活動不一致。
- A foreign based customer that uses domestic accounts to trade on foreign exchanges.
- 使用國內帳戶進行外匯交易的國外客戶。
- The customer exhibits a lack of concern about higher than normal transaction costs.
- 客戶不在乎異常高的交易成本。

### ***Rogue Employees***

#### **不良員工**

- The employee appears to be enjoying a lavish lifestyle that inconsistent with his or her salary or position.
- 員工享受不符合其薪資或職位的奢華生活。
- The employee is reluctant to take annual leave.
- 員工不願請年假。
- The employee is subject to intense job-related demands, such as sales or production goals that may make him more willing to engage in or overlook behaviour that poses ML/TF risks.
- 員工承擔銷售或生產目標等許多工作要求，可能因此使其做出或忽略引發洗錢/資恐風險的行為。
- The employee inputs a high level of activity into one customer account even though the customer's account is relatively unimportant to the organisation.
- 即使該客戶帳戶對公司來說比較不重要，員工仍高度投入。
- The employee is known to be experiencing a difficult personal situation, financial or other.
- 已知員工曾經歷過個人、財務或其他的困難情況。
- The employee has the authority to arrange and process customer affairs without supervision or involvement of colleagues.
- 員工有權在沒有同事監管或參與的情況下安排及處理客戶事宜。
- The management/reporting structure of the financial institution allow an employee to have a large amount of autonomy without direct control over his activities.
- 金融機構的管理/通報結構賦予員工大量的自主權而未直接控管其活動。
- The employee is located in a different country to his direct line of management, and supervision is only carried out remotely.
- 員工與直屬主管位於不同國家，僅能從遠端監督。
- A management culture within the financial institution focuses on financial reward over compliance with regulatory requirements.
- 金融機構的管理文化著重在財務報酬，而不是符合法規要求。

- The employee's supporting documentation for customers' accounts or orders is incomplete or missing.
- 員工的客戶帳戶證明文件或匯票不完整或遺失。
- Business is experiencing a period of high staff turnover or is going through significant structural changes.
- 企業正在經歷員工流失率高的時期，或組織結構發生重大變化。

**Section II:**  
**Suspicious Indicators for Predicate Offences To Money**  
**Laundering Linked to Securities**

**第二節：**  
**證券相關的洗錢前置犯罪可疑指標**

***Insider Trading***  
**內線交易**

- The customer makes a large purchase or sale of a security, or option on a security, shortly before news is issued that affects the price of the security.
- 客戶在影響股價的新聞發布後立刻大量買入或出售證券或有擔保選擇權。
- The customer is known to have friends or family who work for the securities issuer.
- 已知客戶有朋友或家人任職於證券發行公司。
- A customer's trading patterns suggest that he or she may have inside information.
- 客戶的交易模式顯示客戶可能有內部資訊。

***Market Manipulation, including Penny Stocks***  
**市場操縱，包括仙股**

- A customer engages in prearranged or other non-competitive securities trading, including wash or cross trades of illiquid or low priced securities.
- 客戶進行事先安排好或其他無競爭性的證券交易，包括沖洗交易或交叉交易流動性低或低價的證券。
- Securities or funds transfers between parties without an apparent relationship.
- 證券或資金在沒有明顯關係的多方中轉移。
- Securities transactions occur across many jurisdictions, and in particular high risk jurisdictions.
- 在許多地區，特別是高風險地區中進行證券交易。
- Two or more unrelated accounts at the securities firm trade an illiquid or low priced security suddenly and simultaneously.
- 證券公司中兩個以上的無關係帳戶突然同時交易流通性低或低價的證券。
- A customer journals securities between unrelated accounts for no apparent business reason.
- 客戶沒有明顯的商業理由將證券紀錄在不相關的帳戶中。
- A customer has opened multiple accounts with the same beneficial owners or controlling parties for no apparent business reason.
- 客戶沒有明顯的商業理由為同一位實質受益人或控制人開設多個帳戶。
- Transactions between the same or related parties structured solely so that one side incurs a loss while the other incurs a gain.
- 交易只在同一方或相關方間進行，如此一方會承受損失，另一方則會獲益。



- Transaction where one party purchases securities at a high price and then sells them at a considerable loss to another party.
- 一方以高價購買證券後在以極低的價格出售給另一方的交易。
- The customer deposits a large number of physical securities at the securities firm.
- 客戶將大量實體證券存入證券公司。
- The physical securities are titled differently to the name on the account.
- 實體證券顯示的名字不同於帳戶的名字。
- The physical security does not bear a restrictive legend even though the history of the stock and/or the volume of shares being traded suggest that it should have such a legend.
- 雖然股票及/或交易的股份數曾有限制標誌，但實體證券卻無。
- The customer's explanation regarding the method of acquiring the physical securities does not make sense or changes.
- 客戶對獲得實體證券方式的說明不合理或改變。
- The customer deposits physical securities together with a request to journal the shares into multiple accounts that do not appear to be related, or to sell or otherwise transfer ownership of the shares.
- 客戶存入實體證券並要求將股份紀錄在多個看似無關的帳戶中，或出售、轉讓股份的所有權。
- Large or repeated trading in securities that are illiquid, low priced or difficult to price.
- 大筆或多次交易非流通性、低價或難以定價的證券。
- The company at issue has no apparent business, revenues or products.
- 該公司沒有明顯的業務、收益或產品。
- The company at issue has experienced frequent or continuous changes in its business structure and/or undergoes frequent material changes in business strategy or its line of business.
- 該公司經常或不斷改變營運結構，及/或營運策略或業務經常有重大改變。
- The officers or insiders of the company at issue are associated with other low priced, illiquid or low volume companies.
- 該公司的高階主管或內部人員與低價、流通性低或交易量低的公司有關。
- The officers or insiders of the low priced, illiquid or low volume company have a history of regulatory violations.
- 低價、流通性低或交易量低的公司其高階主管或內部人員曾經違反法規。
- The low priced, illiquid or low volume company at issue has failed to make required regulatory disclosures.
- 低價、流通性低或交易量低且之該公司未依規定進行揭露。
- The low priced, illiquid or low volume company at issue has been the subject of a prior trading suspension.
- 低價、流通性低或交易量低之該公司曾被暫停交易。
- A customer's transactions include a pattern of receiving physical securities or receiving incoming shares transfers that are sold with the proceeds wire transferred out of the account.
- 客戶的交易模式顯示受讓實體證券或股票後售出，並將所得利益轉出戶頭。

- The purchase and sale of non-listed securities with a large price differential within a short period of time.
- 在短時間內以極大的價差購買與出售未上市證券。

### ***Securities Offering Fraud*** **證券發行詐欺**

- The customer opens numerous accounts for different legal entities that the customer controls.
- 客戶以其控制的不同法律實體名義設立多個帳戶。
- The customer receives many incoming cheques or wire transfers from unrelated third parties.
- 客戶收到多張來自不相關第三方匯入的支票或匯款。
- The customer allocates incoming third party deposits among numerous accounts.
- 客戶將轉入的第三方存款分散至多個帳戶。
- The customer makes numerous outgoing payments to third parties close in time to when the customer receives many incoming third party cheques or wire transfers.
- 客戶收到多張匯入支票或匯款時，經常立即轉帳給第三方。
- The customer's profile does not suggest a legitimate business reason for receiving many third party deposits.
- 根據客戶檔案，客戶並沒有真正的商業原因可接受如此多的第三方存款。
- The cheques or wire transfers note that the funds are for an investment.
- 支票或匯款註記資金為投資用途。

## ANNEX C: SUSPICIOUS TRANSACTION REPORTS 附錄 C：疑似洗錢或資恐交易報告

**Table 1: Securities Related STRs – 2005-2008<sup>29</sup>**  
**表 1：證券相關疑似洗錢或資恐交易報告 STR – 2005-2008<sup>29</sup>**

2005	2006	2007	2008 (to extent available) 2008 (在可取得範圍內)	Total 總計
10,852	13 241	20 350	13 357	57 800

**Table 2: STR Breakdown Based on Type of Security**  
**表 2：根據證券類型細分疑似洗錢或資恐交易報告 STR**

Type of securities activity/product 證券活動/產品類型	2005	2006	2007	2008 (to extent available) 2008 (在可取得範圍內)	Totals 總計
<b>Transferable Securities</b> <b>可轉讓證券</b>					
Equities 股權	1 255	1 549	3 021	1 818	7 643
Bonds and Similar Instruments 債券與類似工具	194	252	334	271	1 051
Certificates of Deposit 定期存單	48	105	88	114	355

<sup>29</sup> Two jurisdictions provided figures that appear large with respect to their securities markets. Jurisdiction one indicated that 303,054 STRs were filed between 2005 and 2008. In particular, jurisdiction one indicated that 70,405 STRs were filed in 2005, 78,705 in 2006, 86,607 in 2007 and 67,337 in 2008. It is unclear whether this figure is representative of all STRs filed in the jurisdiction or only those related to securities. Jurisdiction two indicated that 34,700 STRs were filed in 2007, but did not provide yearly figures or specify whether figures were inclusive of all STRs filed. Because of this ambiguity, Table 2 adjusts the securities related STRs figures by deducting the figures provided by jurisdictions one and two. Inclusion of these figures would bring the total numbers of securities related to 81,257 for 2005, 91,946 for 2006, 141,657 for 2007, 80,964 for 2008 for a total of 395,824 securities related STRs filed for that period.

<sup>29</sup> 兩個地區提供與其證券市場密切相關的數據。地區 1 指出 2005 年到 2008 年間共提出 303,054 份 STR。地區 1 特別指出 2005 年時提報 70,405 份 STR，2006 年時提出 78,705 份，2007 年時提出 86,607 份，而 2008 年時提出 67,337 份。目前不清楚此數據是否代表此地區中所有提報的 STR 或只是與證券相關的 STR。地區 2 指出 2007 年時共有 34,700 份 STR，但未提供年度數據或特別說明數據是否包含所有提報的 STR。因為仍有模糊不清的部分，因此扣除地區 1 與 2 提供的數據後為表 2 中調整後的證券相關 STR 數據。包含這些數據，則證券相關的 STR 總數在 2005 年為 81,257 份，2006 年為 91,946 份，2007 年為 141,657 份，2008 年為 80,964 份，總計這段期間內有 395,824 份證券相關的 STR。包含這些數據，則證券相關的 STR 總數在 2005 年為 81,257 份，2006 年為 91,946 份，2007 年為 141,657 份，2008 年為 80,964 份，總計這段期間內有 395,824 份證券相關的 STR。

Type of securities activity/product 證券活動/產品類型	2005	2006	2007	2008 (to extent available) 2008 (在可取得範圍內)	Totals 總計
Commercial Paper 商業票據	11	23	42	17	93
Other 其他	19	22	27	30	98
<b>Units in Collective Investment Trusts</b> 集體投資信託單位					
Mutual Funds 共同基金	366	392	754	441	1 953
Money Market Mutual Funds 貨幣市場共同基金	196	257	373	231	1 057
<b>Derivatives</b> 衍生性商品					
Options 選擇權		1		1	2
Securities Futures Products 證券期貨產品	13	23	8	11	55
Commodity Derivatives Contracts (including futures) 商品相關衍生性金融商品契約 (包括期貨)	14	17	40	12	83
Foreign Exchange Contracts 外匯契約	30	59	163	100	352
OTC Derivatives OTC 衍生性金融商品	16	15	35	14	80
Others 其他	10	26	39	14	178
<b>Other</b> 其他					
Warrants 權證	7	10	21	6	44
Other securities 其他證券	84	78	104	83	349
Any other 任何其他	1 818	1 834	2 272	1 281	7 205

**Table 3: STR Breakdown by type of institution**  
**表 3：依機構類型細分疑似洗錢或資恐交易報告 STR**

Type of Institution 機構類型	2005	2006	2007	2008 (to extent available) 2008 (在可取得範圍內)	Total 總計
Securities Broker or Dealer <sup>30</sup> 證券經紀商或交易商 <sup>30</sup>	8 284	8 486	13 224	7 765	37 759
Commodities Futures Merchant, Broker, Dealer, Pool Operator <sup>31</sup> 商品期貨商人、經紀商、自營商、基金經理人 <sup>31</sup>	196	258	446	206	1 106
Fund Manager 基金經理	54	15	892	351	1 312
Bank or Affiliate <sup>32</sup> 銀行或分行 <sup>32</sup>	947	1 395	1 231	1 044	4 617
Financial Adviser 財務顧問	262	698	1 299	918	3 177
Collective Investment Scheme <sup>33</sup> 集體投資計畫 <sup>33</sup>	623	646	1 404	423	3 096
Other, Foreign FIU, Self-Regulatory Organisation <sup>34</sup> 其他、外國金融情報中心、自律團體 <sup>34</sup>	1 170	1 933	3 550	1 973	8 626

<sup>30</sup> This figure includes market makers, municipal or local government securities dealers, introducing and clearing brokers, securities dealers, securities floor traders, securities options brokers and dealers, specialists, and federal or national government broker-dealers.

<sup>30</sup> 此數據包括造市者、市政或當地政府的證券自營商、介紹經紀人及清算服務商、證券自營商、證券場內交易者、證券選擇權經紀商與自營商、專業人員及聯邦或國家政府的經紀-經銷商。

<sup>31</sup> This figure includes agricultural trade option merchants, commodity pool operators, commodity trading advisors, futures commission's merchants, and futures floor brokers and dealers.

<sup>31</sup> 此數據包含農業交易選擇權商人、期貨基金經理人、商品交易顧問、期貨佣金商人及期貨場內交易者經紀商與自營商。

<sup>32</sup> This figure includes banks, bank holding companies and bank subsidiaries.

<sup>32</sup> 此數據包括銀行、銀行控股公司與銀行子公司。

<sup>33</sup> This figure includes mutual funds.

<sup>33</sup> 此數據包含共同基金。

<sup>34</sup> This figure includes STRs filed by direct participation programs, FIUs and self-regulatory organisations, and those did not indicate what type of institution was filing, if any.

<sup>34</sup> 此數據包括直接參與計畫、金融情報中心與自律團體提出的 STR，以及未顯示哪種類型機構提出的 STR（若有）。



## ANNEX D: QUESTIONNAIRE AND RESPONDING JURISDICTIONS AND ORGANISATIONS 附錄 D：問卷及回答的地區與組織

The following jurisdictions submitted a response to the questionnaire that is re-produced below.  
下列地區提交問卷回覆，如下所示。

Andorra 安道爾	Argentina 阿根廷	Australia 澳洲	Austria 奧地利
Belgium 比利時	Brazil 巴西	British Virgin Islands 英屬維京群島	Canada 加拿大
Cayman Islands 開曼群島	China 中國	Denmark 丹麥	European Commission 歐盟委員會
France 法國	Hong Kong 香港	Israel 以色列	Japan 日本
Jordan 約旦	Lithuania 立陶宛	Luxembourg 盧森堡	Malta 馬爾他
Mauritius 模里西斯	Mexico 墨西哥	Moldova 摩爾多瓦	Monaco 摩納哥
Norway 挪威	Panama 巴拿馬	Poland 波蘭	Portugal 葡萄牙
Qatar 卡達	Romania 羅馬尼亞	Singapore 新加坡	Slovakia 斯洛伐克
Spain 西班牙	Sweden 瑞典	Switzerland 瑞士	The Netherlands 荷蘭
Turkey 土耳其	Ukraine 烏克蘭	United Kingdom 英國	United States 美國

## 2008 FATF Securities Typology Questionnaire 2008 FATF 證券分類問卷

### **I. BACKGROUND**

#### **I. 背景**

1. The objectives of the FATF Securities Typology Questionnaire are to collect information about: (i) the range of products classified as “securities” in various jurisdictions; (ii) how jurisdictions supervise compliance with anti-money laundering/combating terrorist financing (“AML/CTF”) requirements for these products; (iii) potential areas of AML/CTF vulnerabilities in the securities industry; (iv) suspicious transaction reports (STRs) in the securities industry; and (v) enforcement actions in the securities industry.

1. FATF 證券分類問卷的目的在於蒐集下列方面的資訊：(i) 被多個地區歸類為「證券」的一系列產品；(ii) 該地區如何透過產品的防制洗錢/打擊資恐 (AML/CTF) 法規監督合規性；(iii) 證券業中防制洗錢/打擊資恐弱點的潛在領域；(iv) 證券業的疑似洗錢或資恐交易報告 (STR) 及 (v) 證券業的執法行動。

2. The results of this survey will be used to develop a securities typology report to provide insight into the how money laundering and terrorist financing (“ML/TF”) may operate in the securities industry. The securities typology project team will use the responses along with information from other sources to prepare the securities typologies report.

2. 此調查結果將會用於製作證券分類報告，如此可深入了解如何在證券業操作洗錢與資恐 (ML/TF) 活動。證券類型專案團隊將利用回覆及其他來源的資訊製作證券分類報告。

### **II. INSTRUCTIONS FOR COMPLETING THE SURVEY**

#### **II. 完成此調查使用的工具**

3. All FATF members and FSRBs are invited to submit completed questionnaires to support the securities typologies report initiative. Contributions should be submitted to the FATF Secretariat ([secretariat@fatf-gafi.org](mailto:secretariat@fatf-gafi.org)) **by 19 December 2008**. All questionnaire participants are encouraged to seek input from private sector representatives operating within their respective jurisdictions, as appropriate, in developing responses to the questions contained in this questionnaire. Responses should be complete yet concise and clearly address the questions asked. Any additional information which may be relevant for the securities typologies report may be submitted along with the questionnaire response. The typology is looking at the use of the securities industry/securities products for money laundering and terrorist financing, and questionnaire responses should concentrate on this, rather than examining the predicate offence (e.g. fraud).

3. 所有 FATF 成員及 FSRB 均需提交完成的問卷，協助證券分類報告計畫。投稿應在 **2008 年 12 月 19 日**前交給 FATF 秘書部 ([secretariat@fatf-gafi.org](mailto:secretariat@fatf-gafi.org))。所有問卷參與者可酌情向各地區內的私部門代表索取資訊，以填寫此問卷內的問題回答。回覆應簡潔完整，並清楚說回答詢問的問題。任何其他可能與證券分類報告有關的資訊可與問卷回覆一同提交。此分類在於研究利用證券業/證券產品進行洗錢與資恐，問券回覆應著重在此方面，而非細查前置犯罪（如詐欺）。

1. **Jurisdiction/Organisation**  
1. **地區/組織**

Name of Jurisdiction or Organisation completing questionnaire  
完成問卷的地區或組織名稱

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2. **Contact details**  
2. **聯絡資訊**

Contact details for any queries arising from this response  
對回覆有任何疑問時可連絡溝通的聯絡資訊

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3. **Range of products classified as “securities”**  
3. **歸類為「證券」的產品系列**

Using the definition of “financial institution” in the FATF glossary as a point of reference, please use the following chart to identify: (1) products that are traded as “securities” in your country; (2) the type of financial institutions involved in selling, recommending or distributing securities (e.g. broker-dealers, banks, etc.); and (3) the supervisory authority(ies) responsible for AML/CFT supervision of that product/financial institution.

利用 FATF 詞彙表中對「金融機構」的定義作為參考，請使用下表進行辨識：(1) 在貴國中當作「證券」交易的產品；(2) 涉及銷售、建議或配售證券的金融機構型（如經紀-自營商、銀行等）；及 (3) 負責監控產品/金融機構防制洗錢／打擊資恐的監管機關。

Product 產品	FATF definition of activity (see Glossary - below) FATF 活動定義 (請參閱下方 詞彙表)	Is this treated as a security in your jurisdiction? (YES or NO) 這在您的地區中 被視為證券嗎？ (是或不是)	If product is a security, type(s) of institutions involved in sale, advice, or distribution (e.g. broker-dealer/fund manager/bank) 若產品為證券，銷售、建 議或配售的機構類型（如 經紀-自營商/基金經理/銀 行)	Name of supervisory authority(ies) responsible for regulating AML/CFT compliance of applicable institution 負責要求所屬機構遵循防 制洗錢／打擊資恐法規的 監管機關名稱
<b>1. Transferable Securities</b>				
<b>1. 可轉讓證券</b>				
Equities 股權	7(a), 9, 10, 11			

Product 產品	FATF definition of activity (see Glossary - below) FATF 活動定義 (請參閱下方 詞彙表)	Is this treated as a security in your jurisdiction? (YES or NO) 這在您的地區中 被視為證券嗎? (是或不是)	If product is a security, type(s) of institutions involved in sale, advice, or distribution (e.g. broker-dealer/fund manager/bank) 若產品為證券, 銷售、建 議或配售的機構類型 (如 經紀-自營商/基金經理/銀 行)	Name of supervisory authority(ies) responsible for regulating AML/CFT compliance of applicable institution 負責要求所屬機構遵循防 制洗錢/打擊資恐法規的 監管機關名稱
Bonds and similar debt instruments 債券或類似債務工具	7(a), 9, 10, 11			
Certificates of deposit 定存單	7(a), 9, 10, 11			
Bills of exchange 匯票	7(a), 9, 10, 11			
Other (please specify) 其他 (請說明)				
<b>2. Units in collective investment schemes</b> <b>2. 集體投資計畫單位</b>				
Unit trusts 單位信託	7(d), 9, 10, 11			
Investment trusts 投資	7(d), 9, 10, 11			
Mutual funds 共同基金	7(d), 9, 10, 11			
OEICs (open-ended investment companies) OEIC (開放式投資公 司)	7(d), 9, 10, 11			
SICAV/Fs (an open-ended collective investment scheme) SICAV/Fs (開放式集 體投資計畫)	7(d), 9, 10, 11			
Closed-end company 封閉式公司	7(d), 9, 10, 11			
<b>3. Derivatives</b> <b>3. 衍生性商品</b>				
Options 選擇權	7(a), 7(b), 7(c), 7(e), 9, 10, 11.			
Future 期貨	7(a), 7(b), 7(c), 7(e), 9, 10, 11.			
Swaps 交換交易	7(a), 7(b), 7(c), 7(e), 9, 10, 11.			
Forward rate agreements 遠期匯率合約	7(a), 7(b), 7(c), 7(e), 9, 10, 11.			
Commodity derivatives contracts 商品相關衍生性金融 商品契約	7(a), 7(e), 9, 10, 11.			

Product 產品	FATF definition of activity (see Glossary - below) FATF 活動定義 (請參閱下方 詞彙表)	Is this treated as a security in your jurisdiction? (YES or NO) 這在您的地區中 被視為證券嗎？ (是或不是)	If product is a security, type(s) of institutions involved in sale, advice, or distribution (e.g. broker-dealer/fund manager/bank) 若產品為證券，銷售、建 議或配售的機構類型（如 經紀-自營商/基金經理/銀 行）	Name of supervisory authority(ies) responsible for regulating AML/CFT compliance of applicable institution 負責要求所屬機構遵循防 制洗錢／打擊資恐法規的 監管機關名稱
Foreign exchange contracts 外匯契約	7(a), 7(b), 7(c), 9, 10, 11.			
Other 其他				
<b>4. Other</b> <b>4. 其他</b>				
Please detail any other product which is classified as a “security” in your jurisdiction (e.g., insurance products such as variable annuities). 請詳細說明在您地區 中被歸類為「證券」 的任何其他產品（如 變額年金等保險產 品）。				

#### 4. *AML/CTF vulnerabilities in the securities industry* 4. 證券業中的防制洗錢/打擊資恐弱點

4.1 Please describe the types of transactions, products and/or activities in the securities industry that are considered to present high risk factors for ML/TF, if any.

4.1 請說明證券業中會造成洗錢/資恐高風險因子的交易、產品及/或活動類型（若有）。

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4.1.2. Are any of the above designated as high risk by law/regulation/other measures in the jurisdiction?

4.1.2. 上述是否有任何一項被該地區中的法律/法規/其他辦法標示為高風險？

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4.2 Please describe the payment methods in the jurisdiction (e.g., cash, wire transfer, cheque, online systems, mobile phone systems, etc.) associated with higher risks for ML/TF, if any.

4.2 請說明該地區中與洗錢/資恐高風險有關的付款方式（如現金、電匯、支票、線上系統、手機系統等），若有。

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4.3 Please describe the delivery methods used in the jurisdiction (e.g. physical securities, book-entry, etc.) associated with higher risks for ML/TF, if any.

4.3 請說明地區中與洗錢/資恐高風險有關的交付方式（如實體證券、帳面等），若有。

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4.4 Please provide examples of any specific suspicious transaction triggers/indicators/red flags for the securities industry.

4.4 請舉出任何特定證券業可疑交易觸發因子/指標/紅旗的範例。

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## 5. *Typologies/methods/trends*

### 5. 類型/方法/趨勢

Please attach or provide hyperlinks to any ML/TF typologies for the securities industry developed within your jurisdiction (such as documents that detail high risk securities products or method of distribution, as well as what caused initial suspicions in the securities industry, how assets were traced, and the outcome of investigations/prosecutions). Where relevant, please indicate at which stage of the transaction(s) you consider that money laundering/terrorist financing took place.

請附上或提供您所屬地區中證券業的任何洗錢/資恐類型之相關超連結（例如詳細說明高風險證券產品或配銷方式，以及什麼在證券業引發初步懷疑、如何追蹤資產與調查/訴訟結果的文件）。若有相關，請指出您認為交易的洗錢/資恐發生在交易的哪個階段。

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**6. Enforcement actions for violations of AML/CFT requirements**  
**違反防制洗錢／打擊資恐法規的執法行動**

6.1 How many criminal/regulatory enforcement actions concerning AML/CFT requirements applicable to the securities firms have been brought in the past 3 years?

6.1 過去 3 年來，針對證券公司執行多少與防制洗錢／打擊資恐法規相關的刑事/監管執法行動？

Year 年	Number – regulatory only 數量 – 僅包括法規	Number – criminal only 數量 – 僅包括犯罪	Number – joint regulatory/criminal 數量 – 包括法規/犯罪
2005			
2006			
2007			
2008 (if available) 2008 (若有)			

6.2 Do any of these enforcement actions reveal areas of high risk or vulnerability in the securities industry? If so, provide brief summaries of key enforcement actions.

6.2 這些執法行動中是否有任何一次揭露證券業中的高風險領域或弱點？請提供主要執法行動的簡短摘要（若有）。

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**7. Suspicious transaction reports**  
**疑似洗錢或資恐交易報告**

7.1 How many STRs relating to securities transactions has the FIU received in the past 3 years?

7.1 過去 3 年來金融情報中心總共收到多少與證券交易相關的疑似洗錢或資恐交易報告？

Year 年	Number 數量
2005	
2006	
2007	
2008 (if available) 2008 (若有)	

7.2 Please specify the number of STRs filed in the past 3 years relating to securities transactions for each type of securities activity/product and/or relating to the each type of filing institution (if this information is maintained by the FIU).

7.2 請根據每個證券活動/產品類型及/或與每個提報機構說明過去 3 年來提報與證券交易相關的疑似洗錢或資恐交易報告數量（若金融情報中心保有此資訊）。

For example, possible types of products and institutions are given below.  
 例如，可能的產品與機構類型如下述。

Type of securities activity/product 證券活動/產品類型	2005	2006	2007	2008 (if available) 2008 (若有)
<b>A. Transferable Securities</b> <b>A. 可轉讓證券</b>				
Equities 股權				
Bonds and similar debt instruments 債券或類似債務工具				
Certificates of deposit 定存單				
Bills of exchange 匯票				
Other (please specify) 其他（請說明）				
Other (please specify) 其他（請說明）				
<b>B. Units in collective investment schemes</b> <b>B. 集體投資計畫單位</b>				
Unit trusts 單位信託				
Investment trusts 投資				
Mutual funds 共同基金				
OEICs				
SICAV/Fs				
Other (please specify) 其他（請說明）				
Other (please specify) 其他（請說明）				
<b>C. Derivatives</b> <b>C. 衍生性商品</b>				
Options 選擇權				
Futures 期貨				
Swaps 交換交易				
Forward rate agreements 遠期匯率合約				
Commodity derivatives contracts 商品相關衍生性金融商品契約				
Foreign exchange contracts 外匯契約				
Other (please specify) 其他（請說明）				
Other (please specify) 其他（請說明）				

Type of securities activity/product 證券活動/產品類型	2005	2006	2007	2008 (if available) 2008 (若有)
<b>D. Other</b> <b>D. 其他</b>				
Please detail any other product which is classified as a “security” in your jurisdiction. 請詳細說明在您的地區中被歸類為「證券」的任何其他產品。				

Type of filing institution 提報機構類型	2005	2006	2007	2008 (if available) 2008 (若有)
Broker/dealer 經紀商/自營商				
Fund manager 基金經理				
Bank 銀行				
Financial advisor 金融顧問				
Collective Investment Scheme provider 集體投資計畫供應商				
Other (please specify) 其他（請說明）				

7.3 Do any of these STRs reveal areas of high risk or vulnerability in the securities industry? If so, please discuss any trends or areas of risk/vulnerabilities demonstrated by STRs.

7.3 有任何疑似洗錢或資恐交易報告顯示證券業的高風險領域或弱點嗎？若有，請討論疑似洗錢或資恐交易報告中紀錄的風險/弱點趨勢或領域。

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7.4 Based on STRs related to the securities industry or as a result of other information concerning the securities industry: how many referrals has the FIU made to law enforcement, how many ML/TF prosecutions have been commenced, and how many convictions have resulted?

7.4 根據證券業相關的疑似洗錢或資恐交易報告或其他證券業相關資訊的結果：金融情報中心轉介多少案子給執法單位？有多少案子進行洗錢/資恐起訴？以及有多少案子判決有罪？

Year 年	Number of Referrals 轉介數量	Number of Prosecutions 起訴數量	Number of Convictions 定罪數量
2005			
2006			
2007			
2008 (if available) 2008 (若有)			

8. *Other proceedings*  
8. 其他行動

Please give details of any ancillary proceedings/tracing/freezing of assets/regulatory proceedings/criminal proceedings that revealed the use of securities.

請詳細說明任何利用證券進行的相關行動/追蹤/資產凍結/監管行動/刑事行動。

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*[www.fatf-gafi.org](http://www.fatf-gafi.org)*