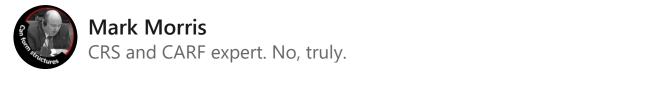


AML/KYC make up ludicrous rules who can discretionary manage assets of an investment entity. Licenced? What



September 24, 2024

Many banks insist an investment entity's assets be managed by a regulated or licensed institution. Hilarious though is that neither CRS or FATCA mention or hint anything regarding the 'regulated / licensed' requirement. They're not trying to craftily corral business their way, are they? Nah, never.

• The CRS and FATCA definition of the management prong of a managed investment entity (type B) is that the entity be an FI. Let's look carefully what it says about 'regulated / licensed'. Hint: Nothing, nada, zilch, goose eggs, nil, naught, zip.

CRS page 44 paragraph (6)(b) if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a).

So look at two of these entities, viz . i.) Subpar A6a managing investment entities, and ii.) Custodial Institutions

i. Subparagraph A(6)(a) - (managing) Investment entity

...primarily conducts as a business one or more of the following activities or operations for or on behalf of a customer: i) trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading; ii) individual and collective portfolio management; or iii) otherwise investing, administering, or managing Financial Assets or money on behalf of other persons.

Any clue regarding regulated in the "primarily conducts"?

An Entity is treated as primarily conducting as a business one or more of the activities described in subparagraph A(6)(a), or an Entity's gross income is primarily attributable to investing, reinvesting, or trading in Financial Assets for purposes of subparagraph A(6)(b), if the Entity's gross income attributable to the relevant activities equals or exceeds 50% of the Entity's gross income during the shorter of: (i) the three-year period ending on 31 December of the year preceding the year in which the determination is made; or (ii) the period during which the Entity has been in existence.



- Regulated? Licensed? Ha, nope. not a dicky-bird on 'regulated/ licensed'. • So where on earth do banks have the cajones to insist that Subparagraph A(6)(a) -(managing) Investment entity is a 'regulated / licensed' entity.
- Sure, in many countries the domestic legislation insists a wealth manager be regulated... but that is beyond CRS / FATCA. A wealth manager in non-particiüpating jurisdiction Zimbabwe would qualify as the FI in subparapgraph A6a.
- Heck, your uncle forming an untregulated wealth management company to manage just your assets would qualify. Think out of the box, such as yourself and / or your wife
- forming a partnership.

Wealth manager be located in same jurisdiction as the bank - another nonsensical rule

• Not to be libellous here, but there is likely one reason for this brazen rule, 'nuff said.

ii.) Custodial Institution - Not licenced / regulated

- CRS page 44 paragraph (6)(b) if the Entity is managed by another Entity that is a Depository Institution, a Custodial Institution.... Note that one of the entities in the definition is Custodial institution.
- For CRS a Custodial Institution is an entity that holds assets for someone else and at least 20% of its income is custody like fees. Also nada, zip, zilch on the Custodial Institution be regulated licensed.
- So its incongruent that a bank would permit an unlicenced Custodial institution to manage the assets, yet just agree with the CRS that an unlicenced Custodial Institution manage the assets.
- The Custodial Institution could be subject to the jurisdiction of a non-participating jurisdiction.
- Again, it would be libellous for me to opine on why banks insist on 'licensed / regulated' entities, resident in the same jurisdiction as bank to boot.

Bank insist 100% of the assets under discretionary management? No. No. No

Some banks insist that 100% of the assets be under discretionary management to qualify as an investment entity. This inane non-existent rule by some banks is especially galling... and again part of the corall business. Let's see what percentage of assets of the managed investment entity needs to be under discretionary management to qualify the managed by prong of the test. CRS Commentary page 162 par (17)

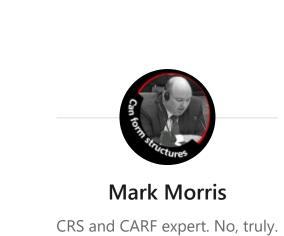
However, an Entity does not manage another Entity if it does not have discretionary authority to manage the Entity's assets (in whole or part). Where an Entity is managed by a mix of Financial Institutions, NFEs or individuals, the Entity is considered to be managed by another Entity that is a Depository Institution, a Custodial Institution, a Specified Insurance Company, or an Investment Entity described in subparagraph A(6)(a), if any of the managing Entities is such another Entity.

- Wow, mix. Notice folks, a mix of management by FIs and non-FIs qualifies for CRS as being managed by an Fl.
- There is no de minimus threshold for the definition of mix. How many law firms are coining legal opinions on what mix will not be regarded as abusive equally ignorant banks. For CRS a mix could be one penny given to be discretionary managed. • Sure, find a manager that would accept a penny for the discretionary management
- agreement, but your uncle would (nudge, nudge, wink, wink), but you get the drift. • So why on earth do lawyers opine a random 5%, 10% or 20% as a non abusive de minimus mix? There is no definition of a unreasonable mix. Simples.

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the assets of an investment entity.

- Summary • A wealth manager that is not necessarily 'regulated / licensed' may manage some (mix) of
- This wealth manager can be subject to any jurisdiction, participating in CRS or not. • This could as simple as an unicorporated partnership with you and your wife.
- Note that the equity interest in a subparagrapgh A(6)(a) are not reportable account holders, unless the investment entity was created for the purpose of avoiding CRS. Yep although relatively simple so it is perplexing why banks believe they have the right to
- create rules out of thin air. • Just like they qualify an entity as a trading active NFE despite the breach of the 50% cash



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