Callcredit response to HM Treasury Call for Evidence

"Review of the Money Laundering Regulations 2007"
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1 CALLCREDIT

Callcredit is one of the UK’s three consumer credit reference agencies, which facilitate the sharing of data on how people manage their repayment commitments. Consumers have statutory access to the credit account performance data that Callcredit compiles on behalf of lenders, and we make optional online services available to meet more advanced consumer needs. We offer solutions to business to establish the creditworthiness and verify the identity of individuals, alongside other related products and services. Services offered to the UK financial services industry include:

- Credit Risk Solutions
- Fraud and ID Solutions
- Marketing Solutions
- Consumer Solutions

In the last few years the majority of the UK’s sizeable lenders have moved to implement Callcredit products and services. The rate of growth of Callcredit’s client base underlines the success of our approach.

Some areas where Callcredit has particular interests:

- **Identity Verification and Anti-Money Laundering** – Callcredit assists firms in meeting their obligations to prevent money laundering and protect against fraud through identity verification.

- **Data Sharing** - Greater data sharing has been proposed as an important step in detection and prevention of crime, and to support responsible lending, but must always be weighed against the rights of the individual and the risks of any possible inaccuracy or data security issues.

- **Over-Indebtedness** – Callcredit’s unique consumer indebtedness initiative uses consolidated income and debt data to help lenders avoid extending new credit to consumers who may find it unaffordable, and to identify where existing customers are taking on excessive commitments elsewhere.

- **Fairness in Collections** - Callcredit seeks to provide the best available tools to enable responsibility in collection activity, to assist creditors to correctly identify and treat highly indebted consumers.

A completed “tell us about yourself” form is also attached.
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3 CALLCREDIT RESPONSE TO CALL FOR EVIDENCE

3.1 Introduction

This submission provides Callcredit’s response to the Call for Evidence by HM Treasury to support a Review of the Money Laundering Regulations 2007.

This paper is brief – we are not ourselves regulated under the Regulations and nor are we responding as a customer. We are however closely engaged in anti-money laundering activity to the extent that we provide data and services to assist companies both large and small to meet their obligations under the Regulations. We therefore wish to advise our interest, rather than responding to the individual questions presented.

3.2 Data and electronic verification

As one of the three “full” consumer credit reference agencies, Callcredit acts as a custodian of shared account performance data contributed by financial institutions, which is used in this context to verify identity at address. We are also entrusted with access to the full Electoral Register for controlled use in anti-money laundering and in creditworthiness assessment.

We are aware of how important these unique data sources in particular are to organisations when they need to perform risk-based identity checking. They provide an independent and authoritative source of confirmation at a time when documents may now be forged relatively easily following advances in technology in recent years.

By drawing on these and other sources of data to provide confirmation that an individual exists at the address, companies are also able to meet their obligations in respect of anti-money laundering in a way which minimises inconvenience to consumers. In particular, persons who do not hold the principal conventional forms of identification, such as a passport or driving licence, can find it more difficult to verify their identity. Persons who do not head their household and are not the utility bill payers at their home can also find such processes more taxing. The availability of electronic verification reduces potential for inadvertent financial exclusion of these individuals.

We suggest that any change resulting from the Review should maintain or indeed strengthen the ability to perform electronic confirmation of identity where organisations choose to do so and such measures are indicated by risk assessment. Unintended consequences have from time to time impacted on electronic verification, such as the circumstances around the 'Companies (Disclosure of Address) Regulations 2009 SI 2009/214'. To avoid any possibility of similar concerns arising, Callcredit would welcome inclusion as appropriate in any relevant future work which might result from the Review.
Background:

The Money Laundering Regulations 2007 replaced the Money Laundering Regulations 2003 which had come into force in April 2004 and which had, for the first time, included casinos on the list of regulated businesses for the purpose of the anti money laundering regime. MLR2003 therefore, had replaced the Gaming Board’s Code of Practice on Money Laundering which had previously governed casinos’ anti money laundering procedures.

At that time, the extant Gaming Act 1968 prevented all UK casinos from operating non-member clubs, so the imposition of the MLR2003 was not particularly onerous; the focus was mainly on the identification of customers, record-keeping and staff training and basically reinforced the existing Code of Practice. From a monitoring perspective, there was little change from the old regime and from a suspicious transaction reporting standpoint, a casino mainly concentrated on identifying transactions of ‘no economic merit’ (for example the conversion of cash by a customer through their requesting a winners’ cheque when their funds had not been genuinely risked at the gaming tables).

Section 10 of MLR2007 set out the basic Customer Due Diligence (CDD) requirements for casinos. This would not have created much of a change for the industry had the 1968 Gaming Act continued in force but, in the interim, the 2005 Gambling Act replaced the ‘68 Act. This new legislation swept away the obligation to have casino membership and opened the doors for the public to walk in off the street.
Whilst many of the smaller casino operations were very reluctant to dismantle their membership systems (as membership and “ID on entry” gave the casino operator strong safeguards in relation not only to the ML Regulations, but also to the social responsibility elements of the new Gambling Act), it was immediately apparent that market forces would ensure that all casinos would have to relax their admission procedures if only one operator adopted an open-door policy.

The threshold provisions of MLR2007 therefore became relevant to the casino industry and extensive and expensive new systems had to be developed in order to verify the identity of customers who were approaching the bizarrely set cash-drop and cash-out limit of 2,000 Euros as well as the other CDD and EDD requirements regarding PEPs and Sanction List customers etc.

**Introduction to the Call for Evidence.**

HM Treasury states in the Summary {Chapter 1} that “This Call for Evidence seeks evidence to support a review of HM Treasury’s Money Laundering Regulations 2007.”

From the perspective of the smaller, independent casino operator, this Association wonders if any review of MLR2007 would be more accurately described as an “Agonising Reappraisal” – a phrase coined by the US statesman and international lawyer John Foster Dulles – which is defined by Brewer’s Dictionary as:

“a reassessment of policy that has been painfully forced on one by a radical change of circumstance or by a realisation of what the existing circumstances actually are.”

Whilst this Association recognises that the “radical change of circumstance” happened 3 months before the implementation of MLR2007 (in December 2007) when the Gambling Act 2007 had come into force (in September 2007), the effects of that Act on the existing casino industry soon became apparent and just 2 years later, there is now a clear “realisation of what the existing circumstances actually are” and how disproportionate the MLR2007 have actually become.

This Association welcomes the Call for Evidence, but in response, for brevity, we will avoid the structure of the 30 questions and rather address the “principles of effectiveness, proportionality and engagement that underpin the UK’s anti-money laundering strategy” as mentioned in the Call for Evidence document.

**Effectiveness, Proportionality and Engagement**

The Gambling Industry

This Association would like to emphasise the fact the casino industry is only a small sector of the gambling industry as a whole. The Gambling Commission’s “Industry Statistics 2008/09” document states: “the gambling industry in Great Britain is substantial, with a turnover of £84 billion in 2006/07 and gross gambling yield was estimated at £9.9 billion (of which 25% was from the National Lottery).
The betting sector in 2008 had a turnover in off-course bets of £10.8 billion generating a gross profit of £1.7 billion. In addition, the betting sector’s gross profit from gaming machines in betting shops in 2008 was £1.138 billion (or 40% of their total profits) which gave betting shops a total profit in 2008 of £2.838 billion.

By comparison, the casino sector in 2008 had a turnover (or drop) of £4.4 billion generating a gross profit of £656.5 million. Casino’s gross profit from gaming machines in 2008 was £120.5 million which gave casinos a total profit in 2008 of £777 million.

In simple terms, the betting sector is two and a half times as large as the casino sector in terms of turnover and four times as large as the casino sector in terms of gross profit.

With these facts in mind, this Association asks HM Treasury why the casino sector is the only part of the gambling industry listed under the MLR2007 as a Designated Non-Financial Business or Profession (DNFBP) and thus bound by those regulations, when the larger betting sector is not, especially considering that Licensed Betting Offices now offer high-stake, high-prize casino games on their Category B gaming machines (FOBTs) which should only ever have been allowed within licensed casino premises.

Due Diligence

Sections 10 and 14 of MLR2007 outline the CDD, EDD and Ongoing Monitoring requirements which casinos must undertake. These requirements are exactly the same enquiries that banks, solicitors and accountants are required to make, and yet casinos are bound by a gold-plated 2,000 Euro threshold (even the EU Directive only stipulates 3,000 Euros) whereas banks have a 15,000 Euro threshold.

This Association asks HM Treasury why there is this discrepancy in the regulations, especially when, from a commercial standpoint, other regulated bodies are able to levy enhanced fees to cover the costs of such monitoring, whereas casinos cannot pass on our costs to customers as our sole source of revenue is from the casino win. As an example of the cost, one of our Member’s annual subscription to the AccuitySolutions database (to monitor PEPs and the Sanctions List) is £15,000, as well as a substantial cost to the casinos for the manpower needed to supervise these particular requirements. The result of all of this expense, time and effort for this particular casino has been the discovery that 0.83% of their active membership are PEPs; 1.18% of their active membership who have a total cash-drop of £1500 or more are PEPs; 2.17% of their active membership who have a single-visit cash-drop of £1500 or more are PEPs. In addition, a scan of their entire membership has failed to identify anyone with known or suspected terrorist links and they have terminated the membership of only a handful of individuals who were named on the Sanctions Lists, very few of whom had even visited the club in recent years. This again raises the question of proportionality.
Exchange of Chips
As mentioned above, the regulations set out thresholds which, if customer transactions approach this level, require the casino operator to verify the identity of the customer. In casinos, identification and verification is required when a customer “purchases from or exchanges with the casino chips with a total value of 2,000 Euros.”

This Association cannot understand why the “exchange of chips” has been interpreted as a customer’s cash-out. If it had referred to the exchange of non-negotiable plaques (which are given to a customer who has proffered a personal cheque or made a debit card transaction and are then used in place of cash at the gaming tables) we would understand and endorse the rule as it would constitute a customer’s cash drop. To insist that a customer’s cash-out be included in the threshold is illogical, impractical and nothing to do with any suspicion of money laundering or POCA. It also causes real problems with our customers who see it as an excuse from the casino not to pay out their legitimate winnings immediately if that customer is not carrying acceptable ID. A single bet of just £60 on a number on a roulette table will instantly put the customer over the threshold and unable to take away all his winnings without producing ID, which frequently causes anger and frustration – especially as there is no logical explanation available for the reasoning behind such a rule.

This Association also feels that the use of Euros within the regulations, instead of Great British Pounds (which is the legal tender of this country), causes more problems for the casino operators and is illogical and unnecessary. A volatile exchange rate causes a varying threshold which requires the repeated issuing of guidance and training to casino staff in order to stay compliant with the regulations.

“A Risk-based System”
The FATF Recommendations, upon which the MLR2007 are based, single out the business sectors where there are believed to be the highest risks of money laundering and terrorist financing. Despite all evidence to the contrary, casinos are included as high-risk. Between April 2008 and March 2009, there were 16.6 million visits to the 143 casinos in Great Britain. By comparison, SOCA received under 600 Suspicious Activity Reports from British casinos for the year 2006/07 in figures released for the Mutual Evaluation Report by FATF. This equates to an average of 4 just SARs per casino per year.

This Association believes there is a great imbalance between the vast amounts of information collected and stored by each casino and the actual relevance or need for this information by the authorities. An increase to the “Buy-in” threshold (to £10,000 for example) and the removal of the “cash-out” threshold would dramatically ease this burden on the casino operators. Casinos’ commercially generated customer records would always be available for any investigations by authorities if so required.

PHIL LOWTHER
GENERAL SECRETARY COA (UK) DECEMBER 2009
Review of the Money Laundering Regulations
Financial Crime Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

11 December 2009

Dear Sirs

Treasury Review of the Money Laundering Regulations 2007
Call for Evidence Part A

CCLA is the largest charity fund manager in the UK with about 46,000 investors and £4.6 billion assets under management. Our clients are almost entirely charities investing in Common Investment Funds (CIFs) and Common Deposit Funds (CDFs), or similar. We are 85% owned by charity bodies and represent the interests and well being of the sector as a whole.

We have a particular concern in connection with the following questions in the document:

- Chapter 4 – Scope and Customer Due Diligence Requirements (CDD) - 1,2,3
- Chapter 5 – Role and Use of Guidance – 11
- Chapter 8 – Proportionate Experience on the Ground - 26

Before the Third Money Laundering Directive the minimum requirement for standard evidence was that we verify the charity itself and confirm that the person acting for the charity (correspondent) was properly authorised to do so. We were permitted to confirm these details by reference to Charity Commission or Church Registers, or to a HMRC record of charity status for tax purposes. There was no need to verify the personal identity of any of the individuals concerned.

This was changed significantly by the beneficial owner provisions in the 2007 regulations. As well as the previous checks, the following requirements were added:

- A list of all the trustees
- Confirmation of the identity of all trustees from one of those signing the application form or from public domain information
- The names, addresses (three years for electronic checking) and dates of birth for those signing the application form
- Standard verification of the identity of each individual authorising the application form, carried out by electronic checks or by using personal documentation.

To achieve the minimum level of CDD on average the identity of three individuals for each new application must be verified. These are trustees who are contacted through the charity correspondent. They are often unpaid and meet infrequently to discuss their mandates. About 50% of our existing clients do not respond to initial requests for additional information for at least six months. Many do not have an electronic footprint and have difficulty in providing standard evidence documents. Mistakes are common in the paperwork, particularly for large trusts. In our experience approximately 33% of all applications fail our initial checks, of these around 60% end up having to provide paper evidence of identity. Our correspondents in particular incur a significant amount of time and effort in co-ordinating the information and in dealing with our requests. As a result of these changes we have seen a five times increase in the number of complaints about the anti-money laundering requirements.

Our costs in respect of this additional work are estimated at £550,000 in total (as each client is brought into line with the new regulations on a trigger event basis). For asset management activity in respect of CIFs and CDFs alone we estimate that this would be around £850,000 across the sector, and is approximately double the costs of compliance with the previous regulations.

This change has removed the reliance on government agency records for charity clients, even though similar reliance has remained for companies. For an incorporated charity we have the extraordinary situation where we are obliged to check both Companies House records and charity registers or HMRC records, as well as the individuals as described above. This significant additional burden is not consistent with any increase in the risk of money laundering through the charity sector.

These organisations have been approved by a government agency as formal charities for tax purposes and we would like this endorsement acknowledged in the regulations. This would mean that Charities were treated in a similar way to registered companies. In normal circumstances simplified due diligence would apply without the need to capture information on individuals for making electronic checks or to ask for copies of personal documentation. We see this as a balanced risk based approach for the sector which is consistent with that adopted for other organisations where simplified due diligence is permitted.

If you would like any further information on this matter please let me know.

Yours faithfully

[Signature]

Tony Kemp
Head of Operational Risk, Internal Audit and Compliance
CCLA Investment Management Limited
ML Call for Evidence.pdf

Sir/Madam,

I attach a completed "Tell Us About Yourself" form.

CDC Group plc is a UK government owned (and FSA registered) investment company, which commits capital from its own balance sheet to emerging market private equity funds. Please see www.cdcgroup.com for more information.

We undertake AML/KYC checks when we: (i) commit capital to private equity funds; (ii) enter into co-investments with private equity fund managers; and (iii) divest from legacy investments in portfolio companies.

We have a detailed AML/KYC process which we follow on every investment/divestment but do have a number of observations regarding the current AML regulations (Questions About Industry Practice), which we wish to share with you:

* The Regulations do not clarify the extent to which we are expected to monitor our investee private equity funds once we have undertaken the initial AML checks and committed to such funds. It is not clear to us what checks (if any) we are expected to do after that initial check and approval. We receive and review Complainet updates on checked individuals but are uncertain of our continuing responsibilities absent any grounds for suspicion etc.

* We deal with overseas fund managers managing funds typically domiciled in offshore financial centres and overseas purchasers of assets - they are often advised by non-UK law firms. It would be very helpful if the Treasury could produce "high level" explanatory notes detailing the reasons for the AML regulations, what are intended to do and the information that needs to be supplied to ensure compliance with them. We find ourselves explaining UK AML requirements to overseas lawyers regularly. This can be a laborious, painful process, particularly with US law firms. It would assist us greatly if we could simply refer overseas fund managers/purchasers and their lawyers to well-written explanatory notes on a UK government website explaining the above.
* We struggle at times with the requirement that PEPs disclose the source of their funds. In certain cases, there is clearly a real
need to obtain this information but in other cases, where the PEPs are a minimal AML risk because of the nature of their "political
exposure" (e.g. the PEP sits on a wholly legitimate government body), we seek guidance on the appropriateness of requesting
such information. An exercise of judgment is required - without full guidance in our view.

We trust that you find these comments useful and look forward to seeing the results of the survey in due course.

Regards,

Mark D. Kenderdine-Davies
General Counsel and Company Secretary

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P  Think before you print.
David Lewis  
Head of Anti-Money Laundering Policy  Financial Crime Team  
1 Horse Guards Road  
London  
SW1 2HQ  

15th December 2009

Dear David,

Review of Money Laundering Regulations 2007

Chartered Accountants Ulster Society thanks you and Sandy Sheard for attending our offices in Belfast on 18 November 2009 as part of the HMT Review of the Money Laundering Regulations 2007. The Ulster Society is a district society of Chartered Accountants Ireland with over 3,000 members in Northern Ireland.

The Ulster Society through the CCAB Money Laundering Working Party have had the opportunity to read the detailed response from the Institute of Chartered Accountants in England and Wales to the Call for Evidence on HM Treasury Review of Money Laundering Regulations 2007 (ICAEW REP 127/09, REVIEW OF THE MONEY LAUNDERING REGULATIONS 2007). The Ulster Society concurs with and supports the comments in the ICAEW response.

The ICAEW response identifies feedback on the benefits of the regime as one of its major points. You will recall from our meeting in November that this was a major theme from the Ulster Society members. Our members would like to see better feedback on the suspicious activity reported information which has proved useful to date and how reports could be improved. Also members would like some information on how Northern Ireland compares to other areas in terms of quantity and quality of reporting. We believe that with improved feedback members will see increased merit in the process and the costs they bear.

Another issue of concern was the need for adequate time gaps between amendments to the Regulations. The point is well made in the ICAEW response and we believe a period of 5 years between significant changes is required to absorb the necessary training and other costs.

We would be grateful if you could keep us informed of any future discussions on the nature of feedback regulated professional bodies might find beneficial.

Yours sincerely,

Tony Nicholl

On behalf of the Ulster Society
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ZOE WEEETMAN SENIOR MANAGER
COMPLIANCE AND RISK
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West Yorkshire
WF12 8DJ

1.3 ORGANISATION: Cheque Exchange Ltd

1.4 EMAIL: zoe.weetman@cheque-exchange.co.uk

2.3 Representing a Regulated Firm

4.1 MSB Sector – Mainly Cheque cashing and money transfer (through MoneyGram) with insignificant Bureau De Change business.

4.2 H M Revenue & Customs

4.3 Latest Turnover £2,100,000

4.4 60 Employees
Regulations

1 To what extent is the scope of the Regulations and their application to business activity appropriately risk-based?

The regulations themselves do not define differing types of sectors as higher risk than others, however they do define different types of customers. The Regulations define customers entering into a business relationship or occasional transaction customers as customers where CDD should be undertaken. The definitions of such are not particularly clear and referral to the Guidance is necessary in helping to determine the meaning behind these. The Regulations should be more prescriptive in each of these definitions, with a possible time-frame for when an occasional transaction, becomes a linked. Would a customer transacting once a week, once a month, once a year be deemed as a linked transaction or a series of one-off transactions? The Regulations do not reference the customer deemed as ‘one-off’ which is in the Guidance and I believe there should be greater clarity in how and when a customer should be defined as ‘one-off’.

2 To what extent are the Customer Due Diligence (CDD) requirements set out in the Regulations a proportionate response to the threat from money laundering?

In the main the CDD measures set out in the Regulations are proportionate as customers opening an account (as such) or customers transacting large values, in theory pose a higher threat than the customer who has done 1 transaction of small value, never to return.

Money transfer is deemed a high risk MSB and coupled with the introduction to the EU Payment Regs ID is sought at a lower value and as such CDD measures are carried out under the requirements.

One issue we experience problems with is how we are meant to identify a PEP. I am sure there are 1,000’s of people classed as PEPs who we would not ‘reasonably assume’ to be as such without asking everyone who we transact with, or running their names through costly identity checking software. It would be of great benefit if HM Treasury could post a list of PEPs, like sanctions/asset freezing list so we could introduce the names into our systems and thus undertake appropriate EDD when a match is made, this would help if HMT was to extend the risk based approach to domestic PEPs. Currently the likelihood of a PEP using our service is very slim, however there will be a financial implication if introducing domestic PEPs, as the likelihood of PEP could be greatly increased.

3 To what extent are the Customer Due Diligence (CDD) requirements effective in the fight against money laundering?
The measures we undertake for our cheque cashing has changed little since the introduction of the Money Laundering Regulations due to the commercial risk of the product. (i.e. we must undertake CDD to ensure we are paying the intended individual, as failure to do so may incur debt to our business.) However, there will be other organisations that have had to change many procedures and I cannot see how it has not helped in the fight against money laundering or other crimes.

Receiving and vetting ID, whilst asking pertinent questions to the customer must help when submitting a SAR, providing a richer picture of individuals will assist others in tackling other crimes. One of the issues regarding the time and effort involved in submitting to SOCA is that we are aware SARs are not being looked at. Only when a customer is being reviewed/ investigated is a search done on the name. Reviewing/forwarding on all submitted SARs could prevent such individuals from becoming more involved in crime.

4 To what extent do the record keeping and policy and procedural requirements upon Regulated Firms support their anti-money laundering efforts?
The time frame for holding records are appropriate, we actually ask our cheque cashing Agents to hold records for 6 years as a cheque has a residual debt potential up to 6 years.

5 To what extent do the Regulations provide Supervisors with appropriate compliance monitoring and enforcement powers and penalties to deter non-compliance?
Not sure. I would like to think that penalties would be proportionate to where the failings lie. We operate as a Principal with many Agents, and therefore if we had evidenced all the steps we had taken to train/educate and guide the Agent and if failings was discovered at site, that the breach would relate to the business of the Agent and not the business of the Principal.

6 To what extent do the Regulations provide a suitable system of registration and 'fit and proper' testing to be established and carried out on a risk basis?
The fit & proper testing is suitable and proportionate. Principals are not required to put Agents through HMRC’s testing as we undertake our own thorough vetting which would duplicate much of the work and cost. With the introduction of Payment Service Directive, MSBs undertaking money transfer (irrelevant of whether they are Principal or Agent) must now also undergo the FSA’s fit & proper approval, perhaps Treasury should consider this duplication of effort going forward. The OFT have also introduced a registration for consumer credit leaving individuals confused as to who they should be registering with, if offering multiple products/services.
7 Are the requirements of the money laundering Regulations compatible with and complementary to the requirements of a) other aspects of the UK’s broader anti-money laundering regime/legislation and b) international standards/practices?

Yes, I believe the Money laundering Regulations sit well with the Payment Service Directive introduced 1/11/09. We are now registered as an Agent for MoneyGram who is the Payment Institute under the PSD. This coupled with the MLR regs can only help to ensure a level of compliance in the UK to set the standards for others.

8 How well does HMT engage with you in developing the Regulations and are the requirements of the Regulations clearly communicated?

We are an active member on the MSB forum and as such helped shape the regulations and contributed substantially to the Guidance, especially on the product specific appendix on cheque cashing.

Any MSB is welcome to join the forum however it appears the independent businesses (rather than the larger MSB businesses) struggle to attend this may be due to them not being able to leave their shop, or might be due to the fact they are not aware they can attend. Although I am aware bodies such as the BCCA and UK Money Transmitters represent their members, individuals not part of their associations may not have the opportunity to review potential alterations.

I am unaware whether other sectors of the industry have similar forums.

HMRC website could be improved as the money laundering part of the site is well hidden. A specific webpage given to the regs and industry guidance and postings on forum meetings/outcome of previous meetings etc, would be much better and help keep individuals as mentioned above up to date. This could also be a blog/chat for members if they have any questions which others may be able to help with, promoting the education and sharing of knowledge, which is intrinsic to the industry.

Guidance

9 To what extent does Guidance promote both an effective and proportionate approach to anti-money laundering?

The Guidance (MLR8) is of much benefit to us and is a most useful tool when delving further into what exactly the regulations mean with examples given. The Guidance is proportionate in its approach as it has sector specific sections (which although are not to be read on their own) enable businesses to focus on the areas their business could be affected by money laundering and does stipulate the certain business models even
within the MSB sector are riskier than others and as such should have systems in place that are effective.

The MLR9 guidance has caused us some problems as the interpretation of one clause 4.3.7 relating to Agents enabled MoneyGram to push registration on to Cheque Exchange Ltd for the money transfer service we offer through them, even though it is not our systems, and we do not set the rules and procedures or ID levels which control the transactions and we can not monitor their entire UK business.

10 How clear and consistent is Guidance including whether Guidance is consistent for those sectors where more than one supervisor exists and generally across sectors?
No Comment

11 In what ways does Guidance assist with a risk-based implementation of Customer Due Diligence (CDD) measures within your sector?
As mentioned previously the Guidance breaks down sectors and enables firms to focus their risk based implementation depending on the concerns of their specific business.

12 In what ways does Guidance assist and support Regulated Firms’ anti-money laundering policies and procedures?
Guidance helps focus regulated firms by providing clear and concise examples of how policies should be set out, and by doing so per sector enables the regulations to be put into practice. Incorporating POCA, MLR 2007, TA000, the EU Payment Regs and CTA2008 enables firms to feel confident that the compliance with the Guidance should ensure businesses have sound policies and procedures covering all legislation. We found the template for policy statement and risk assessment particularly helpful when creating our own document.

13 How is Guidance made accessible and are there opportunities to engage in its formulation?
Previously answered in other questions.

Supervision

14 To what extent does the supervisory framework support an effective, risk based anti-money laundering regime and compliance with the Regulations?
One concern regarding Supervisors now taking on responsibility on firms of other products, due to the fact they are the supervisor for another (such as an MSB offering consumer credit) is that the Supervisor has had no previous experience of this industry and may struggle to understand how the regime fits into the business which may confuse results. It will be costly to train these Supervisors to bring them up to a level of expertise
which will enable them to consider the compliance implications of the business.

15 In what ways do Supervisors communicate and engage with the firms they regulate to ensure a sound understanding of legal duties and responsibilities under the Regulations? The framework becomes confusing when there is more than one supervisor. For instance, our Agents (registered as an MSB under Cheque Exchange Ltd (CEL) for the services offered through CEL) can often offer other regulated products independently. In these situations (like recently brought in by the OFT) one supervisor says firms do not have to register if already regulated by another supervisor, this has created no end of problems for us. Our Agents have been told when calling advice lines that as they are supervised as an MSB, their consumer credit will also be reviewed by HMRC. I have raised this on a number of occasions to be told the information given out to by the advice line is wrong. Agents offering consumer credit under their own licence and not registered in their own right as an MSB (i.e. not an Agent) must register with the relevant supervisors. Cheque Exchange Ltd can not be held responsible for the Agents independent lending activity.

On a similar point people offering other MSB activities as Agents (i.e. Western Union money transfer) are given information from HMRC advice line that no further registration is required. This is not the case and if the Agent wished to offer cheque cashing with Cheque Exchange they would have to be registered under CEL’s registration number. This all gets very confusing with Agents believing we are trying to make money out of them. The Agent –Principal scenario is confusing and I recommend all Supervisors must be educated in the implications of such a business model and when and when not a business needs to be registered, in order that a standardised message is received.

16 How do Supervisors ensure a consistent approach to compliance monitoring and enforcement is taken across the anti-money laundering regime? I can not comment on this.

17 To what extent is Supervisors monitoring of compliance targeted, proportionate and risk based? In recent MSB forums the message given out to forum members is that Supervisors main focus is currently on education and guidance, with the main concentration of efforts being on those firms they know have not got adequate systems in place due to the fact they do not understand what is expected of them, or on individuals who are operating without being registered. Such firms must be classed as higher risk as they could themselves be the front for money laundering, or unwittingly help the money launderer to their success and therefore the Supervisors approach is proportionate. Firms sat underneath the controls of larger organisations
such as Cheque Exchange Ltd, where robust procedures are followed and
tightly monitored have an open working relationship with their regulator
and therefore should be classed as a lower risk.

18 How effective and proportionate is the enforcement regime?
I can not comment

Registration

19 In what ways could the registration process for Regulated Firms be
improved?
As mentioned in previous responses the registration and fees is a
complicated subject more so for us (operating as Agent/Principal) perhaps
than for others.

The many different suggested options discussed at a recent MSB forum as
to how the levy could be fairer and proportionate was met with even more
confusion. Providing varying options showed us how there is not a one
size fits all solution and most of the suggestions did not work when
applying fees to the Agent/Principal. Many options were proportionate to
business volumes which again would have been a contentious issue for us,
as to who would the volumes have been based on, CEL or the individual
Agents? Creating variance in fees would create competition within the
industry depending on the fees charged, which would not be a welcome
proposition.

Issues regarding Agents offering services with more than 1 Principal and
therefore registered 2/3 times at one site, seems unreasonable and is
something we are constantly battling with when signing up new business.
This needs addressing as HMRC do not do 3 times as much work for this
fee. The fee payable for Agents of Principals should be reduced as Agents
are taken on under the watchful eye of their Principal and therefore the
cost should be proportionate to the risk.

We are happy with the speed and the relationship we have with the
individuals within the registration team who are very helpful

Industry Practice

20 Are there barriers to implementing risk-based policies in practice? If so,
what are they?
I have already mentioned the concern regarding PEPs and how we are to
determine who is one of not –refer to other responses.

21 During the process of customer due diligence (CDD), how are risks (in
terms of likelihood and impact) taken into account to decide the type of
due diligence that will be undertaken?
For cheque cashing most of the CDD undertaken is to protect us commercially as a business and was undertaken before the money laundering regulations, as most takes a common sense approach to verifying who you are dealing with and the reason for the business.

As mentioned much earlier in my document the issue regarding ongoing monitoring is exceptionally difficult for the money transfer business we operate through MoneyGram as they do not have an account based product. As stated in the guidance 19.11 (money transmitters) ‘the business contracting with the customer is responsible for applying the CDD measures.’ We are not, nor is our Agent, the ‘contracted business’, that is MoneyGram however we have been pushed to take on full mfr responsibilities, therefore there is much confusion as to where the responsibilities lie.

22. To what extent do the Regulations support or complement Regulated Firms’ business as usual?
Previously answered in other responses

23. Are ‘fit & proper’ tests being conducted in an effective and proportionate manner?
Yes, however with the introduction of the test for the FSA (PSD) it could be considered by HM Treasury that firms already on the FSA register are not required to undertake further testing.

24. How easy or difficult is to comply with reporting and record keeping obligations?
Easy, although the reporting of SARs to SOCA is a time consuming task, which can be described as ‘paying lip service’ to, when we are told that SOCA do not look at the majority of reports made.

25. What forms of communication and engagement take place with stakeholders, from government agencies through to customers?
Have discussed in my previous responses

Customer Experience

26. How proportionate do you believe the Regulations appear once they reach the customer?
I think it is fair that customers entering into a business relationship should have suitable CDD measures undertaken. We do not expect returning these returning customers to bring ID each time, even if ID has expired. Each time a customer returns we ask to ensure they have not changed their address. Any changes to circumstances must be supported by relevant documents. If a customer cheque value changed or drawer was different we would undertake suitable verification to ensure we were positive the individual was entitled to the monies and they were indeed that person.
27. Are you able to provide customers with access to information and resources to check what information is needed from them and why? We do have the HMRC leaflets in various languages should an Agent request them, and we provide all Agents with a full laminated list of our requirements for customers, which is displayed in store in view of the customer.

Regime

28. To what extent do the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) provide an effective tool in the fight against money laundering?
All businesses adopting a standardised approach to the regime must act as a deterrent to the money launder and hopefully move such activity away from our industries. Supervisors must ensure those not registered are acted upon quickly in order that the activity is not able to be moved underground.

I’m sure the detection element of the regime could be better if SARs were reviewed. There seems little point in using a SAR to add ‘meat to the bones’ when investigating individuals. A SAR should be treated as such as the potential first signs of money laundering in action and should be treated as such.

The regime can only help to improve the reputation of industries like ours, who have in the past, been under the spotlight as the potential hotbed for money laundering activity and deemed as the seedy side of the financial industry, an opinion which is changing.

29. To what extent do the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) a proportionate response to the risk of money laundering in the UK?
The risk of money laundering in the UK is high, with some industries and sectors being deemed as riskier than others. The regime is proportionate in addressing these risks and is effective in its entirety at making it harder for the money launder to go undetected.

30. Would you say that all relevant stakeholders are able to participate in the development of the Regime?
I would like to say so, however I can not comment on other industry sectors.
I think it is good to reach out to the smaller businesses by holding conferences such as ‘Payback’ which enables such individuals to understand what exactly is affecting the industry and why the regime is in place.
Children’s Charities’ Coalition on Internet Safety

Review of the Money Laundering Regulations 2007
A Call for Evidence

In our evidence we draw attention to:

- The lack of enforcement in online environments of long-established laws governing the sale of age restricted products or services
- The way the money laundering thresholds and the regulations associated with prepaid cards have exacerbated this problem putting children and young people at risk by making it easier for them to obtain unlawful access to age restricted goods and services

Age verification

In the UK there are over twenty products or services which are subject to some kind of legally prescribed age restriction at the point of sale\(^1\). Gambling, alcohol, tobacco, knives, certain classes of video games and films are probably the best known.

In a shop or at a race track visual checks can be carried out in relation to every purchase of an age restricted product or service. If there is any doubt about the person’s age proof can be requested. If it is not forthcoming typically the sale will not proceed or the service will not be provided. Sales of age restricted products and services over the internet have grown and are set to increase further but there does not appear to have been any corresponding effort made by (even major) online retailers to ensure that, when they sell them, they are sold legally.

The Trading Standards Institute has repeatedly drawn attention to the issue of illegal online sales to minors. In May 2009 in an operation supervised by Greenwich Council trading standards officers, a 16-year-old volunteer went online and successfully purchased the following items:

- Knives from Debenhams, Amazon, Choice and Tchibo
- Age-restricted games for PS2 and PCs from HMV, Play.com and Game
- Age-restricted DVDs from Argos and Play.com
- Alcoholic drinks from Drinksdirect, M&S, Oddbins, Laithwaites

The volunteer made the purchases having bought a prepaid Splash Maestro card and a MasterCard gift card from local retailers. Both cards were registered with the volunteer’s real date of birth and address. All of the goods ordered were delivered to his home. No further checks were made at the point of delivery.

\(^1\) For a full list see [http://tiny.cc/agerestricted](http://tiny.cc/agerestricted)
In June 2009 the results of a nationwide enquiry were published. An investigation had been carried out specifically into the online sale of knives to persons under 18. The survey was conducted jointly by Southwark and Lambeth Trading Standards Officers and was sponsored by GOL (the Government of London office) and the Metropolitan Police.

44 internet sites were tested. Officers supervised volunteers aged either 14 or 15 who used their own pre-payment type cards to attempt to buy knives. The youths had obtained the cards perfectly legitimately. They submitted their true names and ages. It is illegal to sell knives to anyone under the age of 18 yet 41 of the 44 sites sold knives to the youths - a non-compliance rate of 93%. This compares to a non-compliance rate of 19% amongst high street retailers.

A number of journalists in various news outlets have also demonstrated repeatedly how easy it is for children and young people to acquire these prepaid cards and use them to obtain unlawful access to a range of age restricted goods and services.

In October 2009 the Online Purchasing of Goods and Services (Age Verification) Bill completed its passage through the House of Lords. This Private Member’s Bill was sponsored by Baroness Massey and enjoyed support across the House. The Bill fell in the Commons for want of time but had it become law it would have enabled the Secretary of State, following consultations, to draw up regulations which would have required all online retailers of age restricted products or services to introduce robust age verification systems as a condition of continuing to sell those items online. Baroness Massey’s Bill was modelled very directly on provisions which the Government had already established in the Gambling Act, 2005. These provisions became operative on 1st September, 2007 and seem to be working very well. The number of reports of minors gaining access to gambling web sites has fallen off dramatically.

**Online payments systems**

A plethora of prepaid cards using the Mastercard, Visa, Maestro and Amex networks have become available comparatively recently. There are also gift cards which work in a similar way. As noted in the case studies above, these cards are making it easier for minors to gain unlawful access to age restricted goods and services. This is due to a regulatory failure.

FSA oversight does not extend to some of the cards in question because they are promoted by financial institutions based overseas which the FSA does not regulate. Alternatively even where the FSA’s writ would otherwise run, full “Customer Due Diligence” measures only have to be applied in the following conditions or situations:

Where the product is a non-re-loadable e-money product

- the purse limit is greater than €150, or
- the purse limit is greater than €650 or the customer wishes to redeem more than £100, or
- the issuer suspects money laundering or terrorist financing

Where the product is a re-loadable e-money product

- the annual purse limit of €2500 is exceeded, or
- the annual redemption limit of €1000 is exceeded, or
- the customer wishes to send more €1000 in one single transaction, or
- the issuer suspects money laundering or terrorist financing
These may be small amounts for many purposes but they are huge amounts for others. They probably put the full range of age restricted products well within reach. Moreover because it is easy to purchase several of these cards at the same time the scale of offending or risk can increase accordingly. A supposed purse limit of 150 Euros or £100 can very easily become, in reality, a purse limit of 1500 Euros or £1,000.

In the UK’s most notorious child pornography case (Operation Ore) the typical subscription to the Texan child pornography web site was US$30 per month. Over 7,000 UK residents appeared to buy into this site using traditional, traceable credit cards. Over 250,000 people did so worldwide. Today only a complete idiot would use a traceable credit card when they could easily obtain an untraceable card and it would give them exactly the same access to exactly the same illegal items.

We think many members of the public will find it a little odd that financial products or services, particularly financial products or services sporting household brand names such as Visa and Mastercard, can be sold in shops on the High Street yet not be the subject of regulation by the FSA simply because they are provided by companies based overseas.

We appreciate that Visa, Mastercard and the other card franchises are doing a lot to try to stamp out the improper use of their online payments facilities, but the fact that they have allowed these new types of prepaid cards to emerge in the way that they have does rather run in the opposite direction and begs several questions.

We appreciate also that some of the prepaid card issuers have blocked their use on certain types of web sites e.g. sites which are specific to particular age restricted products or services such as gambling or alcohol, but many age restricted items are on sale through generic sites e.g. supermarket sites, where such restrictions cannot easily be applied.

The banks and financial institutions quite properly point out that, where the sale of an age restricted product or service arises, it is the retailer’s responsibility to determine the age of the persons buying the goods and services from them, in the online world as it is in the real world. There is no doubt that it is true but one cannot help but feel some sympathy for the retailers as the financial institutions promoting these prepaid cards have certainly not made their job any easier. In a very real sense these cards are facilitating illegal purchases. This ought to have been foreseen and prevented.

In the Greenwich and GOL case studies referred to it will be noted that the minors making the purchases used their real names and gave their true ages. With some cards it would have been very easy for them to have given false information because no checks of any kind are carried out. Some promoters make this a feature of their marketing literature, thus giving very obvious encouragement to anyone thinking about using such cards for dubious purposes. The cards can, in effect, be used anonymously and where the product or service being bought is downloadable or is consumed online there is not even the possibility of a secondary check at the point of delivery.
What can be done?

Our view is not that these cards should not exist. Our view is simply that, if they are to continue to exist, it should not be possible for them to be used anonymously or, if that is thought to be going too far, it should not be possible to use them to purchase any age restricted product or service without the vendor being required to operate, in the same way as gambling web sites, a separate means of verifying that the person making the purchase meets the specified age requirement. This could be done without necessarily having to make a full disclosure about every attribute of the purchaser i.e. it could be done by a system that simply confirmed that the purchaser has been verified by a reputable third party as being over the age of 12, 15, 18 or whatever the appropriate age limit might be.

If you have any questions about any aspect of this evidence or would like any further information, please do not hesitate to contact me.

Yours,

[Signature]

John Carr
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Children's Charities' Coalition on Internet Safety
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November, 2009
David Lewis  
Head of Anti-Money Laundering  
Financial Crime 3/15  
International and Finance  
HM Treasury  
1 Horse Guards Road  
London  
SW1A 2HQ

10 December 2009

Dear David

Review of Money Laundering Regulations 2007

The Chartered Institute of Public Finance and Accountancy (CIPFA) welcomes the opportunity to comment on the Call for Evidence Review of the Money Laundering Regulations 2007 published by HM Treasury.

CIPFA is one of the leading professional accountancy bodies in the UK and the only one which specialises in the public services. It is responsible for the education and training of professional accountants and for their regulation through the setting and monitoring of professional standards. Uniquely among the professional accountancy bodies in the UK, CIPFA has responsibility for setting accounting standards for a significant part of the economy, namely local government. CIPFA's members work (often at the most senior level) in public service bodies, in the national audit agencies and major accountancy firms. They are respected throughout for their high technical and ethical standards, and professional integrity. CIPFA also provides a range of high quality advisory, information, and training and consultancy services to public service organisations. As such, CIPFA is the leading independent commentator on managing and accounting for public money.

A number of CIPFA members engage in their profession as self-employed practitioners and they are regulated by the Institute through our Practice Assurance Scheme (we currently have 373 such members registered in the scheme). It is under the Practice Assurance programme that the Institute supervises those members for compliance with the Money Laundering regulations.

Overall conclusions

You will have received a full response from Felicity Banks of the ICAEW, on which we have been consulted as a member of the CCAB and Accountants Affinity Group, and we endorse the sentiments set out in that response.

In addition I would like to stress that CIPFA welcomes the Treasury's commitment to continuously monitor regulatory burdens and, as part of this, to keep the UK Anti-Money Laundering (AML) regime under review.
However, changes to the requirements of the Money Laundering Regulations 2007 (the 2007 Regulations) should only be made where they can be effected without damaging the current effectiveness of the regime and without compromising the cost effectiveness of existing monitoring and compliance arrangements.

The AML regime has changed a great deal in the last few years and the most recent changes (the 2007 regulations) are still bedding in in some areas. It might therefore be advisable to refrain from any significant change to the AML regime, as it impacts on the regulated sector and their supervisors, for the time being. Once we have more experience of how the current regime is operating we will be in a better position to judge if changes are needed and if so in what areas and to what extent.

However some minor reforms could be made now which would improve the regime with minimal impact upon the procedures of practitioners and supervisors. These are as follows:

**Improvements to enable the consistent application of the supervisory requirements**

This would include measures to bring the supervision of Accounting Service Providers (ASPs) by HMRC into line with other ASP supervisors. We would also recommend the removal of the distinction between Part 1 and Part 2 bodies in Schedule 3 of the 2007 Regulations. As the professional bodies are working together closely through the various supervisor fora, there is a large degree of convergence between the supervisory approaches that renders the distinction largely unnecessary.

For example CIPFA and ICAEW share the same practice assurance methodology and inspection regime, with the ICAEW conducting assurance visits on CIPFA’s behalf. Despite this high degree of synergy, the ICAEW is listed as a Part 1 body, whilst CIPFA is listed in Part 2. In the absence of any clear criteria which set out how the Part1/Part 2 determination is made, it is difficult to see a clear rational for why CIPFA and ICAEW members should treated differently under the 2007 Regulations when they share similar supervision.

We trust that you will find these comments useful in developing your proposals further. If you would like to discuss any of the points raised or how CIPFA might assist further in the development of this initiative, please do not hesitate to contact CIPFA’s anti-money laundering lead, Nigel Keogh, at nigel.keogh@cipfa.org.

Yours sincerely

**Thomas Lewis**  
Assistant Director – Policy and Technical  
Tel: +44(0)20 7543 5619  
E-mail: Thomas.lewis@cipfa.org
Review of the Money Laundering Regulations 2007

Response from Citizens Advice

December 2009
Introduction

The Citizens Advice service is an independent network that helps people resolve their money, legal and other problems. It provides information and advice, and influences government and organisations to bring about change in policies and laws. Advice provided by the Citizens Advice service is free, independent, confidential, and impartial, and available to everyone regardless of age, race, sex, disability, sexuality or nationality. Most Citizens Advice service staff are trained volunteers, working at more than 3,000 service outlets across England, Wales and Northern Ireland.

General comments

Citizens Advice welcomes the opportunity to respond to this consultation on the money laundering regulations 2007 (‘the regulations’). Our evidence shows that the practical application of the regulations and the associated Joint Money Laundering Steering Group (JMLSG) guidance (‘the guidance’) can make it difficult for some people to gain access to banking services. The qualitative data we receive from bureaux indicates that these problems can particularly affect vulnerable groups such as non-UK citizens, young people, elderly people, those who have experienced domestic violence, bereavement or relationship breakdown, the homeless and those who have recently been released from prison.

This is of great concern to us as the lack of a bank account can lead to exclusion from a range of financial services. For example, people without a bank account may face high costs for transactions such as cashing cheques, and are unable to take advantage of direct debit discounts to fuel bills. Furthermore, it may be impossible to receive wages or certain types of benefit payments without a bank account. Such difficulties can also serve to frustrate wider Government aims, such as those to increase access to education, to encourage people back to work, and to reduce financial and social exclusion.

People without access to bank accounts are often the most vulnerable members of society, and financial exclusion may compound other forms of social and economic disadvantage. While Citizens Advice welcomes the recent announcement that the shared goal between the Government and the banks to halve the number of adults living in households without access to a bank account has been achieved,\(^1\) we are concerned that measures to combat financial exclusion are likely to have diminishing returns; as more people gain access to banking services, those who remain unbanked are likely to be increasingly difficult to reach. Addressing the barriers that can prevent, or put off, people from opening bank accounts therefore becomes even more pressing.

Over the last three years, Citizens Advice Bureaux (CABs) dealt with more than 5,000 problems per year about opening a bank account or post office card account (see chart one below). Our qualitative evidence indicates that the huge majority of these relate to clients who have had problems opening a bank account because they are unable to provide standard identification. Based on data from the first half of this year, we anticipate that in 2009-10 bureaux will deal with nearly 6,000 problems of this nature.

In 2008-09, bureaux provided help to 5,061 clients in regard to this issue.\(^2\) Of the 2,543 of clients who provided information about their income, 37 per cent had an income of under £400 pcm. A further

\(^1\) Number of households without bank accounts cut by half, HM Treasury, Press Release, 20 October 2009

\(^2\) Please note that bureaux saw 5,061 clients about 5,593 problems relating to opening a bank account or POCA
13% had an income of £400-£599 pcm and 22 per cent received between £600 and £700 pcm (see chart two below).

Chart 1

Problems with opening a bank account or POCA as reported by CABs in England and Wales

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of problems reported</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006-07</td>
<td>6000</td>
</tr>
<tr>
<td>2007-08</td>
<td>5500</td>
</tr>
<tr>
<td>2008-09</td>
<td>6000</td>
</tr>
<tr>
<td>2009-10</td>
<td>6500</td>
</tr>
</tbody>
</table>

(estimate based on Q1 and Q2 data)

Chart 2:

Income profile of clients reporting difficulties opening a bank account or POCA (2008-09)

<table>
<thead>
<tr>
<th>Income (per calendar month)</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>£400 - £599</td>
<td>40</td>
</tr>
<tr>
<td>£600 - £999</td>
<td>30</td>
</tr>
<tr>
<td>£1,000 - £1,499</td>
<td>20</td>
</tr>
<tr>
<td>£1,500 - £1,999</td>
<td>15</td>
</tr>
<tr>
<td>£2,000 - £2,499</td>
<td>10</td>
</tr>
<tr>
<td>£2,500 - £2,999</td>
<td>5</td>
</tr>
<tr>
<td>&gt; £3,000</td>
<td>0</td>
</tr>
</tbody>
</table>
Response to specific questions

We are only responding to questions relevant to the problems CAB clients face.

31. How satisfactory is your experience in situations where you believe you have come into contact with the regulations?

The evidence we receive about our clients' experiences in dealing with regulated firms, in which they come into contact with the regulations, generally relates to opening new bank accounts. We also see some cases where clients have difficulty in making withdrawals or transactions on existing accounts. Our evidence suggests that some banks, or perhaps some branches of some banks, deny accounts or transactions to people who have difficulty in meeting standard identity requirements. Some clients are told explicitly that the reason for this is the need for banks to comply with the money laundering regulations. We find that some banks fail to deal sympathetically with clients who are in particularly difficult circumstances, and apply the regulations with excessive strictness. For example:

A CAB in Hertfordshire saw a client who had moved to the UK from India when she married. She had experienced domestic violence and a neighbour had called the police. As a result of this, the client left home and went to live with some friends. She was looking for work and needed to open her own bank account in order to secure a job and receive her wages. Although she could provide her passport, visa and national insurance number, she was unable to provide any acceptable proof of her current address and was so denied an account.

A Staffordshire CAB reported that they saw a client who had recently been granted refugee status in the UK. He wished to apply for an integration loan of £1,000 and needed a bank account for it to be paid into. On attempting to open an account, he was told that his Home Office status document would not be accepted as proof of identity, and was told he needed to produce a passport, which he did not have. The maximum sum of integration loan he could apply for in cash was £450, less than half what he was actually entitled to. This client lost out on an extra £550, simply because he was unable to open a bank account.

The clients who have these sorts of difficulties are frequently on low incomes. The lack of an account often compounds their economic disadvantage, and can make it very difficult for them to access money to which they are entitled. Our clients are often seeking to open only a basic bank account, which has no credit facilities and into which they would be likely to pay only small sums. It seems therefore, that the level of scrutiny to which they are subjected may be disproportionate to the level of risk they pose to the firm. The guidelines state that the identification required for a basic bank account may be lower than that required for other, higher risk products, and that firms should have processes for ensuring that further checks are made as and when appropriate. Our evidence indicates that clients are facing stringent checks even when applying for low risk products; perhaps because banks do not have robust processes in place for making checks at a later stage, should a customer apply for further products.

Bureaux also report cases which involve clients who have held accounts for extremely long periods of time with the same banks, often conducting few transactions. When their account was opened they provided all the necessary documentation and evidence. However, more recently, when they attempt
to make a larger or more unusual transaction they are asked — much to their shock and surprise — to provide ID, which they may struggle to do. The fact that such transactions may also be of great importance or urgency can make the inflexible request for ID even more frustrating. For example:

An 84-year old CAB client in Berkshire was unable to withdraw money from her investment account. She was told that she needed to provide a passport or driving licence, neither of which she held. She asked another bank, with whom she had dealings, to provide documentation that she could use to show her identity, but was told that they could only do so upon receipt of proof of identity.

We consider that the flexibility present in the JMLSG guidance, which enables banks to accept a wider range of ID than is often made clear, should also be applied in these situations.

32. How easy is it to provide acceptable forms of identification to the businesses you deal with?

As mentioned above, CAB clients can experience significant problems in opening bank accounts when they are unable to provide standard evidence of their identity and address. Although the guidance stresses that firms should be flexible in their approach to what constitutes acceptable identification, we frequently find that banks are unwilling to follow this and are insisting on the production of a passport or driving licence.

A client from a CAB in Buckinghamshire was told he could not open a basic bank account because he did not have a passport or driving licence. He was therefore unable to receive his housing benefit as the district council could not pay the benefit into his post office card account. He was not informed by the bank that any other form of ID would be acceptable.

A client who sought advice at a Lincolnshire CAB was told by a bank she could not open an account to have her pension paid in. The client was 76 years old and had recently left her husband, who was suffering from dementia and had been violent towards her. She had left home with nothing — no belongings or clothes — and had no access to money as her pension was being paid into the account she held jointly with her husband, and she was withdrawing this. The client's passport was at her matrimonial home, to which it was not safe to return, and she did not have a driving licence. She did obtain a letter from the DWP confirming her pension entitlement and her current address, but this was not deemed acceptable, despite guidance to the contrary.

Citizens Advice believes that the problems faced by our clients are the result of the (mis-)application of the regulations and the guidance by individual firms and individual branches, rather than the content of the regulations or the guidelines themselves. While the content of the guidance is welcome and comprehensive, we are concerned that it is not well communicated to bank staff, third party intermediaries such as CAB advisers, or the general public.

A CAB in Leicestershire saw a client who had been turned down by three different banks. He wanted to begin employment through an agency and was unable to do so until he had a bank account. He was able to provide a passport but was having difficulty proving his address as all utility bills were in his wife's name. He has an NHS card, which showed his address, but this was not accepted and any of the three banks he approached.
We believe that significant improvements are required in communication to the public about the guidance and its implications. Furthermore, we believe that it would be of great help for a customer to be given information by the bank about the types of alternative identification that would be acceptable if they are unable to provide standard documents. We suggest that a leaflet provided to customers who are initially turned down because of non-standard identification would be particularly helpful.

33. How often and in what contexts have you been asked to provide repeat information to businesses with which you have an ongoing relationship?

The greater part of our data relates to clients having difficulties when opening new bank accounts, but as mentioned above, we do also hear of some clients being asked for identification in order to complete transactions. For example:

A CAB in Yorkshire reported the case of a client from China, who had been asked to prove her identity after depositing two sums amounting to £3,500. She had opened the account some years previously using her Home Office application registration card. However, although it included a chip and a photograph of the client, it was not accepted as evidence for her transaction.

34. If you have had to provide information to establish beneficial ownership, how straightforward was that process?

Citizens Advice has no evidence to report on customers’ experiences of providing information to establish beneficial ownership.

35. How does your customer experience compare across different sectors, between different sized firms and internationally?

Citizens Advice has no evidence to report on customers’ experiences of the regulations across other sectors, between different sized firms and internationally.

36. How easy do you find it to check what information is needed from you and is it clear to you why the information is needed?

As mentioned above, Citizens Advice is concerned that information about the types of documentation required from customers is not well communicated to the public, and that customers may not be well-prepared for their encounters with bank staff. The emphasis on passports and driving licences may discourage some people from even approaching a bank, as they expect – often with good reason – that they will be turned away. When our clients do approach a bank, and are turned away, we frequently find that they have not been informed that other types of identity document may be acceptable. This experience risks reinforcing a feeling that banking is ‘not for them’ and thus is in tension with wider attempts to increase financial inclusion.

37. Overall, based on what you understand about why the regulations exist, and the kinds of procedures regulated firms have in place, do you feel that the burdens they impose on you are reasonable?
Citizens Advice understands that the regulations are necessary and we welcome the production of guidelines that seek to protect against unintended consequences, by encouraging flexibility and actively seeking to avoid reinforcing financial exclusion. However, there is a failure of some banks and bank staff to use a common-sense approach and to properly apply the guidance when customers are unable to provide standard identification, and the regulations are frequently cited as justification for refusal. This has important repercussions, and can place unreasonable and disproportionate burdens on clients who face other forms of social and economic disadvantage.
BY E-MAIL ONLY

Review of the Money Laundering Regulations 2007
Financial Crime Team
HM Treasury
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SW1A 2HQ

E-mail: mlr.review@hm-treasury.gsi.gov.uk

11 December 2009

Dear Sirs

Response to HM Treasury's review of the Money Laundering Regulations 2007: A Call for Evidence

The City of London Law Society ("CLLS") represents approximately 13,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. The attached submission in response to HM Treasury's Call for Evidence is submitted by the CLLS Regulatory Law Committee (the "Committee") and was prepared by the CLLS Anti-Money Laundering Working Sub-Group which falls under the umbrella of the Committee.

Members of the Committee advise a wide range of firms in the financial markets including banks, brokers, investment advisers, investment managers, custodians, private equity and other specialist fund managers as well as market infrastructure providers such as the operators of trading, clearing and settlement systems.

We would be delighted to discuss the attached submission with you. You may contact me on +44 (0)20 7295 3233 or by e-mail at margaret.chamberlain@traverssmith.com.
Yours faithfully,

Margaret Chamberlain
Chair CLLS Regulatory Law Committee

Members of the Committee:

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David Berman, Macfarlanes
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We acknowledge that some of the questions set out in HM Treasury's Call for Evidence relate to matters in the Third Money Laundering Directive and that statutory change may be difficult.

1. To what extent is the scope of the Regulations and their application to business activity appropriately risk-based?

One of the issues raised by the Call for Evidence is whether more activities should be proscribed. We do not believe that there are any further activities which should be proscribed at this stage. As a general rule, proscribing activities limits the ability to apply a risk based approach. However, we would acknowledge that proscription in relation to shell banks and anonymous accounts remains appropriate.

As regards the application of the Regulations to the legal profession, we note that the Risk Based Approach Guidance for Legal Professionals (RBA Guidance) issued by the Financial Action Task Force (FATF) states as follows:

"It is possible that more than one legal professional will be preparing for or carrying out a transaction, in which case they will all need to observe the applicable CDD and record-keeping obligations. However, several legal professionals may be involved in a transaction for a specified activity but not all are preparing for or carrying out the overall transaction. In that situation, those legal professionals providing advice or services (e.g. a local law validity opinion) peripheral to the overall transaction who are not preparing for or carrying out the transaction may not be required to observe the applicable CDD and record-keeping obligations."

We believe this is a sensible and proportionate approach. However the scope of the UK legislation is wider – the definition of "independent legal professional" in the Regulations states that "a person participates in a transaction by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction".

The Law Society Practice Note seeks to clarify: "The Treasury has confirmed that the following would not generally be viewed as participation in financial transactions:

* ...

* provision of legal advice

* ...

If you are uncertain whether the Regulations apply to your work, seek legal advice on the individual circumstances of your practice or simply take the broadest of the possible approaches to compliance with the Regulations."

Despite the above guidance, where legal professionals provide advice or services which are peripheral to the overall transaction and who are not preparing for or carrying out the transaction, it remains unclear as to whether they would be required
to observe the applicable CDD and record-keeping obligations. In our view, due to the lack of clarity and the risk of potential criminal sanctions, there is a concern that many legal professionals may feel obliged to apply the Regulations in full in situations where the processes and procedures are disproportionately burdensome when compared to the potential money laundering risks.

2. To what extent are the Customer Due Diligence (CDD) requirements set out in the Regulations a proportionate response to the threat from money laundering?

General comment

We believe that it is self-evident that the gathering of CDD information assists in the fight against money laundering, but cannot, by itself, remove or even materially mitigate the risk of money laundering. It is important that the costs associated with putting in place systems and procedures to assist in the document gathering process do not become disproportionately high for firms when compared to the rate at which the authorities successfully prosecute actual money launderers.

Simplified due diligence

Simplified due diligence is intended to apply in lower risk situations. However, we consider that what should be a relatively simple process is more complicated than it needs to be in two particular scenarios:

1. By defining investment firms by reference to MiFID and excluding persons falling within Article 2 of MiFID, it appears that not all persons and/or firms regulated under the Financial Services and Markets Act 2000 are covered. This causes issues in trying to assess whether an investment firm will qualify for simplified due diligence, and whether more time and effort is spent on what are essentially low risk cases. In our view, any client which is FSA regulated (or, in the case of an individual, FSA approved) should qualify for simplified due diligence. Furthermore it is not entirely clear whether simplified due diligence can be applied to subsidiaries of FSA regulated entities, although we would expect this to be the case.

2. In the case of companies whose securities are listed the question is whether the entity is subject to the disclosure requirements that are "consistent with" EU legislation (see the definition of "regulated market" in the Regulations). It is, however, unclear to us the extent to which the disclosure must be sufficiently consistent with Community legislation to enable them to fall within simplified due diligence. On one interpretation, a firm could require that all provisions in the relevant directives must be faithfully reflected in the relevant market's obligations. Other firms however may consider it enough to satisfy the major provisions in the relevant directives. Other firms may not feel able to make a judgment on the issue at all, with the result that clients who should qualify for simplified due diligence are denied the benefits of it. In order to have clarity on the issue, it might be helpful for there to be an official list of exchanges which meet the requirements. This would limit the expense involved in trying to establish whether simplified due diligence can be applied and result in a consistent approach across the regulated sector.
PEPs and source of funds

In summary, the source of funds is often difficult to ascertain. PEPs may be particularly wealthy in any event; in these circumstances, is it, for example, sufficient to rely on information in the public domain as regards a person’s wealth? Or would we have to enquire further? Whilst guidance has sought to assist on these issues, there is no clear-cut procedure to be adopted— in the context of criminal legislation, this is an unacceptable position.

Furthermore, to require that enhanced due diligence be applied to all PEPs on a ‘one-size-fits-all’ approach is, we believe, contrary to a risk-based approach. The majority of PEPs are not high-risk but the legislation requires extra measures in all cases, regardless of the level of risk attached to the PEP.

PEPs are defined, broadly, as individuals who have been entrusted with a public function at a national level around the world or in international bodies, their immediate families and known close associates. When ascertaining whether a person is a known close associate, a relevant person must have regard to independent data and publicly known information. However, although information may be publicly available, it does not follow that it will be readily available to a regulated person conducting CDD checks. The requirement means that firms are forced to invest in expensive software applications even where the size of their businesses and their exposure to PEP-risk would not warrant this type of investment.

Domestic PEPs

We do not believe that the legislation should be extended to domestic PEPs. First, this would go beyond the requirements of the Third Money Laundering Directive. Second, PEPs are also individuals who must carry out day-to-day transactions— in the absence of an increased risk there seems to be no justifiable reason to subject them to enhanced due diligence. The rationale for looking more closely at foreign PEPs is that we should ask additional questions as to why the individual is doing business in another jurisdiction. Including a requirement to apply enhanced due diligence to all PEPs regardless of jurisdiction is not proportionate.

Beneficial ownership

We do not think it is clear as to why it should be necessary to establish whether there is a beneficial owner, and to identify the beneficial owner in all cases. In our experience, this often leads to firms chasing negative statements (i.e. that there is no beneficial owner), invariably from the client itself.

We refer to para. 114 (b) of the RBA Guidance issued by FATF which states that law firms should “identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner such that the legal professional is reasonably satisfied that it knows who the beneficial owner is. The general rule is that clients should be subject to the full range of CDD measures, including the requirement to identify the beneficial owner in accordance with this paragraph. The purpose of identifying beneficial ownership is to ascertain those natural persons who exercise effective control over a client, whether by means of ownership, voting rights or
otherwise. Legal professionals should have regard to this purpose when identifying the beneficial owner. *They may use a risk-based approach when determining the extent to which they are required to identify the beneficial owner, depending on the type of client, business relationship and transaction and other appropriate factors...*” [Emphasis added]. We believe that this statement is consistent with the Third Money Laundering Directive and we are strongly of the view that this should be implemented in UK legislation and in practice.

3. To what extent are Customer Due Diligence (CDD) requirements effective in the fight against money laundering?

In our view, CDD requirements do not, by themselves remove, or materially mitigate, the risk of money laundering. They can help to underpin the more important ongoing monitoring process - but it is important that they do not become the 'tail that wags the dog'.

4. To what extent do the record keeping and policy and procedural requirements upon Regulated Firms support their anti-money laundering efforts?

*Reliance*

We do not feel that the reliance provisions work in practice for three key reasons:

(1) Liability remains with the relying party;

(2) Restrictions on providing information;

(3) The fear of civil claims.

*Liability issues*

The Third Money Laundering Directive envisages that “in order to avoid repeated customer identification procedures, leading to delays and inefficiency in business, it is appropriate, subject to suitable safeguards, to allow customers to be introduced whose identification has been carried out elsewhere.” However the problem is that FATF Recommendation 9 and the Directive both provide that where an institution or person covered by this Directive relies on a third party, the ultimate responsibility for the customer due diligence procedure remains with the institution or person to whom the customer is introduced.

In our experience, firms are reluctant to rely on others particularly as the liability remains with the party seeking to rely and, conversely, firms are reluctant to be relied upon for fear of civil claims being brought against them. Thus the practice is often for firms to duplicate the verification process, thereby incurring additional and unnecessary costs. Therefore in order for reliance to be of any practical benefit, the liability issue would have to be addressed, allowing a firm to rely, without liability, on another firm in circumstances where it is objectively reasonable for it to do so - e.g. where the other firm is itself regulated under the Third Money Laundering Directive (or equivalent).
One of our key concerns is the fact that the institution or firm that is relying upon another person remains liable and could face potential criminal sanctions in the event that the CDD evidence is deemed to be insufficient. In the absence of actually obtaining the documentation from the other party, it is not possible to assess whether the standard of due diligence applied will meet the expectations of the institution or firm seeking to rely upon them. This is largely due to the differences in the application of the risk-based approach.

A number of law firms have indicated that when documents are in fact requested, as a result of the difference in applying the risk-based approach, the documentation is not adequate for their purposes (leaving them concerned about criminal penalties). One example of where there may be a difference in application of the risk-based approach stems from the difference in the way that the equivalence provisions are applied for the purposes of determining whether simplified due diligence applies. By way of explanation:

- In the case of financial institutions simplified due diligence can be applied to a non-EEA entity which is subject to requirements equivalent to those set out in the Third Money Laundering Directive. HM Treasury issued a list of jurisdictions for this purpose; however it included a statement that “Firms should note that the list does not override the need for them to continue to operate risk-based procedures when dealing with customers based in an equivalent jurisdiction”. Accordingly the approach to simplified due diligence differs from firm to firm. Some firms may completely rely on the list whilst others may take precautionary measures in relation to certain jurisdictions on the list where corruption is perceived to be more prevalent. Thus the level of information on file will also differ.

- Similarly, as we outlined in our response to Question 2 above, in the case of companies whose securities are listed, there is an issue as to whether the entity is subject to the disclosure requirements that are “consistent with” EU legislation. However we consider that it is unclear as to the extent to which the disclosure must be sufficiently consistent with Community legislation to enable them to fall within simplified due diligence. On one interpretation, a firm could require that all provisions in the relevant directives must be faithfully reflected in the relevant market’s obligations. Other firms however may consider it enough to satisfy the major provisions in the relevant directives. Again this means that different approaches will be taken towards simplified due diligence.

This problem is also exacerbated by the different rules introduced in different EU jurisdictions; for example, the relevant Dutch rules require the collection of name and date of birth details for the representative of an entity. This may not be required in other EU member states.

In summary, unless a firm knows that another entity has procedures that match its own standards and expectations, that firm is taking a risk in using the reliance provisions because liability remains with it. It should however be the case that a
person can assume that another party has put sufficient procedures in place and can also rely on their risk-based judgment.

We recommend that a presumption is put in place that, if the party being relied upon is regulated for AML purposes, it has appropriate standing/reputation/CDD processes.

**Inability to supply documentation**

Another issue that impacts upon the effectiveness of the reliance provisions is the fact that many regulated firms now use a number of service providers to supply electronic verification which often provides evidence of incorporation, registered address and director or shareholder details. All of the information obtained in this way is subject to licence and therefore cannot be passed on. There are also data protection issues to be considered in the context of personal documentation. This requires consent from the relevant individual before being released, which may not always be easy to obtain. Accordingly this sometimes leads to gaps in the CDD documentation that is provided to a third party.

This means that, if a firm signs up to the reliance provisions, not all of the relevant information can be provided upon demand, even if the information has been collected, leaving the party relying on them at risk of criminal sanctions. This may even stop firms from providing reliance certificates. The better position would be if firms could rely on a statement listing generic details of the evidence that has been collected.

**Civil claims**

Where firms have received requests to be relied upon, many are reluctant to do so in case it gives rise to a subsequent civil claim if the risk-based judgment turns out to be misjudged. Many firms therefore seek to provide the information upfront (subject to licensing and data protection laws).

However, there have been instances in the UK where the party being relied upon has been informed that the evidence is insufficient. This results from a different approach as to what is required in the circumstances; for example some firms in the UK still have procedures customarily requiring passport details of directors of companies whereas a number of companies only request such information in high risk situations. Furthermore some firms still expect to receive a utility bill dated within the last three months for individuals (even though the client may have been taken on some time before the reliance certificate is provided). In each case, had those firms with less stringent documentation requirements agreed to be relied upon, they would not necessarily be in a position to comply with the more stringent requirements of the relying party, thereby potentially exposing the party being relied upon to civil claims. Firms may therefore be more likely to simply provide what they can and leave the other party to complete their own CDD checks.

5. To what extent do the Regulations provide Supervisors with appropriate compliance monitoring and enforcement powers and penalties to deter non-compliance?
The criminal offences of engaging in money laundering and non-reporting of suspicious transactions, including where the regulated person was not himself suspicious, but on objective facts should have been, are, in our view, adequate. However, it is likely that supervisory authorities will be better placed to encourage relevant persons and firms to have systems in place which are responsive to developing risk areas without resorting to criminal sanctions, except in the most egregious cases.

6. To what extent do the Regulations provide for a suitable system of registration and ‘fit and proper’ testing to be established and carried out on a risk basis?

No specific comments.

7. Are the requirements of the money laundering Regulations compatible with and complementary to the requirements of a) other aspects of the UK’s broader anti-money laundering regime /legislation and b) international standards/practices?

We believe that there is an overlap between ongoing monitoring and the provisions of the Proceeds of Crime Act 2002, giving rise to dual criminality. This was not envisaged by the Third Money Laundering Directive and we believe that a more proportionate response would be to introduce a system of civil fines.

8. How well does HMT engage with you in developing the Regulations and are the requirements of the Regulations clearly communicated?

We would welcome a more detailed discussion of the issues raised in this submission that affect law firms.

Questions about Guidance

9. To what extent does Guidance promote both an effective and proportionate approach to anti-money laundering?

We believe that government-approved guidance is an essential element of a proportionate and pragmatic AML regime.

10. How clear and consistent is Guidance including whether Guidance is consistent for those sectors where more than one supervisor exists and generally across sectors?

No specific comments.

11. In what ways does Guidance assist with a risk-based implementation of Customer Due Diligence (CDD) measures within your sector?

Please see our comments above on simplified due diligence.

12. In what ways does Guidance assist and support Regulated Firms’ anti-money laundering policies and procedures?
Please see our comments in response to Question 9.

13. How is the Guidance made accessible and are there opportunities to engage in its formulation?

Given its importance, we believe that the JMLSG Guidance should be made available in a fully-navigable web-based format for all firms (i.e. like the FSA Handbook on the FSA website). At the moment this is only available for firms which subscribe. Those who do not subscribe have to rely on PDF documents which are amended by subsequent PDF documents from time to time (but without consolidated, updated versions).

Questions about Supervision

14. To what extent does the supervisory framework support an effective, risk-based anti-money laundering regime and compliance with the Regulations?

No specific comments.

15. In what ways do Supervisors communicate and engage with the firms they regulate to ensure a sound understanding of legal duties and responsibilities under the Regulations?

No specific comments.

16. How do Supervisors ensure a consistent approach to compliance monitoring and enforcement is taken across the anti-money laundering regime?

No specific comments.

17. To what extent is Supervisors’ monitoring of compliance targeted, proportionate and risk based?

No specific comments.

18. How effective and proportionate is the enforcement regime?

As highlighted above, we believe that the inclusion and pursuit of criminal penalties (whilst an option under the Third Money Laundering Directive) is not necessarily a proportionate approach.

19. In what ways could the registration process for Regulated Firms be improved?

No specific comments.

Questions about Industry Practice

20. Are there barriers to implementing risk-based policies in practice? If so, what are they?
No specific comments.

21. During the process of customer due diligence (CDD), how are risks (in terms of likelihood and impact) taken into account to decide the type of due diligence that will be undertaken?

Such an analysis is not necessarily permitted e.g. the requirements in relation to PEPs are fixed regardless of the risks in terms of likelihood or impact.

22. To what extent do the Regulations support or complement Regulated Firms’ ‘business as usual’?

No specific comments.

23. Are “fit and proper” tests being conducted in an effective and proportionate manner?

No specific comments.

24. How easy or difficult is it to comply with reporting and record keeping obligations?

No specific comments.

25. What forms of communication and engagement take place with stakeholders, from government agencies through to customers?

See comments above.

Questions about the Customer Experience

26. How proportionate do you believe the Regulations appear once they reach the customer?

No specific comments.

27. Are you able to provide customers with access to information and resources to check what information is needed from them and why?

No specific comments.

Questions about the Regime

28. To what extent do the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) provide an effective tool in the fight against money laundering?

See comments above.
29. To what extent are the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) a proportionate response to the risk of money laundering in the UK?

See comments above.

30. Would you say that all relevant stakeholders are able to participate in the development of the Regime?

No. See comments above.
Response to the Call for Evidence on the Money Laundering Regulations 2007

Please see separate attachment for responses to questions 1-30

31. How satisfactory is your experience in situations where you believe you have come into contact with the Regulations?

As a former HMG government official working on policy to promote international cooperation on anti-money laundering I have an understanding of anti-money laundering legislation, the Financial Action Task Force’s work and that of other international frameworks established to tackle money laundering. As a private individual now living overseas who finds it almost impossible to open an account in UK with new financial institution or even a financial institution where I have an existing relationship I am unconvinced that the Regulations as applied by the regulated firms with which I have had contact are proportionate.

I moved to Australia in 1999 to join my Australian partner and have sought to keep some savings in UK (on which I pay UK tax). With the passage of time the terms and conditions of bank accounts and the performance of managed funds and other saving vehicles become less (or occasionally more) attractive. Consequently, I have sought to transfer my savings to other products. Almost every product I try to access is open to UK residents only, which precludes me from applying for new accounts. This is even with institutions with whom I have had a relationship for over 20 years.

Recent examples of what could be interpreted as disproportionate application of the Regulations

Barclays Bank
My two Woolwich instant access accounts became part of Barclays Bank when they took over the Woolwich. I wrote to Barclays using my Australian address asking to consolidate the accounts into a single online bank account which was paying marginally more interest than the other accounts. I received a reply on 22 October 2009 advising I could not have online account as I did not have a current account and that I should go into a local branch to open an account – not easy from Australia. The total balance in these accounts is less than £5,000.00.

Santander
As a result of Santander’s takeover of Abbey National I hold 100 Santander shares (I received these Abbey National shares result of Abbey National’s float in 1989). I wish to have dividends automatically reinvested, instead of receiving a cheque but the application form to arrange this requires me to be a UK resident see http://www.santandershareholder.co.uk/promotions/ssa
I have also had polite refusals from UK financial advisers I have approached to manage my portfolio. One firm I approached use the same investment funds that I use in Australia but seemed unwilling to approach my Australian financial adviser for verification of my details.

**UK residency requirement used a pretext to reduce the costs of compliance?**
While financial institutions may try to justify the UK residency requirement on tax grounds I suspect it is the cost of carrying out due diligence on an overseas resident that has led to them imposing the UK residency requirement on customers. On more than one occasion I have written to a financial institution offering to meet a higher standard of evidence (enhanced due diligence) than they would require of a UK resident but I have not had my offer accepted. No financial institution has offered to accept evidence of my compliance with Australian anti-money laundering Regulations.

**Loss of revenue to UK economy and government revenue**
Increasingly, as a result of my inability to manage my UK savings effectively, I am reluctantly inclined to transfer all of my UK savings to Australia. While my total savings portfolio is insignificant it will mean less money in the UK economy, reduced tax paid to HMRC on my UK income and an increased likelihood that I will lose my UK domicile and therefore any liability for inheritance tax attached to my estate.

32. **How easy is it to provide acceptable forms of identification to the businesses you deal with?**
This is reasonably straightforward with a stable address and employment. However, people are far more transient than they used to be eg working or travelling overseas for a year which makes proving one’s identity that much harder.

33. **How often and in what contexts have you been asked to provide repeat information to businesses with which you have an ongoing relationship?**
Occasionally, though cannot provide specific examples.

34. **If you have had to provide information to establish beneficial ownership, how straightforward was that process?**
N/a

36. **How does your customer experience compare across different sectors, between different sized firms and internationally?**
I have lived in Australia for 10 years and have had no difficulty complying with the ‘know your customer’ requirements flowing from Australian anti-money laundering legislation. I do not recall any problems opening a bank account when I first arrived and was able to comply with the points system attached to documentary evidence.
37. Overall, based on what you understand about why the Regulations exist, and the kinds of procedures Regulated Firms have in place, do you feel that the burdens they impose on you are reasonable?

I feel these burdens are unreasonable and in my case restricting my choice as a consumer to access a range of UK financial products.

Though hearsay only, I understand that former colleagues on overseas postings with the FCO are finding it a challenge to access UK based financial products, and yet they are usually overseas for shortish periods of time and retain close ties to UK.

I venture to suggest that regulated firms covered by the anti money laundering regime may have taken a sledge hammer to crack a nut. In other words the majority of law abiding clients of financial and professional services are being penalised by regulated institutions concerned they will be found wanting in their application of the anti-money laundering Regulations.

Education and Information
Analysis of the volume of suspicious reporting transactions and the percentage of these that prove to be linked to criminal activity will be an important element to the Treasury review. While the RCPo’s most recent annual report carries a number of case studies I suggest that there might be merit in seeking additional media coverage for successful prosecutions to continue to educate the public about money laundering or encouraging regulated firms to provide greater information to their clients about why they face regular requests for evidence of their identity. Compliance may not be a sufficient reason for clients but an explanation in plain English of why the Regulations are in place may be welcome by some people.

Table

| 1. I understand the reasons why a Regulated Firm places these sorts of demands on me but I believe the burden is proportionate. | x |
| 2. I understand the reasons why a Regulated Firm places these sorts of demands on me but I believe the burden is not proportionate. | ✓ |
| 3. I do not understand the reasons why a Regulated Firm places these sorts of demands on me but neither do I find them burdensome. | x |
| 4. I do not understand the reasons why a Regulated Firm places these sorts of demands on me and I find their demands burdensome. | x |

In summary I consider the Regulations to be unreasonable. However, if they cannot be wound back I suggest improved community engagement campaigns are required to explain why the regulations are necessary.
HM Treasury Consultation:
Review of the
Money Laundering Regulations 2007
The CLC’s response
December 2009
The CLC’s response to HM Treasury’s Consultation
Review of the Money Laundering Regulations 2007

Introduction

1. The Council for Licensed Conveyancers ("the CLC") was established under the provisions of the Administration of Justice Act 1985 as the Regulatory Body for the profession of Licensed Conveyancers. As set out at section 28 Legal Services Act 2007 the CLC must, so far as is reasonably practicable, act in a way—
   (a) which is compatible with the regulatory objectives (set out at section 1 of the Legal Services Act 2007), and
   (b) which it considers most appropriate for the purpose of meeting those objectives.

2. Further, the CLC must have regard to—
   (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
   (b) any other principle appearing to it to represent the best regulatory practice.

The purpose of the CLC

3. To set entry standards and regulate the profession of Licensed Conveyancers effectively in order to:
   • secure adequate consumer protection and redress;
   • promote effective competition in the legal services market; and
   • provide choice for consumers

4. The CLC welcomes the opportunity to respond to HM Treasury’s consultation Review of the Money Laundering Regulations 2007.

Questions about the Regulations

1. To what extent is the scope of the Regulations and their application to business activity appropriately risk-based?

   The CLC has insufficient data to be able to make an informed assessment. It is, however, concerned that some aspects of the Regulations unnecessarily raise concerns for its regulated community, such as the concept of the Politically Exposed Person. Other aspects such as Simplified Due Diligence, designed presumably to alleviate the regulatory burden, appear in practice to have no application for the range of activities undertaken by the CLC’s regulated community.
2. To what extent are the Customer Due Diligence (CDD) requirements set out in the Regulations a proportionate response to the threat from money laundering?

The CLC's experience is that the requirements of CDD are appropriately aligned with the requirements of institutional lenders for verifying the identity of borrowers, and to that extent provides a proportionate response to the threat of money laundering.

3. To what extent are Customer Due Diligence (CDD) requirements effective in the fight against money laundering?

CDD ensures that licensed conveyancers take reasonable steps to verify the identity of clients and, where they consider it appropriate, raise their concerns with a third party by submitting a Suspicion Report. To that extent the CLC considers CDD is a proportionate tool which is likely to result in identification of a reasonable proportion of money laundering activities within the sector the CLC regulates.

4. To what extent do the record keeping and policy and procedural requirements upon Regulated Firms support their anti-money laundering efforts?

The CLC agrees that it is important for its Regulated Firms to maintain records in order to provide an audit trail for any subsequent investigations.

5. To what extent do the Regulations provide Supervisors with appropriate compliance monitoring and enforcement powers and penalties to deter non-compliance?

The CLC uses the statutory powers available to it to carry out monitoring and enforcement activities. The CLC has not yet identified any area where these activities need to be modified.

6. To what extent do the Regulations provide for a suitable system of registration and `fit and proper' testing to be established and carried out on a risk basis?

Again, the CLC uses its existing statutory powers and rules to screen applicants for licences. It will be reviewing its system of registration and the scope and application of the "fit and proper" test in the course of 2010 to determine the extent to which it can be improved subject to the principles of better regulation.

7. Are the requirements of the money laundering Regulations compatible with and complementary to the requirements of a) other aspects of the UK's broader anti-money laundering regime/law and b) international standards/practices?

The CLC is not in a position to make this judgment.
8. How well does HMT engage with you in developing the Regulations and are the requirements of the Regulations clearly communicated?

The CLC is a member of the AML Supervisors forum which enables it to engage with HMR.

Questions about Guidance

9. To what extent does Guidance promote both an effective and proportionate approach to anti-money laundering?

The CLC has prepared and published Money Laundering Guidance tailored for licensed conveyancers which is accessible from the download centre at www.clc-uk.org. Breach of the Guidance may result in disciplinary proceedings.

10. How clear and consistent is Guidance including whether Guidance is consistent for those sectors where more than one supervisor exists and generally across sectors?

The CLC believes its guidance is clear. The CLC is not aware of any instances where it has been unclear which supervisor should take the lead in any circumstance.

11. In what ways does Guidance assist with a risk-based implementation of Customer Due Diligence (CDD) measures within your sector?

The CLC’s Guidance reinforces a risk based approach – see for example paragraph 6.20 of its Guidance

Practices are expected to take a risk-based approach in deciding the extent of CDD measures to be applied at the outset of a transaction and then on an ongoing basis.

See also response to Question 2.

12. In what ways does Guidance assist and support Regulated Firms’ anti-money laundering policies and procedures?

The CLC’s Guidance provides a framework aligned to the provision of conveyancing services (but not yet specifically directed to the provision of probate services) to enable licensed conveyancers to obtain an overview of the steps they need to take to comply with anti money laundering requirements. The CLC has also published an accompanying AML (good practice) Toolkit with outline draft policies which can be developed and adapted by licensed conveyancers.

13. How is Guidance made accessible and are there opportunities to engage in its formulation?
The CLC’s Money Laundering Guidance is accessible from the download centre at www.clc-uk.org. Licensed conveyancers were invited to comment on that Guidance. The CLC will consult on further versions of the Guidance.

Questions about Supervision

14. To what extent does the supervisory framework support an effective, risk-based anti-money laundering regime and compliance with the Regulations?

The CLC considers that the multi-supervisor structure enables Guidance to be tailored to the specific area of operation. The CLC has not yet found it necessary to exercise disciplinary powers regarding AML supervision. The CLC is mindful of the costs to Regulated Firms in determining its approach to compliance monitoring.

15. In what ways do Supervisors communicate and engage with the firms they regulate to ensure a sound understanding of legal duties and responsibilities under the Regulations?

Examples of the steps taken by the CLC are:
- An AML Toolkit has been published website which provides a template for Practices to produce their own policies and procedures.
- Information about AML developments are posted on the CLC website.
- The CLC responds to AML enquiries from the profession.
- The CLC has supported the SOCA payback conferences and utilised SOCA information material.
- Each new CLC regulated Practice attends a Workshop at the CLC offices which includes a session on AML.

The CLC has not taken steps to encourage feedback from regulated firms.

16. How do Supervisors ensure a consistent approach to compliance monitoring and enforcement is taken across the anti-money laundering regime?

The AML Supervisors Forum provides a forum for the development of a consistent approach.

17. To what extent is Supervisors’ monitoring of compliance targeted, proportionate and risk based?

The CLC has adopted a risk based approach to inform its data gathering activities for its compliance monitoring with regard to the Regulations.

The CLC is in the course of enhancing its compliance monitoring across all aspects of its responsibilities by piloting a new risk based Monitoring process which includes a review of AML processes adopted by CLC regulated Practices. If in exceptional cases, visits are necessary, they would be combined with other data gathering activities.
18. How effective and proportionate is the enforcement regime?

The CLC’s enforcement processes for non-compliance with professional rules also apply to non-compliance of the Regulations. The CLC will develop in 2010 an enforcement policy which will explain the powers available to it and how they will be exercised in order to make its enforcement regime more proportionate and transparent. This will also explain the CLC exercises its powers as an AML Supervisor.

19. In what ways could the registration process for Regulated Firms be improved?

The CLC considers the existing registration processes for its regulated practices to be adequate. Any additional registration requirements would be disproportionate and result in duplication particularly as each Practice is required to submit a Practice Information Form annually on renewal of registration as a regulated practice. This includes a section asking who in senior management is responsible for AML, the identity of the Nominated Officer and confirmation that appropriate AML policies have been adopted and appropriate AML procedures are being followed.

Questions about Industry Practice

The CLC does not have any comment on these Questions about Industry Practice.

20. Are there barriers to implementing risk-based policies in practice? If so, what are they?

21. During the process of customer due diligence (CDD), how are risks (in terms of likelihood and impact) taken into account to decide the type of due diligence that will be undertaken?

22. To what extent do the Regulations support or complement Regulated Firms’ ‘business as usual’?

23. Are “fit and proper” tests being conducted in an effective and proportionate manner?

24. How easy or difficult is it to comply with reporting and record keeping obligations?

25. What forms of communication and engagement take place with stakeholders, from government agencies through to customers?

Questions about the Customer Experience

26. How proportionate do you believe the Regulations appear once they reach the customer?
The CLC believes that after early resistance customers now accept the need for CDD particularly because of the joined up approach adopted by the other providers with which that customers increasingly interact.

27. Are you able to provide customers with access to information and resources to check what information is needed from them and why?

Customers are able to view the information available to licensed conveyancers on the CLC website. The CLC has not published information about AML specifically targeted at customers, and has no immediate plans to do so.

Questions about the Regime

28. To what extent do the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) provide an effective tool in the fight against money laundering?

The CLC considers that 'the regime' has heightened the awareness of approved persons to take appropriate measures to deter, detect and report suspected money laundering activities.

29. To what extent are the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) a proportionate response to the risk of money laundering in the UK?

Subject to its comments in the response to Question 1, the CLC considers that Guidance tailored to relevant approved persons is a proportionate response to the risk of money laundering in the UK.

30. Would you say that all relevant stakeholders are able to participate in the development of the Regime?

The CLC as a stakeholder considers that it has had sufficient opportunity to participate in development of the regime.

QUESTIONS ABOUT THE REGULATIONS – RESPONSES

1. Given that the scope of the MLR is governed by the EU Directive there seems little leeway for change. The MLR, thanks to the Directive, is not truly risk-based as it singles out three areas for EDD and others for SDD which in my view are areas which should have been left for firms to decide for themselves & which could have easily been assisted by Guidance. This legislative prescription un-necessarily complicates the approach & in my experience creates uncertainty over, for example, what constitutes “enhanced” or “simplified” CDD? The position has further been muddied by FSA’s public comment that it will now be making “judgements on judgements” regarding firms’ risk-based approach, leading to more, not less, enquiries of customers & the re-emergence of the “fear factor” amongst many firms not wishing to fall foul of the regulator and over-compensating as a result.

2. Overall the MLR seem proportionate, though possibly light on the subject of non-personal structures, corporate & trusts where the 25% threshold of ultimate beneficial ownership is too high in my view. If you look at the FATF Report of 2006 on “The Misuse of Corporate Vehicles” the red-flags described there could well feature in an expanded part of the MLR. These structures are still the vehicles of choice for launderers, corrupt politicians & others seeking a dis-connect between ownership of property & the initial predicate criminal conduct. Further, for those reasons I see absolutely no reason to exclude domestic PEPs from formal inclusion in the MLR. Indeed in its Financial Crime Newsletter No 7, July 2008 the FSA went as far as it could to indicate this. Events since such as the Parliamentary expenses scandal & the likelihood that financial crime has actually been committed in some cases, makes the case beyond doubt.

3. Please see 1 & 2. above.

4. I would support an extension to the time-limit to 10 years and the retention of these requirements to branches & subsidiaries of non-EEA states.

5. This issue cannot realistically be separated from powers available to Supervisors under FSMA 2000 & other statutes & regulations. However I think it is now clear that FSA-regulated firms have a materially higher supervisory regime than most other parts of the “regulated sector”. The latest classic example is registration of MSBs under the Payments Services Regulations, under which we now have a complete muddle & the prospect of at least 3 differing regimes for AML/CTF compliance. Empirical evidence suggests that this high-risk sector is still far too lightly supervised in comparison with banks doing the same type of business. The high proportion of
certain ethnic groups’ participation in the Money Transfer Business sector should not deter policy-makers from ensuring, through changes to the MLR, a level playing field across the board.

6. They fall far short of achieving this balance since for some sectors “fit & proper” testing is not carried out to the depth of the FSA Approved Persons regime! E.g. the registration of MSBs under the PSR.

7. The most recent FATF follow-up to its UK Mutual Evaluation suggests this is the case. However there are important areas which in my view are still very much unfinished business:-

a) The POCA consent regime still poses significant practical problems for those most-exposed to volume reporting to SOCA, mainly banks. In addition case law has established that “fungibility” further complicates the issue to the extent that most firms have probably been acting illegally ever since the “K Limited” case was decided. Consent is a very valuable weapon for law enforcement but further safeguards for reporting institutions and their staff are essential, in my opinion.

b) In addition to the real need more clearly to define PEPs (see 2 above) is the area of “Equivalence”, a term replete in the MLR but it is not good enough just to relate this to EU Member States. It is manifestly obvious that not all EU Member States have anything like an “equivalent” approach to AML/CTF. Lists produced by the EU Commission & HMRC have only served to muddy the waters still further. This is surely an area for international action by the FATF & I trust their current work on this subject will at least gain recognition in the revised MLR. Moreover, I would support restoration of the NCCT List particularly for those states which actively promote terrorism & provide havens for company formation deliberately designed to obfuscate ultimate control by criminals & corrupt heads of state & politicians.

8. Reasonably & much better than in the early days of AML legislation. However, “money laundering “has moved on to the extent that increasingly the traditional model remains valid principally for cash-based criminality. Of much greater import is the “arrangement” offence as described in S.328, POCA whereby no funds need have moved or changed hands at all. The MLR need to keep pace with this by placing more emphasis on CDD for structures & arrangements & consequently on effective monitoring of activity, changes in corporate governance & control, etc. Whilst there are clear practical reasons for consulting with major trade associations & recognised groups over possible changes to & development of the MLR, all too often these tend to focus on views from their larger members. There might be a case for retaining a small number of independent consultants (duly vetted) who would have experience in the regulated sector & could bring to bear the views of smaller & medium-sized undertakings. Needless to say, I would declare my interest in participating in this way, going forward!

QUESTIONS ABOUT GUIDANCE
9. Certainly the concept of approved Guidance has, in my opinion, helped to remedy the unthinking, tick-box approach of Guidance Notes. The JMLSG in particular is invaluable in bridging the gap between legislation & practice & should continue to be recognised as a defence both to litigation & to regulatory enforcement.

10. HMT should work towards one Lead-Supervisor per sector & use the JMLSG as the bench-mark for quality, consistency & clarity.

11. Given my comments under 2 & 8 above I see the need for further & deeper guidance to keep pace with the varied nature of money laundering techniques & vehicles. Although I work with clients who operate under JMLSG, Law Society, HMRC, Accountancy & STEP there is still much uncertainty about what exactly EDD should cover? Please also see my responses under 7 above. One major change I would advocate is the abolition of the “reliance on others” provisions which in my experience have proved to be completely bureaucratic, over-prescriptive & practically unworkable. I suggest a replacement which either says reliance may be placed on another UK-authorised & regulated firm per se, with Guidance spelling out how this might be achieved in a cost-effective way. Alternatively reliance could be restricted solely to FSA-authorised & regulated firms, with Guidance suggesting ways of achieving this.

12. I’m still a supporter of stakeholder-specific guidance but it might be useful if the MLR laid down key mandatory areas of content which must be included as a pre-requisite to HMT recognition. This should encourage greater consistency & promote deeper understanding of the wider anti-financial crime agenda & responsibilities. I have suggested areas where guidance might be strengthened (see 2 & 8 above) & am pleased to note that the JMLSG is working to develop a new Part 3 under which guidance will be given on other issues such as Counter-Terrorism Act, UK financial sanctions, Payments Services Regulations, SWIFT messaging & others. Where applicable other Stakeholders should be prevailed upon to do likewise.

13. Yes to both parts of the question. As a former member of the BBA’s MLAP & having recently agreed to assist with the drafting of guidance on sanctions, I’m very happy with current arrangements in the sector with which I work the most.

**QUESTIONS ABOUT SUPERVISION**

14. There is still too much overlap & is very far from a level playing-field, in my view. I’m not convinced that high-risk sectors such as MSBs and Charities are adequately supervised from an AML/CTF perspective, or that the overlap between FSA, OFT & HMRC has brought verifiable benefit which outweighs the confusion & widespread perception by banks, brokers & securities firms that burdens fall far more heavily on them.

15. I can only speak for my time as a bank MLRO under both the Bank of England & FSA. Under the Bank, informal guidance was most useful & “worked”. The FSA, as a statutory regulator still has
work to do to upgrade the knowledge-base & technical competence of many of its front-line supervisors. It has, further, in my view exceeded its mandate in actively promoting the myth of its own “preferred brand” of AML e-learning as “the” way to achieve compliance. The FSA is not a commercial undertaking & quite simply should not be making money out of what I & many other professionals think is a sub-standard product. In addition the FSA could do much better on its conferences & seminars by moving away from City & Financial & retaining a number of providers who are prepared to include industry practitioners rather than the plethora of lawyers & accountants which all too often populate their events.

16. This is a matter for Supervisors but my impression is they don’t, so once again it’s the FSA firms which, in contrast to others in both public & private sectors, are devoting huge resource to AML/CTF compliance for precious little recognition or reciprocation.

17. Please see 1 above.

18. Ditto, & my impression is that the vast bulk of enforcement comes from FSA, which shows every sign of getting even tougher under its “Credible Deterrence” proposals. Would that other supervisors do the same! In this connection, however, I’m not sure that all supervisors could be trusted with the powers available under RES Act, seeing what has happened to the widespread abuse of powers granted to so many public bodies under RIPA, anti-terrorist & AML legislation.

19. As detailed in previous responses I remain critical of registration as currently operated so that there is a wholly-disproportionate process when compared to authorisation. High risk sectors like MSBs, “Hawallahs”, trust & company service providers & charities are in my view under-supervised when the development of money laundering & laundering techniques are realised.

QUESTIONS ABOUT INDUSTRY PRACTICE

20. Most of my comments on qns 20-25 are covered above, but experience suggests that EU3D’s mixture of prescription & risk-based provisions have over-complicated life for firms & led to the re-emergence of the “fear factor” for FSA-regulated firms under its “get tough” enforcement regime.

QUESTIONS ABOUT THE CUSTOMER EXPERIENCE

26. Very little difference, with wide variations in EDD requirements & procedures even for existing customers within the same banking group!
QUESTIONS ABOUT THE REGIME

28. Progress has been made but much greater consistency across supervisors & industry practice should be the goal. Lack of useful feedback from law enforcement & SOCA in particular hampers industry professionals’ ability to “sell” the regime by demonstrating real results from the massive commitment of private sector resource to it. Evidence also suggests that conviction rates under POCA are still well below expectations & policy makers should be looking for reasons why this is so.

I suspect the continuing official deference to alleged human rights arguments, the tolerance of terrorist groups & the lack of will to enforce the law in some circumstances & against certain groups are at the root of the problem. Government must make up its mind as to what comes first? – a severe reduction of criminality & national security or the niceties of deference?

29. Probably, but it isn’t working s effectively as it should.

30. No.
Review of the Money Laundering Regulations 2007
Financial Crime Team
HM Treasury
1 Horse Guards Road
London SW1A 2HW

By email: mlr.review@hm-treasury.gsi.gov.uk

10 December 2009

Our ref: KS

Dear Sir

Review of the Money Laundering Regulations 2007 – A Call for Evidence - Part A

This document has been prepared by the UK firm of Deloitte LLP solely for the purpose of assisting HM Treasury in relation to the above Call for Evidence. Comments are made from the perspective of this Firm. Our responses to the questions raised in the Call for Evidence are shown in italics on the pages attached.

Please do not hesitate to contact me if you require any clarification of our response.

Yours faithfully

Karen Silcock
1. To what extent is the scope of the Regulations and their application to business activity appropriately risk-based?

We are interested in your views and evidence about:

- Whether the definitions of persons and activities subject to the Regulations are sufficiently clear, meaningful and correct.

  The definitions, except those linked to specific clauses in other law or regulation defining the persons or activities, have caused debate and uncertainty. The difficulty in interpreting what is meant by “accountancy services” illustrates the point, with clarity having to be provided through guidance, in the absence of clarity in the regulation.

- Whether the scope is right; please tell us if there are additional high-risk persons/activities that should be subject to, or low-risk persons/activities that should be excluded from, parts of the Regulations.

  We have not identified any pressing issues. Unless there is a pressing need for change, we would urge that periods of stability are allowed to mitigate the costs to the regulated sector. Ideally, regulations should have a life of at least 3-5 years without change.

- Whether the activities prescribed by the Regulations, such as dealing with Shell Banks or anonymous accounts, are appropriate and sufficient. Are there other activities that should be prescribed or activities that could be excluded?

  None noted.

- Other ways of improving the application of the Regulations on a risk basis.

  None noted.

2. To what extent are the Customer Due Diligence (CDD) requirements set out in the Regulations a proportionate response to the threat from money laundering?

We are interested in your views and evidence about:

- Whether the list of activities permitting Simplified Due Diligence (SDD) and requiring Enhanced Due Diligence (EDD) is appropriate.

  The range is broadly appropriate, but it is inconsistent to single out specific categories of EDD candidates (e.g. PEPs) as requiring special management approval whereas other categories set out in regulation 14 (1) (b) do not.

- Whether the definition of Politically Exposed Person (PEP) and the EDD measures required to manage PEPs’ risks is appropriate, and compatible with your risk-based procedures.

  Our procedures have been designed to accommodate EDD in general and PEPs do not present any additional procedural issues.
• What would be the advantages and disadvantages of extending the risk-based approach to domestic PEPs?

We would support the extension, it is illogical to exclude domestic PEPs. No particular disadvantages are envisaged.

3. To what extent are Customer Due Diligence (CDD) requirements effective in the fight against money laundering?

We are interested in your views and evidence about:

• Whether risk-based CDD requirements assist with the deterrence and detection of money laundering activities and enable the reporting of suspicions of money laundering and terrorist financing. If so, how?

Initial CDD requirements are rarely capable of capturing specific reportable matters. Of their nature, they are preliminary enquiries only as they are preparatory to establishing a relationship. As such, other than blatant cases of refusal to co-operate or a very clear lack of economic rationale for the business and proposed relationship their utility as regards reporting and detection is limited. We are not able to assess the deterrence aspect. We believe the clarity and impact of the regulations could have been improved by setting out clearly in regulation 5 that information needs to be gathered and understood about the business model and/or sources of wealth of the customer and this information carried forward as a basis for monitoring under regulation 8.

• What other benefits (to firms, government agencies, wider society) are derived from CDD requirements, for instance assistance with the tackling of other crimes, such as fraud.

See above, we consider the key benefits derived from the CDD requirements to monitor and report (supported by the requirement to train relevant staff) not from the requirements to conduct initial CDD. CDD has some utility in providing background information to assist subsequent monitoring, and identification of clients subsequently reported to the authorities. Given the cost of CDD, this is an area that merits further examination.

• Whether the beneficial ownership, reliance and equivalence provisions deter financial crime and/or help minimise burdens.

We consider the requirement to identify beneficial ownership to be one of the key elements of CDD in enabling firms to determine whether from a reputational, commercial or regulatory point of view they wish to establish a relationship with an applicant. However, given the frequent lack of publicly available (or otherwise verifiable) information in private company, trust and similar situations, this is one of the most challenging and time consuming elements of the process. We are unable to determine the deterrence effect of this provision.

The reliance provisions are of no practical use to many regulated sector participants as when seeking reliance they require considerable investment in due diligence on the person being relied on to ensure the record keeping provisions in regulation 19 can be met. If a person seeks to rely on
you, again the record keeping provisions are potentially onerous. We would expect that only institutions who regularly have common customers would find it economic and efficient to invest in using the reliance provisions.

As regards the equivalence provisions, we consider these to be effective and efficient government needs to engage in a fuller and more transparent way with the regulated sector to provide comprehensive and supported lists of equivalent countries. The current list was produced far too late, leaving the regulated sector with no support for some considerable period post implementation of the Money Laundering Regulations 2007, and the list is not transparent as it does not specify the features that must be present to achieve equivalence. Government has to date also not provided any support concerning the provisions regarding regulated markets which may meet the requirements in regulation 13 (3). What is needed is a statement by government of what the required features are for a non-EEA state to be considered “equivalent”, which countries are considered by government to meet them, and in each country which regulators do supervise credit or financial institutions for compliance. As regards regulated markets, again government should publish information on what is considers the requirements are, and which markets it considers meet them. It may be in the cases of both equivalence and specified disclosure obligations that government may not publish an exhaustive list, but at least if the criteria are shared, the regulated sector has a firm and commonly understood basis on which to make additional assessments.

4. To what extent do the record keeping and policy and procedural requirements upon Regulated Firms support their anti-money laundering efforts?

We are interested in your views and evidence about:

- Whether the 5-year time limit and reliance provisions concerning record keeping are appropriate.

Our own requirements for other professional and legal reasons exceed the 5 years.

- Whether the requirement that branches and subsidiaries in non-EEA states should have these undertakings extended to them is an effective and proportionate means of addressing money laundering risks for a group business.

We do not consider this is proportionate. Business situated overseas should comply with local legal requirements, and UK standards as required to meet the business needs of the UK based holding company only. To do otherwise may cause competitive disadvantage to businesses situated overseas.

5. To what extent do the Regulations provide Supervisors with appropriate compliance monitoring and enforcement powers and penalties to deter non-compliance?

We are interested in your views and evidence about:

- Whether the duties of Supervisors in relation to compliance monitoring are clear and proportionate; if more or fewer duties are required and if so in what areas.
We have no issues in this regard.

- Whether the range of powers to investigate and deal with non-compliance and breaches is sufficiently flexible to permit a proportionate response; if more, fewer or alternate powers are required and if so what types.

We consider the powers adequate and in particular would not support any extension of enforcement powers to bodies other than the "designated authority" specified in regulation 86.

- Whether the civil penalties and criminal offences currently provided for are effective and proportionate as deterrents and sanctions for non-compliance.

The penalties are considered severe and as such an effective deterrent.

6. To what extent do the Regulations provide for a suitable system of registration and "fit and proper" testing to be established and carried out on a risk basis?

The provisions of regulation 28 are not applicable to our business.

7. Are the requirements of the money laundering Regulations compatible with and complementary to the requirements of a) other aspects of the UK's anti-money laundering regime / legislation and b) international standards and practices?

We are interested in your views and evidence about:

- Whether the risk-based Regulations interact logically and clearly with the criminal aspects of the broader anti-money laundering and counter terrorist financing regime established in POCA and TACT and their requirements.

We have no issues in this regard.

- How compliance with the Regulations interacts with firms' compliance with assetfreezing legislation?

This is not generally relevant to our business.

- Whether the requirements of the Regulations are an appropriate interpretation of the requirements of the EU's Third Money Laundering Directive and FATP standards in UK's context.

We have no issues in this regard.

- Whether the requirements of the Regulations are comparable with anti-money laundering measures employed by other EU Member States in accordance with the Third Money Laundering Directive or other members of the Financial Action Task Force under the 40+9 standards.

One of the key issues is the lack of prompt and uniform implementation across the EU. Another major issue is the very narrow implementation in the USA, resulting in a material mismatch between the requirements placed, for example, on a UK auditor as opposed to a US auditor.
8. How well does HMT engage with you in developing the Regulations and are the requirements of the Regulations clearly communicated?

We are interested in your views and evidence about:

- Whether Supervisors and Regulated Firms in particular are engaged in developing the Regulations, within the constraints of the EU Directive and FATF requirements.

Adequate form are provided for engagement.

- Whether mechanisms are in place to enable all regime stakeholders to consider and input into potential alterations in the Regulations.

Where public consultation is entered into this, in combination with the active involvement of representatives of the regulated sector and its supervisors, generally provides adequate mechanisms. However, in the recent case of SI 2707 2009 the Home Office showed that these provisions can easily break down where legislation affecting the regime is passed without using the established communication and consultation methods.

- Whether mechanisms are in place to enable discussion of the interpretation of the Regulations.

Established fora and ad hoc working groups have proved effective in this. An example was the discussions held prior to and at the July MLAC meeting concerning “Reliance and Secrecy” which provided useful clarification of an interpretation reached in a constructive and open discussion between a wide range of regulated sector representatives.

- Whether there is adequate access to information concerning the Regulations, especially material that supports a risk-based CDD, such as advisories on high-risk jurisdictions.

We believe this is an area where government could provide more support to the regulated sector, both by producing money laundering advisories similar to those produced by the FCO for travel advice and also to lobby overseas governments, where appropriate, to improve the availability of corporate information in the public domain.

9. To what extent does Guidance promote both an effective and proportionate approach to anti-money laundering?

We are interested in your views and evidence about:

- Whether the definitions of persons and activities subject to the Regulations given in Guidance are clear, meaningful and correct from a risk basis in the context of your sector; and whether the ‘acting in the course of business’ requirement for your sector is appropriately explained.

We believe these terms are properly explained in the CCAB guidance (which is the guidance we refer to in our answers below unless otherwise specified).
• Whether it is beneficial that Guidance is legally enforceable in the UK, and that compliance with its provisions can be used as a defence against prosecution for non-compliance with the Regulations.

We consider this a highly beneficial feature of the regime as it allows businesses to rely on carefully tailored guidance which has been subject to rigorous quality control.

10. How clear and consistent is Guidance including whether Guidance is consistent for those sectors where more than one supervisor exists and generally across sectors?

We can speak only in respect of the accountancy sector, and in this regard the guidance is broadly consistent following co-operation between the supervisory bodies.

11. In what ways does Guidance assist with a risk-based implementation of Customer Due Diligence (CDD) measures within your sector?

We are interested in your views and evidence about:

• Whether the activities permitting Simplified Due Diligence (SDD) or requiring Enhanced Due Diligence (EDD) are appropriately explained to support your risk-based approach.

We consider they are.

• Whether the definition of Politically Exposed Person (PEP) and the EDD measures required to manage PEPs’ risks are appropriately set out.

We consider they are.

• Whether available Guidance on beneficial ownership, reliance and equivalence supports an affective, risk-based approach in your sector.

We consider it does within the constraints referred to in 3 above.

12. In what ways does Guidance assist and support Regulated Firms’ anti-money laundering policies and procedures?

We are interested in your views and evidence about:

• Whether sector-specific, tailor made Guidance assists firms to fulfil their requirements to create and maintain risk-sensitive policies and procedures.

We consider it does.

• Whether Guidance is provided that enables firms to consider other aspects of their responsibilities under the Regulations (such as record keeping and training) on a risk basis.

We consider the guidance does fulfil this role.
• Whether Guidance encourages requirements over and above best practice to comply with the requirements of the regulation.

We do not consider the guidance encourages requirements over and above best practice, but seeks to show ways to meet the requirements of the regulation in a comprehensive and appropriate way.

• How Guidance helps stakeholders to understand the UK’s anti-money laundering regime as a whole, and the interaction of the Regulations with other requirements such as those contained in POCA and TACT.

The guidance explains the full range of relevant law and requirement.

13. How is Guidance made accessible and are there opportunities to engage in its formulation?

We are interested in your views and evidence about:

• Whether you have adequate access to Guidance information in your sector and if Guidance is clear.

The guidance is publicly available, and the guidance is considered clear.

• Whether the production of Guidance in your sector involves consultation and discussion with all relevant stakeholders.

The production of guidance involves volunteer members as well as supervisory and professional body secretariat members and has also incorporated the result of public consultation. Once produced, the guidance was submitted for peer and public sector stakeholder review via the approved mechanism set up by HM Treasury.

14. To what extent does the supervisory framework support an effective, risk-based anti-money laundering regime and compliance with the Regulations?

We are interested in your views and evidence about:

• The benefits and challenges of a multi-supervisor structure, with Supervisors specific to different areas of business including the use of professional bodies or professional associations as Supervisors.

We support the present structure as being effective and economic in so far as it provides supervision by those who are familiar with the business of the sector and in that it can frequently be incorporated into other supervisory activities achieving cost and time savings.

• Supervisors making use of disciplinary and enforcement powers including your awareness of powers being used, the effectiveness of the powers and how appropriate powers are for the office.

We have no direct knowledge of activity except that on the public record.
• To what extent Supervisors are mindful of the costs and benefits to Regulated Firms and offer ideas to minimise costs or maximise benefits.

We understand that this is built into the approach of the ICAEW and the FSA (both of which supervise our firm) but there has not been any specific opportunity raised with us.

15. In what ways do Supervisors communicate and engage with the firms they regulate to ensure a sound understanding of legal duties and responsibilities under the Regulations?

We are interested in your views and evidence about:

• What communication means or advice and inquiry services are provided by Supervisors (e.g. awareness campaigns, seminars, written information, approved Guidance, and telephone help lines); and what additional or alternative type of engagement could be useful to improve support for, and outreach and education, to Regulated Firms.

In this response we comment on the facilities provided by the ICAEW who are our main supervisor. The ICAEW provides comprehensive on-line information, email updates, roadshows, helplines and guidance. It is important that this is continually informed and supplemented by outreach from relevant public sector agencies, principally SOCA and HM Treasury Office.

• The extent to which Supervisors encourage feedback from firms they regulate and how are actions taken forward to help shape the anti-money laundering supervisory framework.

Feedback is encouraged.

• How feedback is provided to Firms on outcomes resulting from the information they submit to Supervisors and Government.

Written reports are provided by Supervisors. Government feedback is less direct, but we support the initiatives undertaken and proposed by SOCA to increase meaningful feedback.

16. How do Supervisors ensure that a consistent approach to compliance monitoring and enforcement is taken across the anti-money laundering regime?

We understand that there are supervisor meetings which seek to achieve this.

17. To what extent is Supervisors’ monitoring of compliance targeted, proportionate and risk based?

We are interested in your views and evidence about:

• How risk-based and proportionate Supervisors’ methods are when approaching compliance monitoring.

Our regulators (ICAEW and FSA) are experienced in the field and as such we consider their approaches to be risk-based and proportionate to date.
• Whether Supervisors encourage requirements over and above best practice compliance with the requirements of the regulation.

We have not experienced this.

• To what extent Supervisors make dedicated anti-money laundering visits or combine them with other data gathering activities.

Generally visits are combined, which is our preferred approach.

• How much time firms spend with visits and/or collecting data specific to anti-money laundering that they might not spend otherwise.

We find there is limited time spent now for each regulatory visit, but in the early days of the regime the burden was greater. However, an unnecessary burden results from the inability or unwillingness of our multiple regulators to agree that one will conduct anti-money laundering supervision to an agreed standard and share the results with all relevant supervisors. This results in us having to undertake the same process a number of times in any regulatory cycle, which is disappointing given the declared support of government and the various supervisors for Better Regulation.

• Processes for identifying and dealing with non-compliant firms.

We are not in a position to comment on this.

18. How effective and proportionate is the enforcement regime?

We are interested in your views and evidence about:

• Whether supervisors set out the penalties and sanctions for non-compliance, and explain how they will apply these.

The ICAEW and FSA both provide sufficient information.

• Whether the range of powers permits a proportionate response.

We believe the powers given are extensive but permit a proportionate response.

• What additional or alternative powers would help in encouraging compliance and/or facilitating enforcement.

None noted.

• The appeals processes and the degree to which they are used.

We are not in a position to comment on this.
• How powers in the UK compare with other countries including consistency, risk reduction, deterrence and creating confidence in the UK marketplace.

Generally, the UK would appear to be one of the more advanced countries as regards its implementation, which we welcome. We also strongly support the "all crimes" element of the reporting regime as a contribution to deterrence, confidence and harm reduction.

19. In what ways could registration processes for Regulated Firms be improved?

No comment is made in this area as the Firm was already supervised by relevant supervisory bodies.

We are interested in your views and evidence about:

• Whether the registration system supports compliance with the Regulations, and whether the scope of the firms subject to registration is correct.

• What are the costs and benefits to Regulated Firms of a registration system and what difficulties with the process exist that may put impediments on a Regulated Firm to register?

• The length of the registration process and the ease with which the process is conducted.

• Measures that Supervisors take to assess and ensure that all relevant firms are registered.

20. Are there barriers to implementing risk-based policies in practice? If so, what are they?

We are interested in your views and evidence about:

• To what extent the Regulations and/or Guidance are preventing the implementation of a risk-based approach by Regulated Firms.

These do not form a barrier.

• Whether Regulated Firms’ policies and procedures are constrained by considerations they give to their impact (costs and benefits) on their customers.

We would not consider our policies and procedures constrained in this way but we considered in their preparation how and when requirements would be communicated to customers and undertaken.

• Whether Regulated Firms have the necessary skills, data and tools to conduct effective risk assessments.

We consider we have the necessary skills, data and tools, but the burden on some smaller firms may be much greater.

• What difficulties Regulated Firms encounter with specific provisions such as equivalence and identification of Politically Exposed Persons (PEPs).
Our responses above to question 3 are relevant, and apply as much to PEPs as the equivalence and regulated markets issues. In terms of PEPs there are some commercial solutions available to support the results of firm’s own enquiries but the definitions used do not necessarily coincide with those used in the UK and the licence costs may well be out of the reach of small businesses.

- Whether particular practical aspects lead to, encourage or facilitate prescriptive rules at the expense of case-by-case risk based practices.

The key practical issue is the need to create a system that is risk-based but readily useable by front line client facing staff. An element of “tick box” allocation of clients to different risk categories is, therefore, inevitable but if a mechanism can be created to discuss exceptional cases and tailor the approach to them the potential downside can readily be managed.

21. During the process of customer due diligence (CDD), how are risks (in terms of likelihood and impact) taken into account to decide the type of due diligence that will be undertaken?

We are interested in your views and evidence about:

- Whether regulations about Simplified Due Diligence (SDD) / Enhanced Due Diligence (EDD) are utilised appropriately:

  o Do particular aspects of the Money Laundering Regulations and/or the written guidance influence the degree to which firms use the option for SDD / EDD? If so, what aspects and how?

  Our procedures have been written to take account of the regulations and guidance, however, overlaid onto this is our own risk assessment based on research and experience. Wherever we can reasonably ascertain that a case meets the criteria for SDD to be applied, we apply this option unless another factor is present that on our own assessment causes us to raise the risk level. Where EDD is specifically required by the regulations this is carried out, and we have developed our own matrix to assess where regulation 14 (1) (b) applies.

  o Do commercial considerations, established industry practices or legislation other than the Money Laundering Regulations affect the way that Regulated Firms implement SDD / EDD? If so, what are the issues?

  As well as reference to the CCAB Guidance, we take account of the JMLSG Guidance notes in formulating our risk-based approach, and tailor it to meet the particular needs and experience of our business.

  - Whether reliance on third party information is being used to simplify the customer due diligence process. If not, why not and are the reasons related to the Regulations or other considerations (commercial, other legislation)?

  Whilst we encourage seeking information from other advisers to streamline the CDD process, we do not use the formal reliance provisions of regulation 17 but instead seek certified copies of the relevant material which is then incorporated into our files. Our answer under 3 above explains this in further detail.
• How firms interpret in practice the requirement to ongoing monitoring of businesses in relation to CDD requirements.

The drafting of regulation 8 is far from ideal as it assumes that the activity undertaken with a customer consists of a series of “transactions”. This does not apply to professional relationships in the accountancy sector and so we have had to develop an appropriate interpretation of this. In effect, we encourage our people to exercise continued monitoring of activity observed in a business relationship to see if it is consistent with our knowledge and expectations, and lacking any other indication which may lead to knowledge or suspicion of money laundering. Our procedures incorporate the requirement for review and update of CDD material either at trigger events (e.g. change of control) or as a full back on a periodic basis.

• The effectiveness and proportionality of the process of establishing Beneficial Ownership.

  • If you are a Regulated Firm, since the implementation of the Regulations,
    o What proportion of customers have you subjected to SDD?
      We do not collate this data, but a material number of customers would qualify and have this applied to them.
    o What proportion of prospective clients has been turned away due to failure to fulfil CDD requirements?
      We do not collate this data, but it is a very small proportion.
    o What proportion of CDD checks have benefited from reliance provisions?
      None, but we seek wherever possible to take certified copies of relevant documents from other advisors to streamline the CDD process.
    o What proportion of requests for reliance made by you to another firm has been accepted?
      N/a
    o What proportion of requests for reliance on you have you accepted?
      None

22. To what extent do the Regulations support or complement ‘business as usual’?

We are interested in your views and evidence about:

• How far anti-money laundering policies and procedures, including training, are integrated with other commercial and/or regulatory considerations.

Our CDD procedures now form an integral part of our client and engagement acceptance procedures. However, the information required by CDD regulation does in some areas exceed that which we would seek on our own account. Our AML training is a stand-alone package which works alongside other training modules on different subjects.

• How closely Customer Due Diligence (CDD) requirements complement or overlap with existing ‘business as usual’ procedures; whether CDD requirements assist Regulated Firms in undertaking their risk assessments.

See above
• To what extent the Regulations require actions over and above what Regulated Firms would otherwise do in the absence of the Regulations and how much cost this adds.

See above, the main issues relate to the verification of identity particularly for directors and shareholders of higher risk corporates and similar, plus we might select different percentages for ultimate beneficial ownership, depending on the situation. It is not possible to quantify the cost without a great deal of costly due diligence.

• Any examples of ‘best’ industry practice to minimise costs to Regulated Firms while maintaining appropriate level of detection and deterrence.

These are incorporated into guidance.

• To what extent the Regulations uphold the reputation of the UK business environment and assist Regulated Firms to avoid involvement with financial crime.

As regards the reputation of the UK, the regulations are considered supportive. The best way for regulated firms to avoid involvement with financial crime is for senior management to display an unwavering commitment to the fight against financial crime through promotion of appropriate culture, by being rigorous in selection of clients and engagements and through being committed to the reporting of knowledge or suspicion whenever and wherever it arises.

23. Are “fit and proper” tests being conducted in an effective and proportionate manner?

We have no comment on this area.

We are interested in your views and evidence about:

• The benefits you perceive for Regulated Firms from performing ‘fit and proper’ tests and if the ‘fit and proper’ background checks are broadly similar to those a firm would undertake as part of good commercial practice.

• The case with which the process is conducted and the costs of undertaking the test including the time taken to put a candidate successfully through the test.

• To what extent Regulated Firms select individuals that must be subject to the test according to their functions.

• Whether Regulated Firms subject new employees to the “fit and proper” test irrespective of their past experience, or whether they are able to transfer an approval when an employee moves jobs.

24. How easy or difficult is it to comply with reporting and record keeping obligations?

Reporting and record keeping are of a very different nature. Record keeping is relatively easy to integrate into normal business document retention systems, provided the provisions on reliance are not used as this requires another layer of classification and control.
Reporting, however, does require the development of appropriate awareness and culture through training, the acquisition of skills, knowledge and judgement and the set-up of suitably protected systems for receiving, storing and despatching reporting information and for dealing with follow-up actions by law enforcement (e.g. Production Orders).

25. What forms of communication and engagement take place with stakeholders, from government agencies through to customers?

We are interested in your views and evidence about:

- The opportunities that exist for Regulated Firms to feedback their experiences of the Regulations to Supervisors and/or Government Agencies, and what action is taken on their feedback.

  Supervisory visits, roadshows and helplines provide feedback opportunities as regards supervisors. Except for the Dialogue outreach programme in SOCA, feedback to Government is channelled through sector representation on MLAC and the formal groups set up by SOCA to promote regulated/public sector partnership. In addition, there are opportunities to provide feedback through public consultations on proposed change to regulation and legislation. Our experience is that balanced and realistic feedback is generally well received and acted on wherever practicable.

- The extent to which Regulated Firms are involved in policy and guidance development, either directly or through trade/industry bodies.

  Our experience is there is ample opportunity to become involved in these areas but a considerable investment of time is needed which tends to put this beyond the reach of many smaller businesses.

- Whether the benefits of the Regulations in terms of effectiveness and outcomes are communicated to stakeholders.

  We are not aware of any communication concerning effectiveness and outcomes of the Regulations.

26. How proportionate do you believe the Regulations appear once they reach the customer?

We are interested in your views and evidence about:

- The extent to which questions and requirements are specific to the customer's circumstances.

  This depends on the appropriateness of the translation of regulatory requirements by individual businesses into their day to day procedures.

- How much flexibility is offered in relation to acceptable forms of identification; if more flexibility would be useful to customers and/or Regulated Firms.

  There is already considerable flexibility offered through guidance.

- For customers in an ongoing business relationship, is the customer asked to provide repeat information and why?
This should be avoidable, but can occur on occasion where different business areas are either unaware of or have failed to access existing CDD information. Customers should expect to be asked for update information from time to time.

- How the experiences of customers of Regulated Firms compare across different sectors, different countries and between different sized firms.

We are not able to give any wide ranging comment on this, but uncodably the difference particularly between the US and EU requirement causes frustration.

27. Are you able to provide customers with access to information and resources to check what information is needed from them and why?

Requirements are explained individually to customers by the client service staff responsible for forming the business relationship.

28. To what extent do the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) provide an effective tool in the fight against money laundering?

We are interested in your views and evidence about:

- The extent to which any or all aspects of the Regime facilitate the deterrence, detection and reporting of suspected money laundering activities.

We consider the key element for deterrence, detection and reporting in the UK arrangements to be the reporting requirements in POCA and TACT, coupled with the extensive information and enforcement powers available through those acts and related legislation. The Regime provides underpinning to the extent that it lays the foundations of procedures, CDD/monitoring and training and critically provides for supervision.

- How well the Regime complements other relevant legislation, providing support to aspects of the broader regime such as investigations or Suspicious Activity Reports (SARs).

See above: the Regime provides the administrative framework to support the broader aspects.

- How the effectiveness of the Regime in the UK compares internationally.

We are not in a position to assess this.

- The extent to which the Regime protects the integrity of the financial system and reputation of UK business, and avoids economic and competitive distortions.

We are not in a position to assess this.

- How well the Regime identifies and responds to new and emerging risks.

Relatively brief regulation coupled with the guidance system allows for swift reaction.
29. To what extent are the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) a proportionate response to the risk of money laundering in the UK?

We are interested in your views and evidence about:

• How appropriate the scope of the Regulations is in relation to the range of customers, business relationships and types of transaction that are regulated and their relative levels of risk.

We believe the scope of the regulations is broadly appropriate.

• The ability for firms to concentrate their resources on higher risks and minimise them on lower ones and/or their ability to maximise benefits and minimise costs.

All business relationships have to bear the cost of CDD which is not inconsiderable even where SDD is used. Once the work to qualify a customer for SDD and the need to collect information to allow effective monitoring is also taken into account. The risk based approach allows some degree of focus of effort, which is positive, but this needs to be seen against a relatively high base cost even at the SDD end of the scale.

• How well the costs and benefits of the Regulations are understood.

We do not believe government have ever conducted a realistic cost and benefit assessment. To give an idea of the costs for a single large accounting firm, the following needs to be considered:

- compliance with the regulations requires some 12,000 people to spend an hour per year on average on training
- a training software platform had to be designed and procured to provide the necessary functionality to control rollout and progress chasing for 12,000 people sitting on-line training and tests
- senior staff and partner time is required to draft and implement the training
- at least 1 man hour and often considerably longer (up to several man days involving junior and senior people) is required for CDD on each customer at the outset, and then time is required for updating.
- considerable senior staff and partner time is invested in developing systems and procedures to meet the requirements of the regulations, and maintaining them, and this and advice to client facing teams on the operation of those systems amounts to 5 full time equivalent (“FTE”) staff per year (all new jobs arising solely from the regulations)

In addition, is the time taken by client facing staff to make reports to the MLRO and the time taken by the MLRO time to process those reports. One FTE senior staff member plus partner time is allocated to this area centrally in addition to the time taken by client facing staff. A separate custom made computer database was written and installed to hold reporting details. The costs of responding to Production Orders etc also frequently involve substantial amounts of time from senior personnel including in-house legal advisers as well as the MLRO and client facing personnel.
It can be seen from these figures that the annual costs for one major accounting firm alone are considerable in terms of costs spent on third party systems plus in-house software development, a number of staff members (6 FTE without taking into account any of the work carried out by client facing staff) and a material element of partner time, plus the cost of time spent by client facing staff on each and every engagement.

We do not consider that for costs to be justified that the benefit has to be demonstrated in terms of equivalent monies confiscated from criminals, but we do think it important for government to work closely with SOCA to generate and publicise appropriate holistic measures of the benefit (including harm reduction effects) generated from the UK’s overall Regime.

- The role that Guidance plays in promoting a risk-based approach.

The guidance forms the link between regulation and business practice and as such is vital.

- Whether enforcement powers and their application are appropriate to levels of compliance and risk.

We believe this is the case.

- How the proportionality of the Regime in the UK compares internationally.

We are not in a position to assess this, but would make the observation that compliance with UK anti-money laundering requirements is expensive and as such it is incumbent on government to extract the maximum value in harm reduction terms from the efforts of the regulated and public sectors. Key in this is the maintenance of the “all crimes” reporting regime and the continued development of intelligence led work in SOCA and the police forces to capitalise on the reporting input of the regulated sector and other intelligence sources.

30. Would you say that all relevant stakeholders are able to participate in the development of the Regime?

We are interested in your views and evidence about:

- How extensive and regular the communication is across the Regime and between all levels of the Regime and the opportunity is for Stakeholders subject to the Regulations to input into their development.

Our response under 25 is relevant to this question.

- Access to clear and consistent information and guidance on the need for the Regulations, their scope of application and how to apply them in an effective and proportionate way.

This is provided through guidance.

- Whether Stakeholders interacting with the Regime (but not subject to the Regulations directly) understand the anti-money laundering requirements; whether these requirements are properly communicated to them and whether they are able to input their views on them.
We are not in a position to assess this.

- Whether partnership with other countries is strengthening global standards and compliance in line with changing risks.

This should be the case, and there are some beneficial effects, but the need to build a very wide consensus across different cultures inevitably leads to messages and actions being diluted.
EMA response to the HTM consultation document

'Review of the Money Laundering Regulations 2007: A Call for Evidence'

The EMA welcomes the opportunity to respond to this consultation.

The following is a list of comments that we wish to make on the UK money laundering regime.

Thamer Sabri
Chief Executive

The Electronic Money Association (EMA) is the trade body representing electronic money issuers and payment service providers. A list of EMA members is given in the Appendix of this document.

The opinions expressed below are those of the EMA as a whole and may not represent the views of individual members.
### Questions about the Regulations

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| 1           | To what extent is the scope of the Regulations and their application to business activity appropriately risk-based? | 1) After amendment by the Payment Services Regulations, it has become difficult to work out which supervisory authority is responsible for each class of entity. For example, the definition of ‘Annex I financial institution’ in Regulation 22 is unfeasibly complicated, listing both exemptions to its own definition, as well as referring to Regulation 3(3)(a), which in turn refers to Schedule 1, to which then further exemptions apply. Furthermore, each reference is in turn impacted by the Payment Services Regulations, their definitions, and the amendments to other legislation that they implement. The Regime would benefit from consolidation and clear definitions of entities that fall within its remit. 2) The scope of the Regulations should be clarified in relation to EEA firms offering services in the UK on a cross-border basis, without a physical presence in the UK, in order to be consistent with mutual recognition rights for firms, where they passport under a freedom to offer services limb rather than one of right of establishment; the Regulations should not be applied to such firms. A contrary view would result in service providers having to comply with 27 member state AML requirements, which would be entirely unworkable in practice besides being inconsistent with mutual recognition rights. The e-commerce Directive 2000/31/EC thus prohibits member states from raising barriers to the offering of ‘information society services’ from other member states; Article 3(2) states: “2. Member States may not, for reasons falling within the
### Consultation on the UK money laundering regime

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<td><strong>Coordinated field, restrict the freedom to provide information society</strong></td>
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<td><strong>services from another Member State.</strong></td>
<td>There is therefore good reason to distinguish between freedom to offer services and right of establishment passporting, when considering the application of AML regulation to passporting firms.</td>
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<td>2</td>
<td>To what extent are the Customer Due Diligence (CDD) requirements set out in the Regulations a proportionate response to the threat from money laundering?</td>
<td>The CDD requirements act well to deter money laundering and to minimise the attractiveness of e-money products to would-be money launderers. For e-money issuers the ability to apply simplified due diligence is important and should be maintained. Simplified due diligence allows a quick take-up of products and a risk-sensitive means of applying requirements. Where the risk is higher, e-money issuers apply standard or enhanced due diligence. This leads to a proportionate and well balanced due diligence regime for e-money products.</td>
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<td>3</td>
<td>To what extent are Customer Due Diligence (CDD) requirements effective in the fight against money laundering?</td>
<td>The risk-based CDD measures work in practice by allowing firms to deploy their resources to the areas of greatest AML risk. CDD requirements often also assist with anti-fraud measures and are treated as the same within firms. SDD operates for e-money where the overall risk of money laundering is at its lowest. This enables better management of resources, reduces barriers to take-up and enables better compliance. These are augmented by other AML measures and together have provided a good determent and effective means of addressing the risk of money laundering.</td>
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<td>4</td>
<td>To what extent do the record keeping and policy and procedural requirements upon Regulated Firms support their anti-money laundering efforts?</td>
<td>E-money issuers retain records in order to establish a base line of transactions against which suspicious activity can be assessed. Records also provide information about the flow of funds to internal investigators and law enforcement, should a suspicion have been confirmed. The five-year record keeping requirement may be useful in order to establish a pattern of use that has been infrequent, for example where accounts are purposely left dormant after a transaction so as not to attract suspicion. In practice, however, internal investigations by MLROs of e-money issuers rarely tend to go back more than one year. An extension of the five-year period is therefore not thought to be necessary.</td>
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<td>5</td>
<td>To what extent do the Regulations provide Supervisors with appropriate compliance monitoring and enforcement powers and penalties to deter non-compliance?</td>
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<td>6</td>
<td>To what extent do the Regulations provide for a suitable system of registration and ‘fit and proper’ testing to be established and carried out on a risk basis?</td>
<td>Application of the ‘fit and proper’ test under the Money Laundering Regulations ought to be aligned with that under the Payment Services Regulations, avoiding duplication of processes where possible. Under the Payment Services Regulations fitness and propriety is tested by way of a wider number of considerations than those in the Money Laundering Regulations. While in the Money Laundering Regulations fitness and propriety is tied to the applicant’s record in relation to financial crime, bankruptcy and company directorship, the FSA will consider three broader areas in order to establish fitness and propriety: (a) honesty, integrity and reputation, (b)</td>
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<td>competence and capability, and (c) financial soundness. In addition, agents of payment institutions are subject to the firms’ own procedures for establishing fitness and propriety.</td>
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<td>The objectives for testing fitness and propriety may be different for each legislation (the Money Laundering Regulations look at whether a person is a fit and proper person in the context of preventing money laundering and terrorist financing, the Payment Services Regulations in the context of the provision of payment services).</td>
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<td>However, given the overlap and the higher standard required under the PSD, if a firm were to meet the PSD requirements, it should not be necessary to repeat the process for ML Regulations.</td>
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<td>7</td>
<td>Are the requirements of the money laundering Regulations compatible with and complementary to the requirements of a) other aspects of the UK’s broader anti-money laundering regime legislation and b) international standards/practices?</td>
<td>Although the UK’s implementation of FATF recommendations is consistent with their provisions, a difficulty arises from the inconsistent approach of varying national and international bodies (e.g., the Wolfsberg Group, the European Commission, the FATF, and other forums). For example, while a number of bodies have issued papers on new payment methods, these have not been well coordinated and varied in their content. Furthermore, industry experience is not always sought, and this leads to considerable variation in content.</td>
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<td>8</td>
<td>How well does HMT engage with you in developing the Regulations and are the requirements of the Regulations clearly communicated?</td>
<td>The e-money industry has previously welcomed the opportunity to respond to consultations on the Regulations, and has found the formal and informal mechanisms of discussing interpretation of the Regulations with Treasury staff helpful. The effectiveness of the regime could, however, be improved.</td>
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<td>9</td>
<td>To what extent does Guidance promote both an effective and proportionate</td>
<td>Small e-money issuers are registered with HMRC, but as a matter of practice follow the JMLSG e-money guidance. There is some uncertainty as to whether they are instead required to follow HMRC guidance. Although HMRC have agreed in the past that it is in practice more appropriate that they follow JMLSG guidance on e-money, not least because it is specific, clarification on this point would be helpful. JMLSG e-money industry guidance is fundamental to the implementation of a risk-based approach in the industry, and is essential for understanding and interpreting the requirements in the context of e-money product propositions. Firms rely upon the JMLSG guidance when developing AML policies and procedures, and the provisions of various factors increasing or decreasing risk is particularly helpful in this respect, as it allows e-money issuers to focus on areas with greater risk and deploy resources accordingly.</td>
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<td>10</td>
<td>How clear and consistent is Guidance including whether Guidance is</td>
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<td>consistent for those sectors where more than one supervisor exists and</td>
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<td>generally across sectors?</td>
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<td>11</td>
<td>In what ways does Guidance assist with a risk-based implementation of</td>
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<td>Customer Due Diligence (CDD) measures within your sector?</td>
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<td>12</td>
<td>In what ways does Guidance assist and support Regulated Firms’ anti-money</td>
<td>The e-money sector-specific guidance, formulated with input from industry and the EMA, has assisted in creating a proportionate risk-</td>
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<td>laundering policies and</td>
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<td>procedures?</td>
<td>Based approach for ELMIs that is sensitive to e-money issuers' unique product propositions. This would not have been feasible using generic guidance.</td>
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<td>The guidance assists firms to fulfill the requirement to create and maintain risk-sensitive policies and procedures. The factors increasing or decreasing risk set out in the guidance enable firms to consider other aspects of their responsibilities under the Regulations, e.g. record keeping and training, on a risk basis.</td>
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<td>The guidance encourages good practice, where a risk-based approach is implemented there is seldom an approach that could be described as best practice, while there are often a number of good practices. The guidance encourages members to develop and adopt good practice appropriate to their product proposition.</td>
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<td>13</td>
<td>How is Guidance made accessible and are there opportunities to engage in its formulation?</td>
<td>Availability and accessibility is good.</td>
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<td>The drafting of the guidance involves collaboration between EMA members, followed by consultation with the FSA, Treasury and law enforcement as well as the JMLSG Board. There is then public consultation and the opportunity for any third party to respond. This process involves relevant stakeholders and enables the inclusion of all interests.</td>
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<td>Questions about supervision</td>
<td>To what extent does the supervisory framework support an effective, risk-based anti-money laundering regime and compliance with the Regulations?</td>
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<td>15</td>
<td>In what ways do Supervisors communicate and engage</td>
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<td>16</td>
<td>How do Supervisors ensure a consistent approach to compliance monitoring and enforcement is taken across the anti-money laundering regime?</td>
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<td>17</td>
<td>To what extent is Supervisors' monitoring of compliance targeted, proportionate and risk-based?</td>
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<td>18</td>
<td>How effective and proportionate is the enforcement regime?</td>
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<td>19</td>
<td>In what ways could the registration process for Regulated Firms be improved?</td>
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**Questions about Industry practice**

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<td>20</td>
<td>Are there barriers to implementing risk-based policies in practice? If so, what are they?</td>
<td>E-money products do not allow the saving or investment of funds, and are mostly designed to make small payments. For e-money issuers, emphasis on PEPs seems counterproductive. It requires monitoring activity that diverts resources from other more likely money laundering risks. Positive matching of PEPs is rare, which means there is little demonstrable benefit related to the cost of monitoring. Effectively identifying PEPs without using a third-party solution is not feasible, so firms are forced to use expensive solutions simply as a means of complying with the law.</td>
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<td>21</td>
<td>During the process of customer due diligence (CDD), how are risks (in terms of likelihood and impact) taken into account to decide the type of due diligence that will be undertaken?</td>
<td>The decision on whether to apply SDD rather than full CDD measures is dependent on a number of factors. Apart from the SDD limits set out in the Money Laundering Regulations, the Wire Transfer Regulation and its limits must also be taken into account. For example, even within the SDD £2,200 annual turnover limit, if a</td>
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<td><strong>transaction exceeds £600, customer due diligence must be undertaken.</strong></td>
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<td>Additionally, product features play a role, such as limits, ability to use a card at an ATM, as does the manner in which a product is used and the market where it is deployed.</td>
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<td>Where factors that increase risk predominate or where use of a product introduces vulnerabilities to particular typologies, then a more restrictive approach is used, applying CDD at an earlier stage and using enhanced CDD where appropriate.</td>
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<td>22</td>
<td>To what extent do the Regulations support or complement Regulated Firms’ “business as usual”?</td>
<td>AML policies and procedures are integral to fraud risk management and monitoring, integrating AML processes with fraud risk management procedures, for example, allows complementary processes to be deployed.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other provisions, such as the Wire Transfer Regulation offer few opportunities for business benefit, other than meeting general common good objectives.</td>
</tr>
<tr>
<td>23</td>
<td>Are “fit and proper” tests being conducted in an effective and proportionate manner?</td>
<td>*</td>
</tr>
<tr>
<td>24</td>
<td>How easy or difficult is it to comply with reporting and record keeping obligations?</td>
<td>Issuers and PSPs have not found compliance difficult, although better online tools would be welcome.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Where a firm seeks consent, the speed with which SOCA responds is significant, particularly for e-money issuers who operate online accounts. Managing the customer relationship without tipping the customer off is a delicate balancing act in the online payment environment, where fast execution times are expected.</td>
</tr>
<tr>
<td>Question no.</td>
<td>Question</td>
<td>EMA response</td>
</tr>
<tr>
<td>-------------</td>
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</tr>
<tr>
<td>25</td>
<td>What forms of communication and engagement take place with stakeholders, from government agencies through to customers?</td>
<td>*</td>
</tr>
</tbody>
</table>

**Questions about the customer experience**

| 26          | How proportionate do you believe the Regulations appear once they reach the customer? | More flexibility in the form of material that can be accepted as evidence and the methods of verifying identity, could benefit a wider group of customers, both within the UK and in countries outside of the EEA where standard documentation may not be as readily available. |
| 27          | Are you able to provide customers with access to information and resources to check what information is needed from them and why? | * |

**Questions about the regime**

| 28          | To what extent do the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) provide an effective tool in the fight against money laundering? | |
| 29          | To what extent are the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) a proportionate response to the risk of money laundering in the UK? | |
| 30          | Would you say that all relevant stakeholders are able to participate in the development of the Regime? | |

**Appendix**
List of EMA members as of December 2009:

- Advanced Payment Solutions Ltd
- American Express
- Bank of Ireland
- Blackhawk Network Ltd
- Citadel Commerce UK Ltd
- ClickandBuy International Ltd
- Earthport Plc
- Envoi Services Ltd
- Europay Worldwide Inc
- Googled Payments Ltd
- IDT Europe
- Ixaris Systems Ltd
- MasterCard International
- Moneybookers Limited
- National Australia Group
- NatWest UK Limited
- Newcastle Building Society
- PayPal Europe Ltd
- PayPoint Plc
- Prepaid Services Company Limited
- PrePay Technologies Limited
- PST-Pay Limited
- R. Raphael & Sons plc
- Securiclick Limited
- ToroGlobal Ltd
- Ticket Surf International
- Transact Network Limited
- Transport for London
- Travelex Limited
- Uklash
- Visa Europe
- Wirecard AG
Review of the Money Laundering Regulations
2007
Financial Crime Team, HM Treasury
1, Horse Guards Road
London
SW1A 2HQ

London, 10 December 2009

Subject: Review of the Money Laundering Regulations 2007 – A Call for Evidence (October 2009)

Dear Sir/Madam

We write in relation to the above paper and are grateful for the opportunity to provide feedback in respect of the application and operation of the Money Laundering Regulations 2007 (the "Regulations") in the context of our specific business operations. As you will know, Euroclear UK & Ireland ("EUI") is the operator of the CREST settlement system. EUI is approved as an operator of a relevant system under the Uncertificated Securities Regulations 2001 and has been recognised by the Financial Services Authority ("FSA") as a recognised clearing house ("RCH") for purposes of the Financial Services and Markets Act 2000 ("FSMA"). Against this background, we do not comment on each of the questions in the review document but have focussed on those questions in Part A that are most relevant to EUI and where we feel further clarification should be provided.

EUI’s response and comments to the questions raised can be found in the appendix to this letter. The completed “Tell us about yourself” form is enclosed.

We are happy for our response to be shared with other Government officials and the proposed summary publication, but do not otherwise wish EUI’s response to be made available publicly (e.g. by way of publication on HM Treasury’s website). We understand that our response may be published or disclosed in accordance with the access to information regimes.
If you have any questions regarding the contents of our response, please do not hesitate to contact us.

Yours sincerely,

Lisa Kelly
Compliance Manager

e-mail: Lisa.Kelly@euroclear.com
Appendix
Questions in Part A

Questions about Guidance

9. To what extent does Guidance promote both an effective and proportionate approach to anti-money laundering?

HMT would like to know whether, inter alia, (i) the definitions of persons and activities subject to the Regulations given in Guidance are clear, meaningful and correct from a risk basis in the context of our sector and whether (ii) Guidance assists understanding and supports risk-based implementation of the Regulations’ requirements. Whilst we consider that existing definitions of persons and activities subject to the Regulations are reasonably clear, it would be useful to provide sector specific guidance that takes into account more appropriately the characteristics of the clearing and settlement sector. For example, in adopting a proportionate, risk-based strategy in managing and mitigating the risks of money laundering and terrorist financing, EUI takes into account a number of factors some of which are more widely applicable to RCHs:

(i) EUI does not extend credit of any form to participants in the CREST system;
(ii) EUI does not take deposits;
(iii) CREST members have banking arrangements with settlement banks who in turn have an account with another Central Bank;
(iv) the vast majority of EUI’s members are themselves regulated persons; and
(v) EUI only provides a limited custody function in respect of its international service.

Therefore, in relation to both the nature of its services and the profile of its client base, EUI considers that the risk of it or its services being misused for money laundering purposes or other criminal activity is relatively low. Similar considerations would apply to other RCHs. However, we consider that existing Guidance does not take into account appropriately some of the industry characteristics and therefore it does not, in our view, provide a proportionate response to the threat from money laundering in a clearing and settlement context.
Questions about Industry Practice

20. Are there barriers to implementing risk-based policies in practice? If so, what are they?

HMT is interested to know about the difficulties encountered with specific provisions. EUI applies Simplified Due Diligence ("SDD") to CREST sponsors. A CREST sponsor is a person who has the technical means to communicate with the CREST system and to send properly authenticated dematerialised settlement instructions on behalf of the underlying sponsored members for whom it acts as sponsor. EUI relies on the sponsors to apply customer due diligence ("CDD") measures to the sponsored member and, therefore, sponsors must meet the Regulation 17 requirements. In this regard we have the following comments/questions in connection with Regulation 17:-

(1) We query if Regulation 17(2)(a) should not also be extended to regulated bodies? Currently Regulation 17(2)(a) only covers a credit or financial institution which is an 'authorised person', meaning a person authorised for the purposes of FSMA. Regulated bodies are exempt from authorisation (and for purposes of the Regulations are, as we understand it, "Annex I Financial Institutions") and therefore do not qualify as a person who can be relied on for purposes of applying customer due diligence measures. We consider that additional Guidance would be helpful to understand why regulated bodies that are regulated by and subject to close supervision by FSA (including for anti-money laundering purposes), cannot be relied upon for purposes of Regulation 17 and whether a distinction should be made between regulated bodies in particular and other Annex I Financial Institutions such as consumer credit financial institutions.

It also appears to us that the existing limitation in Regulation 17(2)(a) to 'authorised person' potentially creates an imbalance between persons who can be relied upon and who carry on business in the UK and those who carry on business in another EEA or non-EEA state who are only required to be supervised for compliance with the requirements (in a manner equivalent to) section 2 of Chapter V of the Money Laundering Directive (Regulation 17(2)(c) and (d)).
(2) Regulation 17(2)(c) and (d) specify the cumulative requirements that a non-FSA authorised person must meet in order to be relied on by a relevant person. According to existing wording Regulation 17(2)(c)(ii) and (d)(ii) require, inter alia, that

"(i) a credit or financial institution [...], auditor, insolvency practitioner, external accountant (...);
(ii) [is] subject to mandatory professional registration recognised by law (...)."

Typically "professional registration" means registration requirements applicable to certain professions such as auditors, tax advisers and legal professionals but does not apply to credit and financial institutions. It would be useful to clarify whether, in respect of credit and financial institutions, the existing wording and reference to "professional registration" requirements is intended to mean that such institutions are required to be registered formally with their local regulator/supervisor. If so, we query whether a distinction is to be made between institutions that are formally authorised by their local regulator/supervisor and those that are otherwise 'regulated' (such as recognised bodies in the UK or Annex I Financial Institutions) or supervised for anti-money laundering purposes in their local jurisdiction?

(3) Finally, we consider that there is an ambiguity in the JMLSG Guidance as regards the interaction between Regulation 17 and Regulation 13. In brief, the question here is whether a person who is being relied upon pursuant to Regulation 17 ('A') may apply SDD measures in respect of a third party ('C') falling within scope of Regulation 13, and whether the relevant person relying on A ('B') may accept such standard of customer verification carried out by A?

JMLSG Guidance at point 5.6.10 and in Annex 5 suggests that this is not acceptable:

"For one firm to rely on verification carried out by another firm, the verification that the firm being relied upon has carried out must have been based at least on the standard level of customer verification. It is not permissible to rely on SDD carried out...".
However, we are unclear how 5.6.10/Annex 5 can be reconciled with the JMLSG Guidance given at, for example, 5.3.203-5.3.207. More specifically, if in the previous example, C was an FSA authorised person would A effectively be required to treat C as an unregulated company and apply the standard verification measures set out in 5.3.127 – 5.3.130? We consider that there is a lack of clarity in the Guidance and that it would be helpful to expand section 5.6 to include, for example, practical examples.