SOCA RESPONSE TO REVIEW OF THE MONEY LAUNDERING REGULATIONS 2007

1. SOCA is grateful for the opportunity to feed into this review and for the helpful discussions that have taken place to date with the review team. This document provides a summary of SOCA's response to the Call for Evidence and consists of our observations and comments on those aspects of the Regulations that are relevant to SOCA business.

Introduction:

2. SOCA considers that the Regulations represent a significant step forward in developing the UK's defences against money laundering and terrorist financing. We consider that they are drafted at a suitably high level, and reflect language appropriate to the UK AML/CTF strategy of a risk-based approach. For example: "A relevant person must ... determine the extent of customer due diligence measures on a risk-sensitive basis depending on the type of customer, business relationship, product or transaction"; "have appropriate risk-based procedures to determine whether the customer is a politically exposed person"; and "take adequate measures to establish the source of wealth and source of funds which are involved in the business relationship or occasional transaction". Such an approach allows for responsive and considered implementation of controls by firms.

3. Prior to the implementation of the Regulations, many firms, (particularly those in the financial sector) were already practising the risk-based approach. This would suggest that there have been limited additional burdens on businesses imposed by the Regulations. For newer sectors, over time this approach should produce cost efficiencies in terms of firms targeting their resources at areas of higher risk and away from areas of lower risk. It is recognised both nationally and internationally that the risk-based approach is the most effective and proportionate approach.

4. The Regulations, together with the Proceeds of Crime Act 2002 (PoCA) and the Terrorism Act 2000 form the backbone of the UK's AML/CTF regime. In particular, the Regulations support the requirement to submit Suspicious Activity Reports (SARs) to the UK Financial Intelligence Unit (UKFIU) under PoCA. The third SARs Annual Report, published in November 2009 gives an assessment of the performance of the SARs regime for the reporting year from October 2008 to September 2009.

Scope and the Risk-based approach:

5. The Government's strategy on money laundering and terrorist financing set out the vulnerabilities associated with a number of areas including Money Service Business (MSB) sector. This follows that the scope of the Regulations should be wide enough to cover all areas of risk in order to be an effective tool in deterring, detecting and prosecuting money laundering activities.

6. The UKFIU continues to focus on the most vulnerable sectors in terms of outreach (in order to assist it to receive appropriate SARs reporting across a full range of regulated firms), and by working with partners across law enforcement, supervisors and Government to support other work to reduce these risks where possible.

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1 A more detailed response along with supporting documentation was submitted to the review team in December 2009.
7. SOCA would have concerns if any persons or activities were excluded from parts of the Regulations. Removing a sector from the scope of the regime could potentially alert money launderers to areas where fewer checks take place and potentially create a loophole. It is important to note that under the risk-based approach effectiveness principally relies on the regulated sector working together to the same standards, whilst having the flexibility to assess the individual risks of product and client. It is a collaborative and co-operative regime and by removing a section of the regulated sector it potentially weakens the whole.

8. SOCA is clear that the reporting requirements and the penalties for committing money laundering offences are still applicable under PoCA to the unregulated sector. However it is SOCA’s belief that in the absence of a requirement to identify customers and have systems in place to identify money laundering and train staff, the reporting mechanisms are not as good and the determination to prevent money laundering will lessen.

Money Service Businesses (MSBs)

9. Money laundering supervision was first introduced for MSBs in 2001 in recognition of the particular risks attached to this area. Since then, due to HMRC’s efforts the supervisory regime has continually advanced. We also note that there have been dedicated work programmes by HM Treasury, HMRC and law enforcement to assist this sector in making it hostile to money laundering and terrorist financing, and which have also brought improvements in compliance.

10. Despite recent improvements, the MSB sector remains at risk because of the potential for acting as a cheap and low risk vehicle for placing and moving criminal cash. In SOCA’s view, this sector will continue to cause concern until the following issues are adequately addressed:

- a number of changes are made to the Regulations, as set out in this submission;
- the tactical level joint working that has developed over the years between operational agencies continues and is built upon; and
- the Government strategy on AML is revised in a way that provides HMG commitment and support for this work, and provides a clear direction towards making the MSB sector a more hostile environment for criminals and terrorists.

11. SOCA recognises that the MSB sector is a significant and valuable part of the UK financial services sector. SOCA also recognises the social value that these businesses provide in servicing the remittance needs of groups of people to repatriate legitimate funds. It is critical that there is effective pursuit of money laundering and non-compliance in the sector in order to support these beneficial outcomes in ways that are socially equitable and market-efficient.

Letting Agents

12. SOCA considers Letting Agents to be an area of risk due to its absence from the scope of the Regulations. Criminals can use the services of Letting Agents in a bid to create a veil of legitimacy. Criminal proceeds can be disguised as cash rental payments, and placed within the wider financial sector for further laundering. Therefore, the payment of rent via a Letting Agent using criminally derived funds is a form of money laundering.
13. SOCA recognises the extent to which letting services are becoming an increasingly important and lucrative area of the property industry. It follows that the expansion of the letting industry makes it appear increasingly attractive to criminals for the purpose of laundering criminally derived funds, or providing other facilities to support criminality. Therefore SOCA would like to see this sector become part of the regulated sector.

High Value Dealers (HVDs)

14. Despite improvements under the Regulations, non-compliant behaviour is still possible under the High Value Dealer (HVD) regime. A key challenge is the definition of a HVD. It appears that it is currently relatively easy for any retail outlet to accept £15,000 in cash and to simply not register. It is unclear how or if they would be identified.

15. An ideal outcome would be for particular high risk HVD sectors to be required to register regardless of whether they accept cash above £15,000 (e.g. car dealers, jewelers, auction houses). However, we are aware that we are tied to the EU definition of HVD\(^4\). Therefore HM Treasury may wish to consider raising this point at EU level.

**Customer Due Diligence (CDD) requirements:**

30. SOCA believes that CDD measures are one of the main strands of an effective AML/CTF system. Those firms who conduct risk-based CDD are able to work with SOCA and law enforcement to deny and frustrate criminal activity. However, it is axiomatic that CDD requirements are only as effective as their application by the firms.

31. CDD requirements assist with the deterrence and detection of money laundering and terrorist financing activities as they ensure improved customer information is available should an investigation be initiated. Also, the UKFIU receives better quality SARs as a result of this scrutiny. Accurate and full CDD enables the reporting of SARs which can provide information that supports existing investigations and identifies and locates criminal proceeds. SARs also can supply important information on entities which assist in securing convictions and confiscations. This year’s SARs Annual Report provides case studies and further details of SARs successes which were supported by CDD processes.

**Beneficial Ownership**

34. The requirement to identify the beneficial owner improves transparency which helps to deter financial crime. Evidence from financial investigations indicates that nominee owners and shareholders in trusts and company ownership are being used to shield money laundering activity.

**Reliance**

35. SOCA supports the current scope of Reliance in the Regulations. At the present time, we believe that widening this would weaken the UK AML/CTF regime. In particular,

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\(^4\) EU Third Money Laundering Directive: Article 2(1)(e): “other natural or legal persons trading in goods, only to the extent that payments are made in cash in an amount of EUR 15000 or more, whether the transaction is executed in a single operation or in several operations which appear to be linked”.
we would be extremely concerned if the MSB sector was able to be relied on as a third party for identification purposes. Also, the Trust Company Service Providers (TCSPs) sector is wide ranging and incorporates varied standards of AML controls and no single supervisor. Therefore, SOCA would have serious concerns about allowing the whole sector to be used for reliance. We have no objections to those solicitors and accountants already meeting the reliance provisions by virtue of their professional body to continue to do so when carrying out work in the TCSP environment.

36. SOCA will reconsider its position once the MSB and TCSP sectors can demonstrate that they are robustly compliant and that there is widespread registration.

Record Keeping and Policy and Procedures:

39. SOCA is of the view that the 5 year limit and reliance provisions concerning record keeping are appropriate.

40. SOCA has previously outlined its preference of the regulated sector obtaining copies of the evidence of customer identity instead of being given the option to either note the references to or obtain copies of documentation under Regulation 19 (2). Record keeping requirements are of great importance to investigations and it is important that account opening identification documents, including any subsequent documents are photocopied and retrievable.

41. In our view, noting reference numbers alone can hinder investigations. If documents were forged and then destroyed following account opening, there would be no evidence linking the subject with the document. If the subject had stolen the identity of another, there would be little evidence enabling the real identity owner to prove it was not them opening the account.

42. SOCA experience has shown that the form in which transaction records are kept has a significant impact on the progress of an investigation. Often records are difficult to understand and resource intensive to go through. While SARs are made in English, the supporting records may be kept in the operators' language which can hinder the efforts of investigators.

43. To assist with this, SOCA would also like to see Regulation 19 amended to require that all transactions records are kept in English. We further suggest that the record be kept in a standard form similar to that of the preferred SAR. As well as helping investigators this would also mean that in the event of a SAR being required the information is easily obtained by the business.

44. We appreciate that our proposal has a cost and storage implication for the regulated sector. However, many firms already retain copies of documentation as it suits their own risk management purposes. Therefore, we do not believe that such costs are prohibitive. The absence of this material, however, seriously affects law enforcement's ability to investigate money laundering, recover assets and prosecute, using verification material evidently.
45. Both SOCA and HMRC recognise that a key part of a supervisors’ compliance role is to visit businesses at their premises to review and test their risk assessment, policies and procedures. However, where these are found to be deficient without them being written down, it is difficult to levy a penalty to change the behaviour or require businesses to keep a written version in the future.

46. Therefore SOCA agrees with HMRC that Regulation 20 should state that supervisors may require these policies and procedures to be in written form. By providing it as a discretionary power, supervisors can, through guidance, apply this correctly to those businesses that they need to. We note that HMRC recognises that this change would improve their compliance and education effort to support businesses to ensure that their risk-based approach, procedures and policies are correct.

Role and Use of Guidance:

47. SOCA agrees that legally enforceable guidance plays an important role in promoting the regulated sector’s awareness of their legal obligations. In particular, guidance can assist industry in their implementation of a proportionate and risk-based approach to the fulfillment of their AML and CTF obligations.

48. SOCA is aware of high levels of non-compliance in some areas of the regulated sector. A proportion of this non-compliance is likely to be the result of poor or patchy awareness of legal obligations, indicating that there is room to build on existing guidance outreach efforts.

Supervisory Structure:

49. SOCA believes that there is a need for a strong supervisory framework to ensure that systems and controls are in place to support an effective, risk-based AML/CTF regime and compliance with the Regulations. Effective supervision is central to the overall effectiveness and proportionality of the UK’s AML/CTF regime. The requirement in the third EU Money Laundering Directive for supervision of all sectors has the potential to make a significant improvement to UK AML/CTF efforts.

50. SOCA recognises that there are many good examples of procedures being implemented by supervisors. However, with 28 supervisory bodies with varying arrangements, there is the potential for inconsistencies. In SOCA’s experience, those sectors that have an independent regulatory body provide a good supervisory model.

51. Although SOCA is minded that a framework which includes the least number of supervisors is the best model, we recognise that in the UK context there is unlikely to be an alternative to the current supervisory structure. Therefore, it is essential to ensure consistent and complementary approaches by supervisors and for HM Treasury to be able to effectively monitor their performance. For this reason we support HM Treasury’s recent efforts to improve the effectiveness and accountability of the supervisory arrangements. This area will need further attention as new arrangements are implemented in order to ensure the benefits of the Directive are realised.
52. SOCA recognises the good work of supervisors in establishing processes to ensure all members of their sectors are registered. We support the requirement of a fit and proper test (FPT) as a precondition to registration for MSBs and TCSPs. In our view, a system of registration supports compliance with the Regulations.

53. In our view, the introduction of a FPT for MSBs has made the registration process more effective and gives HMRC better grounds for registration or refusal and cancellation. A vital part of the test is the full range of checks that HMRC undertakes. In addition, the FPT is in many cases the start of a process rather than an end point. In SOCA’s view, passing the test needs to be accompanied by a follow-up depending on the risks associated with a particular sector. We are aware that HMRC undertakes good work in this respect.

54. However, there are a number of gaps in the FPT at present that should be addressed as it is a vital first line of defence against criminal infiltration. SOCA supports HMRC’s proposed steps of using guidance to address these where possible.

55. In addition, for the purposes of consistency, the Regulations should be amended to state that persons are not fit and proper if:

- they have been convicted under the Theft Act 1968, as well as the Fraud Act 2006 which updated aspects of the earlier Act; and
- a confiscation order under the Criminal Justice Act 1996 has been made against them, in addition to orders under PoCA which are already listed.

56. In our view, ideally the FPT should include negative criteria to allow for family members and spouses who have criminal associations to be excluded. We understand that this would be difficult to implement as a systematic part of the test. However, as a middle measure providing HMRC with a power to fail such persons in the event that it is aware of such associations, would be a useful intelligence focused tool that could be used in certain situations.

57. We also welcome the fact that HMRC is re-testing a proportionate percentage of applicants and have informed HMRC that we are keen that this continues.

58. SOCA experience has shown how several MSB businesses are often located in the same premises. Such businesses can be operated by the same group of persons, with some parts of the business activity taking place under the auspices of a stand-alone operation, with other business being undertaken under ‘arms length’ agency arrangements. SOCA would like to see the FPT extended to such agents. We understand HMRC is considering whether it has the power to do this. If not we believe the Regulations should be changed.

Annual Returns

59. SOCA would like to see the registration process supplemented by a signed annual return from traders that their circumstances have not changed since the original application. This requirement should include details of changes to projected turnover, agents and bank accounts. We understand that requesting this information is already possible under Regulation 37 and that HMRC is considering the feasibility of this. We also consider that failing to provide such information should become an offence and,
as detailed earlier in our response, we support HMRC's view that new penalties be attached to this Regulation.

Cancellation of a registration

60. SOCA supports HMRC's proposal to amend Regulation 30 in order to ensure that MSBs that are not authorised or registered by the FSA under the Payment Services Regulations are unable to trade.

Supervision & Enforcement:

61. SOCA is of the view that the civil penalties and criminal sanctions under the Regulations are appropriate. Civil penalties provide a dissuasive penalty for many instances of non-compliance, while the use of criminal sanctions is considered essential by SOCA for those that are at the higher end of non-compliance.

62. Criminal sanctions also provide a significant deterrent to firms within the regulated sector, although this is difficult to quantify. Financial sanctions alone would be unlikely to deter operators of many firms.

63. SOCA agrees with HMRC that the scope of penalties available to HMRC officers is not as wide as it should be in relation to where a MSB is not compliant with requests relating to visiting them or checking their procedures. We therefore support HMRC in the proposal to see Regulation 42(1) extended to allow for penalties to be levied to deal with behaviour from customers who are not complying with reasonable requests under Regulation 37 and 38.

64. SOCA sees great value in supervisors visibly using disciplinary and enforcement powers. In our view, the ability for supervisors to monitor compliance as well as take enforcement action against those that are non-compliant provides incentives for others to comply with the Regulations and therefore boosts effectiveness. To support this work, SOCA is keen to work with supervisors to explore further opportunities for joint working in accordance with the risk-based approach.

65. SOCA would like to see more consistent engagement with SOCA by the full range of supervisors. This is in line with the Prime Minister’s Strategy on Serious Organised Crime, which states that: "We [HMG] will increase collaboration between law enforcement officers and regulatory and professional bodies. This will enable and encourage them to investigate and, where necessary, close down members' businesses used to commit or facilitate serious organised crime, and help them spot corruption and report suspicious activity".

66. The allocation of adequate resources was a central part of the criteria by which professional bodies were granted the status of supervisors under the Regulations. SOCA is conscious that some supervisors have been changing their approach, for example, moving to desk based monitoring or reducing the resources they dedicate to AML supervision. These changes may be justifiable. However, it is vital that in such circumstances adequate re-assessment takes place to ensure that the new approach is still proportionate to the risks.

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Dear Sirs,

REVIEW OF THE MONEY LAUNDERING REGULATIONS: A CALL FOR EVIDENCE – PART A

We welcome the opportunity to respond to this Call for Evidence

INTRODUCTION TO SPC

SPC is the representative body for a wide range of providers of advice and services to work-based pension schemes and to their sponsors. SPC's Members' profile is a key strength and includes accounting firms, solicitors, insurance companies, investment houses, investment performance measurers, consultants and actuaries, independent trustees and external pension administrators. SPC is the only body to focus on the whole range of pension related services across the private pensions sector, and through such a wide spread of providers of advice and services. We do not represent any particular type of provision or any one interest - body or group.

Many thousands of individuals and pension funds use the services of one or more of SPC's Members, including the overwhelming majority of the 500 largest UK pension funds. SPC's growing membership collectively employs some 15,000 people providing pension-related advice and services.

This consultation document has been considered by SPC's Financial Services Regulation Sub-Committee which comprises representatives of actuaries and consultants, insurance companies and lawyers.

For your convenience, we have also completed the Tell us About Yourself template, which is appended to this response.

QUESTIONS ON THE REGULATIONS

Our Sub-Committee has very little first hand knowledge of pension schemes of any description having been used for money laundering. It is aware of at most a handful of cases.

We consider that large schemes, whether occupational or contract based, represent a low risk of being used for money laundering.

There is an increased risk, but in our view still a relatively low one, of personal pension schemes (including Self Invested Personal Pension Schemes) and small self administered pension schemes being used.
In our view, the regulations and their application to business activity are broadly appropriately risk based for pensions business.

QUESTIONS ABOUT GUIDANCE

The guidance produced by the Joint Money Laundering Steering Group is helpful and, in our Sub-Committee’s experience, adherence to it is viewed as akin to having a safe harbour.

It would be helpful if the guidance actually did constitute a safe harbour in regulatory terms.

QUESTIONS ABOUT SUPERVISION

In our view the supervisory framework is appropriately targeted, proportionate and risk based.

The framework has relatively little impact on pension consultants and pension administrators. This is appropriate, given the low risk that they will be involved in financial crime.

Reporting has become more straightforward, following the introduction of the Serious Organised Crime Agency’s online channels and we view SOCA as communicating and engaging well with regulated bodies.

QUESTIONS ABOUT INDUSTRY PRACTICE

In our view, the regulations broadly support “business as usual”.

QUESTIONS ABOUT THE CUSTOMER EXPERIENCE

In our Sub-Committee’s experience, there are now few difficulties in operating the customer identity requirements, the need for which is generally understood by customers.

FSA factsheets have been helpful in this respect.

Where used, electronic identification makes the compliance process less intrusive for customers.

QUESTIONS ABOUT THE REGIME

As we have already indicated, our Sub-Committee’s experience suggests that pension schemes of any type have rarely been a vehicle for money laundering.

It would, however, be helpful to have more examples, perhaps in confidence to Money Laundering Reporting Officers, of any cases where pension schemes have been a vehicle for money laundering.

Yours sincerely

John Mortimer
Secretary

At:
Solicitors Regulation Authority

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

The Solicitors Regulation Authority (SRA) was established in January 2007 as the independent regulatory body of the Law Society of England and Wales.

The SRA sets standards for and regulates more than 100,000 solicitors, registered European lawyers and registered foreign lawyers together with 10,000 law firms in England and Wales.

The SRA is the designated regulator and responsible for the supervision and enforcement of the money laundering regulations within the Solicitors profession and welcomes the opportunity to comment on the review.

Our response to the questions that you have asked are outlined below;

The Regulations

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

As the regulator, the SRA operates in a proportionate manner and transparent manner concentrating on a risk based intelligence led approach to the regulation of solicitors. Solicitors appreciate that effective regulation ensures that the public are safeguarded and that confidence in profession is maintained at the highest level.

The SRA supports the risk-based approach which applies to anti-money laundering compliance and takes this into account when undertaking their regulatory function.

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

The SRA believe that the current level of CDD requirement is a proportionate and relevant response.

Comprehensive, almost prescriptive CDD is important from the outset of a solicitor/client relationship and not only protects the solicitor (and indeed the firm that they may work for) but also the client. CDD should be set at a sufficiently high standard so that both the solicitor and client understand from the outset what is required whilst acting as a deterrent factor should any party wish to attempt to transgress the law or regulations.

Having a published standard also means that should that standard be comprised, there is a comparator to assist in pursuing a disciplinary or criminal route. For
example a solicitor acting alone either wittingly or unwittingly accepts a lower standard of CDD within a firm that has set a much higher standard.

Whilst some time and energy is expended by the solicitor at the outset of the relationship the SRA believe that this is an important factor in satisfying not only public confidence in the profession but to ensure that wherever possible attempts to circumvent the system or perhaps conduct criminality are discovered and or disrupted at an early stage.

3. To what extent are CDD requirements effective in the fight against money laundering?

The majority of solicitors work in small law firms (with 4 or less principals) and act on behalf of "unsophisticated" users of legal services. In the majority of cases, the need to provide identification is a highly important area of their business process for the reasons outlined in our previous answer.

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

Solicitors are required to maintain a number of records to comply with regulatory requirements. We believe that this is a proportionate method of ensuring compliance, maintaining audit trails and assessing effectiveness.

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

The SRA has statutory powers to regulate and has an effective range of options to deal with those that transgress. The SRA also have the option to refer any matter to the police or other law enforcement agency should this prove necessary and appropriate, a process agreed through a series of memorandum of understanding.

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 SRA undertakes rigorous scrutiny of entrants to the profession from whatever point of entry and this includes those that enter from overseas or via the recently introduced non lawyer manager regime under legal disciplinary partnerships. The current processes are under review and may lead to a more enhanced and intrusive vetting process being introduced over the forthcoming years, starting in 2010, which will also include beneficial owners of alternative business structures. A pilot scheme has just been completed and this will inform some firmer recommendations by the early part of next year.
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 in relation to both questions although far less is known of international standards. Broadly the UK’s are regarded as some of the most comprehensive in the world. The requirement for CDD and enhanced CDD is of paramount importance, not just to complement the AML regime but for simple best practice in knowing who your customer is.

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

The SRA are members of the AML supervisor’s forum and a senior representative from the forum actually chairs the quarterly meetings. The chair also has regular one to one meetings with HM Treasury by the very nature of chairing this group and to develop and mature ideas in a more private environment. In addition the SRA attend all thematic and other workshops arranged by HM Treasury specific to this subject. This is appreciated.

Guidance

Questions 9 - 13

The Law Society is responsible for providing guidance to the profession and the recent publication of the Law Society’s Anti Money Laundering practice note has recently received Treasury approval and has received widespread support as a useful compliance tool.

The SRA continues to give guidance on ethical issues which arise in the context of anti money laundering procedures.

The Law Society and the SRA endeavour to work together in this area to ensure that the profession is provided with relevant and consistent guidance.

The response by the Law Society will provide greater detail.

Supervision

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

The SRA monitors, investigates and enforces compliance with AML and is able to institute disciplinary proceedings where necessary and appropriate.

The SRA Ethics Guidance Team provides advice and guidance on ethical issues which are brought to their attention by the profession and works in partnership with the Law Society who provide advice on good practice and
training programmes through the Practice Advice Service and Policy teams to enable them to meet their obligations and commitments.

The SRA has a number of operational units to support this function. They are:

- The Practice Standards Unit (PSU) undertakes over 1100 monitoring visits to firms based on risk or through intelligence assessment. During the course of these visits the firm’s commitment to AML processes and procedures is examined. The PSU will provide advice and guidance in such matters however if they consider that a serious breach has occurred they have the ability to seek assistance from the Forensic Investigations Department of the SRA.

- The Forensic Investigations (FI) department of the SRA undertakes investigations (based again on risk or intelligence assessment) into allegations of misconduct. Part of their remit is to investigate allegations of money laundering. Where appropriate and necessary the FI will institute disciplinary action.

- The Fraud and Confidential Intelligence Bureau is responsible for receiving, recording, assessing, developing and disseminating intelligence from a wide variety of sources. It works in partnership with law enforcement, other regulators and the profession and has the ability not only to receive intelligence for internal usage but to disseminate it to the most appropriate external source. The main client within the SRA for its work is the Forensic Investigations Unit.

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

As described in the response above.

The SRA, in addition, issue regular bulletins via the SRA website and electronic SRA Update and at SRA road show events.

In 2009 the SRA issued warning cards on fraudulent financial arrangements, money laundering and property fraud. These were distributed to all firms and are also available on the SRA website. They are widely used by PSU advisers on firm visits and at road shows etc. These cards are generalised warnings, are not rules and do not provide statutory definitions or advice. They are designed to warn solicitors, in general terms, of some of the signs indicative of improper activity. They can however be used to support disciplinary proceedings.
16. How do Supervisors ensure a consistent approach to compliance monitoring and enforcement is taken across the anti-money laundering regime?

There is a consistent and regular dialogue and liaison between the component parts of the SRA overseen by the tasking and co-ordination process. This ensures either individual or more generic problems are addressed and dealt with at an early stage and appropriate action taken. There is a similar dialogue with the Law Society and other key stakeholders.

In addition the SRA is a member of the AML supervisor's forum and the current chair is the Head of the SRA's Fraud and Intelligence Department.

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

See question 1 above. All visits or inspections to solicitors firms go through a risk assessment process prior to them being undertaken and are monitored by the

18. How effective and proportionate is the enforcement regime?

Unable to quantify as no current performance data is obtained.

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

We cannot comment on other Supervisors. We believe that our registration process – with fit and proper testing – is appropriate.

Industry Practice

20-25

There is engagement with SOCA, other law enforcement and regulators and through the AML supervisor's forum.

Customer Experience

26-27 – not able to comment

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?

As outlined 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?

The current regime is proportionate, relevant and necessary to combat the threat of money laundering within the UK.

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

There are a number of ways in which stakeholders can participate. In particular from a regulators perspective it includes the AML supervisor’s forum, individual workshops and one to one meetings with HM Treasury.
Review of the Money Laundering Regulations 2007
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1. The Society of Trust and Estate Practitioners (STEP) is the worldwide professional body for practitioners in the fields of trusts and estates, executorship, administration and related issues. STEP members help families secure their financial future and protect the interests of vulnerable relatives. STEP aims to promote the highest professional standards through education and training leading to widely recognised and respected professional qualifications. STEP internationally has over 14,500 members, with almost 6,000 members in the UK. Over 4000 students worldwide are currently studying for STEP qualifications and in the UK STEP supports an extensive regional network providing training and professional development.

2. STEP welcomes the opportunity to contribute to the call for evidence as part of the Review of the Money Laundering Regulations 2007. STEP wholeheartedly supports the aims of the Money Laundering Regulations in combating crime of all forms. In their professional roles our UK members have extensive experience of both how the regulations work in practice and also the difficulties the regulations can create for both practitioners and clients.

3. We give our responses below to the specific questions raised, but we would like initially to make some broad comments about the issues raised in the call for evidence. The stated aim of the review “is to understand how effective and proportionate the Regulations and their implementation are as a whole”. There is little doubt that the Regulations impose significant costs and administrative burdens on UK practitioners and their clients. An assessment of how proportionate these costs are must depend on an assessment of how effective the Regulations are in combating crime.

4. We know of no credible independent research on the effectiveness of the money laundering regulations focused on the UK. There is, however, independent research suggesting that anti-money laundering regulations are relatively easy to circumvent internationally via the use of anonymous corporations in many jurisdictions, including within the G-7 (see, for example, “Behind the Corporate Veil: A Participant Study of Financial Anonymity and Crime”, J.C. Sharman, Etudes Fiscales Internationales). This matches the perceptions of many practitioners. The Foot Review of British Offshore Centres expressed very similar concerns, highlighting, for example, an “egregious loophole” (paragraph 7.40, Final Report) in the US regulations.

5. Such evidence can only add to concerns that while the objectives of the UK money laundering regulations are entirely laudable, for a professional criminal they are so easy to circumvent internationally that they are not particularly effective. Given the importance of the issue we would urge the UK government to commission its own independent empirical study of the effectiveness of the money laundering regulations both domestically and internationally.
Questions about the Regulations

1. To what extent is the scope of the Regulations and their application to business activity appropriately risk-based?
   We believe that there is substantial scope to make the application of the Regulations more appropriately risk-based. The likely risks inherent in particular transactions or persons vary greatly. Many practitioners currently feel that the highest risks are often constituted by PEPs from certain jurisdictions, even when those jurisdictions are not on any official blacklist. Looking at low risk transactions, deceased estates in the UK without a substantial foreign element are typically very low risk. The guidelines are also often difficult to apply to the real life situations faced by practitioners, with the definition of “beneficiaries” in the case of trusts continuing to create practical problems in implementation.

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?
   There continue to be concerns from practitioners that too many low risk areas such as domestic trusts and estates are being subject to excessive CDD requirements. There ought to be a greater recognition in these areas that the funds in question have, in practice, already been subject to extensive checks by third parties. In a similar vein, we can see few realistic advantages to bringing domestic PEPs into the EDD regime, although we do believe that the international PEP regime has some significant loopholes. We acknowledge that addressing these loopholes will require co-ordinated international action.

3. To what extent are Customer Due Diligence (CDD) requirements effective in the fight against money laundering?
   We believe the impact of the CDD requirements on money laundering is relatively limited. Professional criminals can usually obtain documentation of some form in their claimed identity. The most effective barrier to money laundering is a culture in firms which alerts them when dealing with suspect individuals. We would therefore very much support policies designed to encourage a move from the current “tick list” approach of some institutions towards a more broadly based, cultural approach to identifying and managing potential risks.

4. To what extent do the record keeping and policy and procedural requirements upon Regulated Firms support their anti-money laundering efforts?
   Diligent firms would always wish to maintain comprehensive records of their dealings with clients. In consequence the requirements imposed on them by the Regulations are not generally identified as being excessively onerous. To secure an effective anti-money laundering culture, however, the monitoring and interpretation of records is as important as their collection and maintenance. Fostering a more proactive culture amongst firms could therefore be as important as any move to extend the remit of the current regulations to overseas branches and subsidiaries. We would also flag the danger that the local AML regulations for overseas branches and subsidiaries may not be wholly consistent with the UK regulations, creating the risk of unnecessary cost and bureaucracy.
Supervision, Enforcement and Registration

5. To what extent do the Regulations provide Supervisors with appropriate compliance monitoring and enforcement powers and penalties to deter non-compliance?
The Regulations broadly provide Supervisors with appropriate powers and penalties but we feel the implementation of those powers varies widely across regulators. Many Supervisors are overly focused on procedural issues rather than cultural issues. We also note that some Supervisors take a much more proactive approach to supervision than others.

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?
Generally we feel that there is excessive reliance on membership of the professions in terms of fulfilling “fit and proper” persons tests. We would highlight that HMRC, in its role as the de facto default supervisor for many advisers who are not members of a major professional body, is poorly placed to undertake any proactive monitoring of standards and instead fulfills a largely reactive role. There would seem to be considerable merit in HMRC having the powers and resources to apply a robust “fit and proper person” test to those it regulates.

Compatibility

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 this question raises significant issues. While the various requirements and legislative Acts are largely compatible within the UK, we are still a long way from achieving consistent application of minimum standards both within the EU and more broadly internationally. We would also note that often the most glaring gaps in the application effective anti-money laundering regulations occur in the US and the other major economies rather than the smaller states and international financial centres which are subject to close scrutiny at international forums such as the OECD.

Communication and Engagement

8. How well does HMT engage with you in developing the Regulations and are the requirements of the Regulations clearly communicated?
Our experience of HMT engagement to date has been generally positive but we would flag the need for a regular forum to enable practitioners to provide feedback, facilitate continuous monitoring of the Regulations and promote on-going professional engagement in the issues surrounding money laundering. It would be particularly valuable if this forum could receive regular updates from HMT on developments in Brussels and other international governmental forums, not least to assist firms develop their risk assessment methods.
Questions about Guidance

9. To what extent does Guidance promote both an effective and proportionate approach to anti-money laundering?
Guidance is variable in effectiveness across the Supervisory bodies. Many STEP members have identified the Guidance issued by the Law Society are particularly useful and well drafted, but guidance from some other regulators is notably less helpful. We believe that Guidance should not be legally enforceable in the UK since it is important to preserve the more flexible nature of Guidance as opposed to regulation and legislation. If Guidance is to be considered useful by practitioners, however, it is equally important that compliance with guidance should be a strong legal defence against prosecution. Following Guidance should always be recognised as “one, but not the only way” of meeting the regulations.

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?
Not only is Guidance of variable quality across the sectors (HMRC Guidance is generally seen to be not as useful as it could be), it is often inconsistent. This creates particular problems for financial services companies whose business may be spread across several sectors and Supervisors.

11. In what ways does Guidance assist with a risk-based implementation of Customer Due Diligence (CDD) measures within your sector?
STEP membership is not confined to a single unified sector of the financial services industry so it is difficult to make other than generalised comments on this issue. We would note, however, that in many instances, implementation strategies appear weak because of poor understanding of the issues by the staff involved rather than because of problems with the Guidance available. We would highlight, however, that “beneficial ownership” is generally ill-defined in the context of most trust business, giving rise to significant additional difficulties in implementation.

12. In what ways does Guidance assist and support Regulated Firms’ anti-money laundering policies and procedures?
Anti-money laundering policies and procedures at established Regulated Firms are generally now firmly embedded. Management and staff thus have relatively little day to day need for Guidance other than as a reference point. The issue for most established firms is instead how to adapt established practices to new risks and developments and while Guidance updates clearly have a role here, the more important issue to ensure timely action is the rapid dissemination of information and intelligence.

13. How is Guidance made accessible and are there opportunities to engage in its formulation?
As we have noted above, our membership is spread across activities falling under a range of differing Supervisors. They report substantial differences in accessibility and openness to engagement among these various Supervisors.
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? Clearly there are substantial benefits if Supervisors are focused on particular sectors and able to develop Guidance and a supervisory framework tailored to the circumstances of that sector. Marked cultural differences between various Supervisors remain, however, and more could usefully be done to ensure greater consistency across a strong core of common issues and practices between differing Supervisors.

Engagement, guidance and Cooperation

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 would refer to our previous comments about the level of variability across Supervisors.

16. How do Supervisors ensure a consistent approach to compliance monitoring and enforcement is taken across the anti-money laundering regime? We believe it should be HMT’s role to pro-actively ensure greater consistency of approach by Supervisors to both engagement and enforcement via the AML Supervisors Forum.

17. To what extent is Supervisors’ monitoring of compliance targeted, proportionate and risk based? There remain concerns about “gold plating” by some Supervisors. Quite often poor assessment of the risks and therefore what is proportionate appears to reflect lack of experience and training on the part of Supervisory staff.

18. How effective and proportionate is the enforcement regime? There is little firm domestic evidence that we have seen that would support an accurate assessment of effectiveness (and therefore of proportionality). As we indicted in our opening remarks, we think it important that research is commissioned to provide empirical evidence to enable such an assessment.

Registration

19. In what ways could the registration process for Regulated Firms be improved? In most cases firms will be registering with a regulator for a wide range of purposes, extending well beyond AML Supervision. Given the differing sectors and activities covered by Supervisors there is also, for understandable reasons, no single common approach to registration. It is therefore difficult to make any meaningful comments about the length, costs and benefits of the registration process.

Questions about Industry Practice

20. Are there barriers to implementing risk-based policies in practice? If so, what are they? We have referred to many of the specific issues raised in this question in our responses to previous questions. We would, however, re-iterate that the PEP regime remains an area requiring further attention at the international rather than domestic level. More broadly, the effective implementation of a risk based approach requires a level of practical understanding of issues which is too often not available among Supervisors’ staff.
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 would assume that all firms attempt to base their CDD process on their assessment of risks but in practice, it is clear different types of CDD will often be used in what appear to be very similar situations. It is not always clear if this reflects differences of approach among Supervisors or a poor understanding of the risks among the staff of regulated firms.

Relationship with business as usual

22. To what extent do the Regulations support or complement Regulated Firms' 'business as usual'? Most diligent firms would be following very similar procedures as part of their normal risk management processes. The major actions required over and above what Regulated Firms would otherwise do are therefore in the area of more formalised record keeping and management sign off procedures.

23. Are “fit and proper” tests being conducted in an effective and proportionate manner? Our perception is that such tests vary enormously in rigour and effectiveness across differing sectors. Firms supervised only by HMRC, for example, will typically apply any such test in much less rigorous fashion than firms regulated by bodies such as the FSA or the Law Society.

24. How easy or difficult is it to comply with reporting and record keeping obligations? While well managed firms would wish to maintain strong reporting and recording procedures in any case, some of the information they are required to collect and keep under the Regulations appears to be of dubious value or relevance.

25. What forms of communication and engagement take place with stakeholders, from government agencies through to customers? Opportunities for engagement on the part of stakeholders are currently limited. We would welcome a more formal structure in order to allow regular exchanges of intelligence and views between supervisors and the representatives of Regulated Firms.

Questions about the Customer Experience

26. How disproportionate do you believe the Regulations appear once they reach the customer? Our perception is that many clients find the Regulations disproportionate, with little or no flexibility as to acceptable forms of identification and repeated requests for the same information for clients already well known to an institution. It would be useful, however, to have wider empirical evidence on consumer views on this subject.

27. Are you able to provide customers with access to information and resources to check what information is needed from them and why? All STEP members would typically provide their clients with detailed personal advice on the requirements.
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?
With question marks still in evidence both around the extent to which SARs are adequately investigated and the ease with which the AML regime can be circumvented internationally, we believe there is a strong case for a balanced, empirical assessment of how effective the current regime is in combating 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?
The response to this question would very much depend on the evidence emerging from the sort of study suggested in our response to Question 28.

30. Would you say that all relevant stakeholders are able to participate in the development of the Regime?
The UK Regime clearly reflects a broad agenda set at the FATF and EU level. In that context it appears to practitioners to be largely “top-down” in nature and opportunities to influence it have been relatively limited. We very much value the opportunity to input via this consultation, but the opportunity for practitioners to engage more fully on an on-going basis in the UK and participate more fully in developing the broader international agenda would both help improve the effectiveness of the Regulations and assist implementation by businesses.
TaxAid
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The charity which provides free tax advice to people in financial need and promotes public understanding of tax matters

HM Treasury
Financial Crimes Team, HM Treasury
1 Horse Guards Parade
London SW1A 2HW

By e-mail
MLR.Review@hm-treasury.gov.uk

11 December 2009

Dear Sir/Madam

Review of the Money Laundering Regulations 2007 – Call for Evidence

Background re TaxAid

TaxAid is a charity which provides free, independent advice and support on tax and tax credits. We do this by telephone, face-to-face and by correspondence, for clients who cannot afford the services of a professional accountant or tax adviser. Most of our work is ‘self help’ in the sense that wherever possible we support our clients in managing their own affairs, rather than carrying out the work for them.

The activities of the charity are provided free to clients, and so not delivered to customers ‘by way of business’. They are therefore in general outside the Money Laundering Regulations. However, the definition of provision of tax advice by way of business has unexpected consequences in the way the charity can organise delivery of its services.

We therefore welcome this opportunity of the Call for Evidence on the operation of the Money Laundering Regulations to put forward this anomaly and a possible solution. We have confined our comments to issues affecting the work of TaxAid and the voluntary sector generally.

The exemption from aspects of the money laundering rules, and from the provision in Finance Act 2009 whereby third parties may be required to provide the address of a tax debtor, both recognize that the work done by the voluntary sector is very different from that done by professional firms, and that there are good public policy reasons for treating them differently.
We urge that the same approach should be adopted here to extend the scope of the exclusion to enable voluntary sector organizations providing advice free of charge to organise their activities in the most efficient way.

We attach the completed form Tell us about yourself.

Specific comments in relation to the questions in Part A are set out below.

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

Our specific problem concerns what appears to be an unintended consequence of the definition of regulated services.

The definition of tax adviser at Money Laundering Regulations 2007 (SI 2007/2157) Regulation 3(8) includes those who give such advice 'by way of business'.

(8) "Tax adviser" means a firm or sole practitioner who by way of business provides advice about the tax affairs of other persons, when providing such services.

This definition creates problems for third sector organisations providing free advice on a charitable basis. HM Treasury previously agreed that the charity itself (and its employees) do not provide advice 'by way of business' where the advice is provided free to the customer of the charity.

However, if the charity 'buys in' advice for its customers, the activities of independent, self-employed or 'freelance' advisers are not covered by this exemption. Such advisers are providing advice 'by way of business', although their paying customer is the charity, not the charity's customer who receives the advice free of charge.

This creates a serious obstacle to the way in which such free advice can be offered, or what advice can be dealt with by advisers not directly employed by the charity.

The obstacle would be removed if the definition in s3 (8) was amended to follow the example in Finance Act 2009 Schedule 49 'Powers to obtain contact details for debtors'. This legislation states:

(1) This Schedule applies where.....

(3) This Schedule does not apply if-
(a) the third party is a charity and obtained the details in the course of providing services free of charge, or
(b) the third party is not a charity but obtained the details in the course of providing services on behalf of a charity that are free of charge to the recipient of the service

This clearer and more comprehensive exclusion would resolve the problem which the voluntary sector will otherwise have in delivering advice relating to tax or other financial matters.
q8. How well does Treasury engage with you in developing the Regulations, and are the requirements clearly communicated?

Whether mechanisms are in place to enable all regime stakeholders to consider and input into potential amendments to the regulations

Whether mechanisms are in place to enable discussion of the interpretation of the regulations

It proved difficult to obtain any assurance from Treasury that identifying activities within the regulations as those carried out 'by way of business' was intended to exclude charitable activity from the scope of the regulations. As mentioned above, this exclusion is not complete, depending on how the charity structures the way it delivers its advice.

We are not aware of any channels for 3rd sector organisations which need to ensure they can deliver advice without becoming liable to the Regulatory requirements of the Money Laundering Regulations to discuss their concerns with HM Treasury. Consequently, we are pleased to be able to use this Call for Evidence as a means of raising an issue which will be of wider concern to the voluntary sector in the near future as they develop new ways of delivering advice in partnerships, and funded through contractual arrangements with Government departments.

We trust that this response is of some help

Yours faithfully

Rosina Pullman

Director, TaxAid
Dear Sirs,

We attach an information sheet about this firm as requested.

Taylor Wessing is a full service law firm with a widely acknowledged strength in industries rich in intellectual property, based primarily in the three largest markets in Europe but also in markets in Asia and the Middle East. We act for private and public companies, financial institutions, public sector bodies and high net-worth individuals.

We set out below our responses to the various questions included within the call for evidence.

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

We consider the broad scope of the Money Laundering Regulations 2007 (the “Regulations”) is about right.

We consider that Regulations 3 and 4 are unnecessarily opaque and difficult to follow. In many cases it is necessary to refer back either to other legislation or EU Directives which in turn have often been amended many times. Drafting in plain English coupled with a list of entities, or classes of entities, covered by the Regulations would be clear,
understandable and meaningful. We see no reason in principle why reference could not be made to a list maintained and published by the Financial Services Authority ("FSA"), HM Treasury or some other reputable organisation.

The definition of "independent legal professional" in Regulation 3(9) is unnecessarily complicated. For our part we treat all clients, whether or not the work falls within Regulation 3(9), as being required to be identified and verified in accordance with the Regulations. From a wider risk management perspective we identify and verify all clients and then keep them under review, rather than to have to identify clients that have been accepted for non-Regulation 3(9) purposes when they first fall within Regulation 3(9).

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 have substantially the same concerns regarding the definition of the institutions eligible for simplified due diligence as we have referred to in question 1 of this submission.

Regulation 13(2)(b)

The provisions in Regulation 13(2)(b) regarding equivalence are too vague and uncertain. If the intention is that reliance can be placed upon lists of institutions that the FSA regards as equivalent then this should be clearly stated. If this is not the intention then clarification must be provided. This is especially important because of the serious professional and/or criminal sanctions that can be implied for making an incorrect assessment of equivalence. Regulation 13(2)(b)(ii) is especially uncertain. What degree of supervision for compliance is required? Who is expected to make that assessment and how effective, in practice, is it required to be?

Regulation 13(3)

Regulation 13(3) is another unnecessary maze of legislation to fight through before one can identify what is, or is not, permitted. This should be simplified and clarified.

We urge HM Treasury to consider that it is now appropriate that companies quoted on the Alternative Investment Market in the UK (AIM) be regarded as falling within Regulation 13(3) of the Regulations. HM Treasury has a margin of appreciation in
implementing the EU Money Laundering Directive and it should use this to include companies quoted on AIM within the simplified due diligence regime. Indeed, the question whether the manner in which the Directive is implemented in this regard is sufficiently clear and precise to enable the UK to comply with its EU obligations.

**Regulation 14 – Enhanced due diligence**

We consider that the enhanced due diligence regime is particularly onerous and, in many cases, unworkable. In this day and age of electronic communications and remote working it is absurd that a firm such as Taylor Wessing, with a diverse international practice is required to treat all individual clients that it does not meet in a face-to-face meeting, as subject to enhanced due diligence. This is entirely disproportionate.

While we appreciate that there may be some circumstances where failure to meet an individual client in a face-to-face meeting should lead to heightened awareness and concern of possible money laundering, we consider it absurd to translate this into an absolute obligation to undertake enhanced due diligence in all cases where the client is not met in a face-to-face meeting. In our opinion it should be open to businesses to apply a risk-based approach in deciding whether or not to apply enhanced due diligence particularly in relation to beneficial owners.

**Regulation 14(1)(b)**

Regulation 14(1)(b) is particularly opaque. On one interpretation almost anything can be regarded as falling within the definition of "any ... situation which by its nature can present a higher risk of money laundering or terrorist financing." At the very least this should be revised to include an element of objectivity and proportionality and making it clear that a risk-based approach can be applied to the assessment.

**Politically exposed person ("PEP")**

In our opinion the definition of a PEP is not adequate to prevent money laundering. We believe that the concept behind the current Regulations that a former PEP, who ceased to be a PEP more than 12 months previously, no longer poses a risk of money laundering is simply wrong. There are many former PEPs who have amassed a very large source of wealth while in power, who continue to enjoy their wealth long after they cease to be a PEP, as currently defined. We work on the basis of "once a PEP
always a PEP" but within that apply a risk-based approach after a person has ceased to be a PEP for a number of years.

We consider that some elements of the definition of a PEP are unnecessarily and disproportionately broad. Others are uncertain in the extreme. The reference to "high-ranking officers in the Armed Forces" is particularly unclear and should be clarified.

The reference to "members of the administrative, management or supervisory bodies of state-owned enterprises" is also particularly uncertain. Is this intended to apply to subsidiaries and sub-subsidiaries of state-owned enterprises? Clarification is required that a PEP can only be an individual. A state owned enterprise makes a person who is on the board a PEP. This in turn means board members become subject to enhanced due diligence which would not otherwise have to be undertaken – especially for EU state-owned enterprises which would otherwise be subject to simplified due diligence.

One of the greatest concerns that we have with the Regulations is the requirement to take adequate measures to establish a source of wealth and a source of funds of a PEP. The extent of these obligations is extremely unclear. Again, we urge that the obligations are modified to introduce an element of objectivity and proportionality.

For example, an individual who holds a senior position in a Ministry of Infrastructure that pays a modest salary, and who has no other apparent source of wealth, clearly raise concerns and require a high level of due diligence if he is seeking to purchase a £3 million property in London.

Conversely, we would suggest that a son of the ruler of an oil rich Middle Eastern state that is on the board of a national oil company and who wishes to purchase a £10 million property should not, in the absence of specific cause for concern, be required to prove his source of wealth.

We already apply enhanced due diligence to domestic PEPs. In part this is because of our international practice that our overseas offices may wish to act for such people and it is convenient to have cleared such people up front. In any event, in the light of recent well-publicised disclosures concerning MPs and others we would not feel confident in assuming that domestic PEPs do not pose a money laundering risk.
Identification and verification of corporate entities

There are real practical difficulties, with no discernable benefit, in being required to identify and verify the beneficial ownership of a company owned by a private equity house, venture capital fund or other financial institutions, especially where these are located outside the UK.

The requirement to identify and verify corporate customers/clients through independent evidence is burdensome. It arguably precludes companies providing uncertified photocopied copies of their own corporate documents to verify their identity. In many cases it is a time-consuming and lengthy process to obtain these from a company registry or equivalent especially to obtain original documents or documents independently certified. There have been cases where such information is simply not available. Even where information can be obtained it may need to be translated with the cost and delay that this will necessarily involve. In our experience it can frequently take a number of weeks to obtain such information. The combined effect of Regulations 9 and 11 makes it impossible to carry on normal, entirely legitimate, business activities. The inevitable consequence is that business is lost either to other UK firms that take a less robust approach or to other countries which have chosen to implement the EU Directives in a less onerous manner.

Clarification is required on the need to identify and/or verify certifications of documents. This is a major practical problem in many countries and results in significant problems where enhanced due diligence is required.

There is great uncertainty over the extent of the obligation to identify and verify intermediate owners in corporate structures between the customer and the ultimate beneficial owner. For example, is it sufficient, in the absence of any specific concerns, merely to obtain a structure chart or is it also necessary to obtain, translate and analyse all corporate documents for each of the intervening corporate entities in order to be satisfied that there are no third party controllers not shown on the structure chart?

A further consideration is that many businesses increasingly rely upon third party electronic databases and systems to meet all or part of their client due diligence obligations. Licences for these services often provide that the information obtained cannot be disclosed to third parties.
We would welcome clarification on whether reliance upon such data bases provides a
defence in the event that information is incomplete or inaccurate.

The recent change to the procedures at Companies House as a result of which
directors of English companies no longer have to publish their home address has
further complicated the ability of Regulated Businesses to identify and verify even
English companies.

Identification and verification of individuals

A photocopy of a passport, national identity card or driving licence should be sufficient
evidence to identify and verify an individual in the absence of clear evidence of
suspicion. The requirement for an individual’s address to be separately verified, as
opposed to ascertained, is especially burdensome. Utility bills are frequently in the
name of one member of a family making it difficult to identify the other(s). Utility bills
are increasingly unreliable as a means of identification or verification. Many families
now only have internet-generated invoices and not originals delivered by the utility
company. We understand that utility bills are easy to forge. A utility bill for a non-UK
resident is of limited value. The effectiveness of electronic identification and
verification systems in the UK will frequently depend on whether an individual is on the
 Electoral Roll. This is an entirely different test from that required by the Regulations
and raises its own issues because many people now opt out from the Edited Electoral
Roll upon which some electronic identification and verification systems are based.

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

Our experience is that the CDD requirements are irrelevant to the fight against money
laundering. We cannot recall any occasion where the obligation to undertake CDD has
lead to us identifying an actual or prospective money launderer.

Furthermore, we are not aware of the existence of any authoritative investigations or
studies where there has been demonstrated to be a linkage between CDD and the
identification of money launderers or money laundering.

If during the course of CDD we had concerns, falling short of a suspicion that the client
may be or have been engaged in money laundering then we would not act for that
prospective client. All the more so if we had a suspicion and had to report it to SOCA.
The reliance provisions of Regulation 17 are unworkable and do not, in any event, alleviate the fundamental obligations under the Regulations. No professional firm will accept additional legal obligations by providing an introduction certificate. Indeed, in our experience, many law firms and other professionals, especially substantial and reputable law firms in the USA, are not prepared to provide any form of certificate or certification because of the perceived liability issues that may arise.

We have grave reservations about HM Treasury’s statement on equivalence published on 12 May 2008. While in some cases it is easy to understand that some of the jurisdictions named can properly be regarded as equivalent to these in the EU, it seems to us that the same cannot be said for some of the countries that have been named.

If the intention is that the statement on equivalence is intended to be relied upon so that, in the absence of particular grounds for concern, simplified due diligence can be applied then this should be made clear. If it is not, what is the purpose of the statement? For the reasons stated above the apparent exclusion of the test in Regulation 13(2)(b)(ii) is particularly unhelpful.

There is no evidence that the CDD regime, for both customers and beneficial owners, deters crime. It certainly substantially increases burdens on business and makes UK business less competitive than those elsewhere in the EU and USA.

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

Any requirement that branches and subsidiaries in non-EEA states that are not credit or financial institutions should be subject to similar obligations as businesses within the EEA is, we believe, unworkable. It is certainly disproportionate.

Why should business in third countries be willing to take the time, cost and effort to comply with onerous UK rules when they can deal with businesses from other countries that do not impose such obligations? Any such extension will result in the loss of business to UK groups.

Every business needs to know and understand its client/customer. The Regulations do nothing to enhance this fundamental requirement. Indeed, quite the opposite. The
Regulations lead to a focus on irrelevant regulatory issues and distract on what a business really ought to be finding out about its clients/customers.

Those businesses, like ours, that value their reputation will necessarily undertake additional appropriate checks and make suitable enquiries. The CDD obligations imposed by the Regulations are separate from and largely irrelevant to what we seek to achieve.

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

The onerous civil and criminal enforcement powers are incompatible with a genuine risk-based approach. They inevitably lead to a negative and defensive approach, not to reduce the risk of money laundering but to ensure that the Regulated Firm is not subject to the risk of civil or criminal enforcement and the serious reputational risk that would result from such enforcement. It has also lead to an increasing tick-box approach in many quarters.

The role of Supervisors should be limited to ensuring broad compliance with the regime. At present, there is a fear amongst MLRO’s of Supervisors double guessing decisions through the 20:20 lens of hindsight.

Criminal and civil sanctions should be limited to gross and wilful breach of the Regulations, for example when no attempt is made to implement a monitoring system or there has been a wilful refusal to undertake any identification and verification.

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?

We assume that the scope of this question is limited to those Regulated Businesses within Regulation 28.

If the question is intended to be of wider application then the answer is that they do not. Compliance with the Regulations has nothing to do with whether a client/customer is “fit and proper”.

7 Are the requirements of the money laundering Regulations compatible with and complementary to the requirements of a) other aspects of the UK-anti-money laundering regime/legislation and b) international standards and practices?
In our opinion there is no logical coherence between the Regulations, POCA and TACT. POCA and TACT are separate and reasonably coherent. Conversely, the Regulations have little, if any, connection with POCA and TACT. So far as Taylor Wessing is concerned the Regulations could be repealed with little, if any, impact on the reporting and other regimes under POCA and TACT.

A correlation between the Regulations and our compliance with asset-freezing legislation only exists to the extent one believes that those subject to asset-freezing legislation do not have access to the means to produce a credible alternative identity. For our part we consider that anyone subject to the asset-freezing legislation would not be foolish enough to use the identity by which they are identified under the asset-freezing regime.

A regime requiring specified businesses to search an asset-freezing database with the name that they have reasonable cause to believe is the true name of their client/customer would be easy to administer and proportionate to the real risk.

We firmly believe that the UK's implementation of the EU Money Laundering Directives is neither appropriate nor proportionate. It is a classic case of gold plating the UK's obligations in a manner that curbs UK business with no discernable benefit.

Our colleagues in our other EU offices are aghast at what is required of them and their clients under the Regulations. "How can you possibly be right when no other member state adopts this approach", is a not uncommon refrain.

It is not just the terms of the Regulations that is relevant. The manner in which they have been interpreted and implemented in the UK, coupled with the serious criminal and regulatory sanctions have resulted in a regime that bears no relationship to those in other EU member states.

The depth and complexity of the UK regime can be seen from size of the JMLSG's Guidance (331 pages) and that for the Law Society (135 pages).

The position is even more absurd when comparison is made with the USA. There is a complete lack of comprehension of why the information required by the Regulations is necessary. We have had a number of prospective clients, who we have no reason to doubt were respectable, point blank refuse to provide the information needed about them and their beneficial owners.
While we can appreciate that the UK Government may wish to be seen to be taking the lead in fighting terrorism and money laundering the outcome of the Regulations has been to isolate the UK from its major trading partners and to seriously compromise the ability of legitimate UK businesses to compete with their overseas competitors.

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

There are no mechanisms in place for obtaining an authoritative interpretation of the Regulations. For a law firm such as ours that would be of limited use because of privilege and confidentiality obligations.

It has to be said that HM Treasury's limited attempts to provide clarity, such as its statement of equivalence, has been of little use and has served to create more, rather than less, legal certainty. See also our response to question 3.

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

While the Law Society's Practice Notice, which has recently been approved by HM Treasury is helpful in providing a degree of clarity on the current obligations of law firms it is no substitute for ensuring that the underlying legal obligations are clear, reasonable and proportionate.

It is a disgrace that it took almost two years to obtain approval of the Practice Note with what many regard as largely trivial changes.

However, our interpretation of Regulation 45(2) and the Guidance is that compliance with the Guidance does not, as the notes to this question suggest, provide a defence. It is merely a factor to be considered. That is less than satisfactory. Why cannot compliance with the Guidance be a defence?

There remains much uncertainty of how risk assessments are to be undertaken and recorded and to what extent, if at all, they are required to be separate from any wider risk assessment undertaken.

The "acting in the course of business" for lawyers is unclear and not well explained. For the reason stated in our response to question 22 we consider that the Regulations are a serious barrier to "business as usual".
How clear and consistent is Guidance including whether Guidance is consistent for those sectors where more than one supervisor exists and generally across sectors?

One of the reasons that Taylor Wessing withdrew from the need to obtain certain potential activities was because it was not prepared to accept the risk of double jeopardy.

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

As we have indicated in relation to our response to question 9 the Guidance that is applicable to us provides some welcome clarification of certain aspects of CDD. This is not a substitute for the underlying Regulations being appropriate and proportionate. Indeed the Guidance to date seems to reinforce the underlying problems underpinning the Regulations.

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

See our response to the preceding questions.

The notion that Guidance encourages requirements over and above best practice can at best be described as wishful thinking.

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

Guidance is accessible for those who know of its existence.

There was reasonable consultation and discussion within the profession but the ability to participate in any meaningful consultation with HM Treasury was almost non-existent.

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

We have real concern whether the current supervisory framework is appropriate. In order to be useful and effective the supervisory framework requires that supervisors have sufficient knowledge of the many wide ranging activities undertaken by the Regulated Firms that they supervise. This is inherent in any supervision of a
risk-based regime. At present we are not satisfied that this is the case. We are left with the impression that supervisory authorities see their role as policing and enforcement of the regulations and not assessing the effective implementation of the regime and encouraging best practice. It is altogether too easy for supervisory authorities to assess compliance with the Regulations with the benefit of hindsight rather than undertaking an genuine risk-based assessment in the light of the particular facts of the case at the relevant time.

We see no evidence to suggest that Supervisors are mindful of the costs and benefits to Regulated Firms or that they offer ideas to minimise costs or maximise benefits.

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

The Law Society provide a good service to solicitors in meeting these responsibilities, however, when it comes to enforcement the Solicitors Regulation Authority does little, if anything, to communicate and engage with solicitors to ensure a sound understanding of their legal duties and responsibilities under the Regulations, or to encourage best practices.

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

We see no evidence to suggest that this is the case.

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

Please see our response to question 14.

We have seen no evidence to suggest that Supervisors seek to improve current requirements over and above best practice compliance with the requirements of the Regulation.
18. *How effective and proportionate is the enforcement regime?*

For the reasons stated elsewhere in this response (see particularly our responses to questions 2, 3, 4, 7 and 26) we consider that the regime, as a whole, is disproportionate. This includes the enforcement regime.

The powers available to Supervisors, and the manner in which those powers are implemented, is wholly different in terms of style and scope to those in other, equivalent, jurisdictions. When we have discussed these issues with our peers in other UK firms, as well as in law firms in other jurisdictions they are firmly of the view that the UK enforcement regime, and the regime as a whole, are grossly disproportionate.

It is not a case of what additional or alternative powers would help in encouraging compliance and/or facilitating enforcement. It is a clear case of "less is more". What is required is a fundamental change in approach.

For the reasons stated in our response to question 26 we consider that the enforcement regime needs a fundamental change of approach.

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

In assessing whether the Regulations are appropriate and proportionate in a service based sector one has to have regard to the views of clients/customers. The overwhelming number of clients/customers we have discussed these matters with consider that the Regulations are neither appropriate nor proportionate. We work with many, well known and respectable, US law firms. They are wholly unable to comprehend why the information that we are required to obtain is relevant, let alone proportionate. They do not identify any benefit.

There are two distinct aspects of this question that require consideration. Firstly, the ability of Regulated Firms to obtain the requisite information in a timely manner. This is often, especially when seeking to identify and verify the identity of beneficial owners, outside the control of the Regulated Firm, and is dependent upon the willingness of its client/customer to provide the requisite information.

Secondly, the resources that the Regulated Firm is expected to provide to process, analyse and assess in a risk-based manner the information obtained. We question whether Regulated Firms have the requisite skills to undertake a true risk-based
assessment which incorporates an assessment of likelihood and impact. It is generally unrealistic to expect junior employees to make such complex assessments. This necessarily increases the sunk cost of implementing a regime which many Regulated Firms considers provides little, if any, benefit to them or the country at large.

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 question whether this is what the Regulations require, especially in the context of enhanced due diligence.

If this is what the Regulations require, why is it that Regulation 14(2) mandates enhanced due diligence whenever an individual client is not met face-to-face?

We would urge the clarification of “risk-sensitive” basis to make it clear that this includes an assessment of likelihood and impact and how this should be assessed.

In any event, almost no guidance has been provided on the assessment of likelihood and impact of risks identified under the Regulations. Many Regulated Firms will not have the knowledge or skills to make such assessments.

22 To what extent do the Regulations support or complement “business as usual”?

They do not. They are a serious barrier to “business as normal”.

With all due respect it is simply absurd to suggest that the obligations imposed by the regime can in any sense be regarded as “business as usual”. Quite the opposite. Please refer to our observations in relation to question 9 and below under “Other Comments”.

The requirement not to start work except in certain narrowly defined circumstances is almost wholly unworkable for forward-thinking, proactive, law firms, such as Taylor Wessing. As a result we have been forced to reduce the service we can offer our clients.
23 Are "fit and proper" tests being conducted in an effective and proportionate manner?

See our response to question 6.

We disagree that the Regulations or the Regime can be interpreted as imposing a "fit and proper" test of general application.

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

We consider that the reporting regime under POCA is broadly acceptable. Where we have concerns is in relation to the consent regime which, in the past, has been problematic. However, SOCA's speed of response has improved significantly recently. An area that we would like to see addressed is that issues frequently arise outside "normal office hours". Where urgent consent is required this can create a problem. We would like to see a mechanism introduced whereby, at least in appropriate cases, consent can be obtained on an urgent basis, outside normal office hours.

We remain concerned about the risk of tipping off where consent cannot be obtained in a timely manner.

As far as record keeping is concerned, in the case of long term clients it will become very onerous to retain all records until the relationship has ended. We would like to see a long-stop date for retaining records. An obligation to retain records for six years, the normal limitation period, would be appropriate.

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

Until recently there has been zero communication or engagement with stakeholders from government agencies. Recently SOCA has improved its communications.

Our perception is that there is limited opportunity to communicate or influence the thinking of government agencies. The Law Society appears to be making a good job of disseminating information about the regime.

One of our major criticisms is that there is far too little feedback on the actual benefits as opposed to theoretical, of the current regime, especially on cost benefit of identification and verification. This we need to convince clients, our colleagues and other stakeholders of the benefits of the regime.
A significant part of our difficulties arise from the UK Government's fundamentally different, and more onerous, approach to identification and verification compared to that of our major trading countries. Today the benefits and/cost benefit of the UK's regime have not been adequately articulated.

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

Regulated Firms have a range of clients. The risk-based approach in turn leads to a range of possible outcomes. In our view, the Regulations do not deal adequately, or proportionately, with the many outcomes that arise.

The Regulations appear to have been drafted and implemented on the basis of a simplistic assumption that anyone using a company or trust structure represents a significant money laundering risk. This is naive and dangerous.

We have grave reservations whether the identification and verification regime is capable of achieving its objectives which are, in any event, inadequately defined and communicated. It seems to us that it is all too easy for a criminal easily to avoid the impact of the Regulations by obtaining a forged passport and some other forged identity document.

If the UK Government is genuinely wanting to improve the client/custom experience then a wholesale change in approach of the UK Government and enforcement authorities is required. Tinkering at the edges will achieve little if anything.

We suggest:

- Implementation and sanctions are brought into line with those of the UK's major trading partners;
- criminal and civil sanctions should be limited to gross and wilful breach of the Regulations, for example where no attempt is made to implement a system or there is a wilful refusal to undertake any identification and verification;
- the role of Supervisors should be limited to ensuring broad compliance with the regime. Presently there is a real fear amongst MLRO's Supervisors double guessing decisions through a 20:20 lens of hindsight;
- clear, authoritative guidance is issued on the extent of identification and verification required for beneficial owners and intermediate owners;

- relaxation of the obligation to undertake client due diligence until immediately prior to the central feature of a transaction or advice e.g. contracts cannot be exchanged or completed until CDD has been performed. A sanction that may wish to be considered is to make it unlawful to charge a client, or make any payment to him/her/it until client due diligence has been completed;

- extending the equivalence regime so that Regulated Firms can place reliance on, for all purposes associated with anti money-laundering procedures, the jurisdiction named in the equivalence list;

- introducing an effective reliance regime that does not expose participants to an additional level of risk.

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

We can, and do, provide clients/customers with access and resources to check what information is needed from them.

Again, this question highlights the lack of comprehension HM Treasury seem to have of the real effect of the Regulations. Why does the UK Government insist on applying a different, and disproportionate, approach from everyone else? It is the time consuming, expensive and intrusive extent of application of the Regulations that causes anger not the “what and why”.

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

See our responses above, especially our responses to questions 2, 3, 4, 7, 15 and 26.

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?
It is not. See our responses to questions above, especially questions 2, 3, 4, 7, 9, 11, 12, 14-19 and 26.

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

No. Clients, and especially non-UK clients and stakeholders have no real opportunity to participate in the development of the Regime. Clients, and especially non-UK clients, have a legitimate expectation that the UK will implement its anti-money laundering regime in a manner that is not materially different from its major trading partners in the EU and elsewhere. At present this expectation is not met as a result of the gold plating of the EU regime by the UK Government.

**Further Comments**

**Commencement of Business/ Work**

The requirement not to start work except in certain narrowly defined circumstances is almost wholly unworkable for many commercially oriented law firms. Part of the business proposition of these firms is the ability and willingness to provide an immediate response to the demands of clients. The combined affect of Regulations 9 and 11 creates a serious barrier to meeting the needs of clients, especially international clients. As a result we have been forced to reduce the service we can offer our clients. There is no discernable benefit in requiring that, except in very narrowly defined circumstances, CDD must be undertaken before establishing a business relationship.

So far as Solicitors are concerned we can see no reason why initial advice and preparatory work cannot be undertaken during the collation of CDD, if the firm wishes, on a risk-based approach to do so. We accept that it would be proportionate to require that a company/trust cannot be established or, for example, contracts cannot be exchanged or completed prior to the completion of appropriate CDD.

A sanction that may wish to be considered, is to make it unlawful to charge a client, or make any payment to him/her/it, until appropriate CDD has been completed.

**Ongoing Monitoring**

The obligation to undertake ongoing monitoring is not only extremely onerous but also extremely unclear. Improved guidance is required on the frequency of ongoing monitoring of
the extent of monitoring required. Guidance is required on the frequency and extent to which CDD should be updated in the absence of any money laundering concerns or suspicions.

We trust that you will find our responses to your questions of assistance of your review of the anti-money laundering regime.

We would be pleased to expend upon our answers if this would be helpful.

Yours faithfully

Taylor Wessing LLP

Encl.
Good afternoon

Please find below my signature my response to your Call for Evidence on the effectiveness of the Money Laundering Regulations 2007.

I am also attaching my questionnaire to tell you who I am. In short, I provide anti-money laundering training and advice (including AML "audits" and the writing of AML policies and procedures) to firms covered by the ML Regulations 2007.

Best wishes
Susan
Susan Grossey

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Responses below:
Questions about the Regulations

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

As someone who deals with the Regs on a daily basis, I find them comprehensible and clear.

However, I do think the next iteration should include two high-risk areas that are currently missing: bookmakers (on-course and high-street), and those selling services (as opposed to goods) for cash (e.g. universities, consultancy firms, kitchen fitters).

I am also concerned about the proliferation of pre-paid cards (see <http://www.mycashplus.co.uk/default.aspx> www.mycashplus.co.uk/default.aspx for a list of examples) that are sold and honoured by corner shops throughout the world.

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?

I think it is crucial to extend the definition of PEPs to include domestic PEPs - the idea that UK and indeed EU PEPs are any less a concern than other PEPs is madness. (I appreciate the political sensitivity of this, but from the point of view of preventing money laundering, a UK PEP is no less likely to become corrupt than a Malaysian one, is he?)

I also think that the one year limit on PEP status is wrong - this should be extended, perhaps to ten years. (Some jurisdictions, e.g. Guernsey, have plumped for a "PEP forever" definition, but this is overkill and places an ever-growing burden on regulated firms.)

The whole equivalence issue is a mess. The HMT list is unhelpful - including, as it does, areas of high ML concern such as Russia, Hong Kong and (heaven help us) the Netherlands Antilles and Aruba. MLROs are confused: on the one hand, they are warned to be careful of jurisdictions that receive poor FATF (or equivalent) evaluations (e.g. Russia, HK and Aruba), and on the other hand HMT tells them that these places can be considered equivalent. Either the equivalence list has to be a true representation of ML risk and not a product of political horse-trading, or scrap it entirely and ask MLROs to make their own judgements based on research.

3. To what extent are Customer Due Diligence (CDD) requirements effective in the fight against money laundering?
I think that CDD is vital in the fight against ML. However, I think we need to guard against people thinking that ML CDD is a separate activity from other CDD that the firm may be undertaking for other business purposes (e.g. to know the client better in order to sell them more services). If we hive off AML into a separate area, of course it appears burdensome to both the regulated sector and the public.

As stated above, the equivalence provisions need revisiting. Likewise, the issue of reliance is similarly confused - can MLROs rely on others or not, and to what extent? This needs to be more of an international decision, as I have client firms in, for instance, Jersey who do not know whether they can rely on a UK firm's due diligence, and whether that firm is permitted to rely on them.

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

Five years is fine. And yes, the requirements should be extended to branches and subsidiaries in non-EEA states - five years is quite short compared to other countries, and is not too much to ask. If any firm has access to the UK financial system, they should abide by the UK requirements. Criminals will soon spot the weak parts of the chain.

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

I do not deal with supervisors in a business capacity as I am unregulated. However, I do think we need to fines more firms and perhaps even impose prison sentences on responsible (irresponsible?) officers of those firms when the Regs are breached. It is shameful that not one person was prosecuted over the GBP 1.3 billion of Abacha funds that moved through the UK banking sector - not one person.

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 comment.
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?

The Regs seem to reflect MLD3 quite closely - no "gold-plating" as I believe it is called. But I think we should have fought harder for bookies to be included - there aren't many of them in other EU countries, but plenty of them here and so it is a specific local problem for us.

We should also put pressure on other EU countries to ensure that their regulated sector is as wide as ours (no AML requirements on lawyers, accountants, estate agents or casinos in Poland).

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

I know I am not your target audience, but I am very keen to engage with HMT on this issue. I would dearly love to be involved with the MLAC - they have been quiet of late. The AML page of your website is comprehensive but a bit difficult to navigate - it's just one long list.

Questions about Guidance

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

The JMLSG guidance is certainly fulsome, but I fear that it has become bloated. Also, the Part II chapters vary enormously in detail and indeed clarity, which seems unfair to some sectors. In almost every other jurisdiction in the world, guidance is written by the regulator responsible for the regulated sector - why is this not the case in the UK?

I think the various supervisory bodies (FSA, HMRC, OFT, etc.) need to get together and really look at the guidance with a fresh eye. In particular, it needs to be purged of all the "you might do this, but on the other hand you could do that" stuff - we can all imagine the alternatives, but MLROs want recommendations.

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?

See comments above - it's a mess.

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

On the whole, MLROs tell me that the JMLSG guidance is not of much help with the risk-based approach - it's good on the theory, but not much help with practicalities. As a contrast, you can see the "risk matrix" approach of the guidance put out by Gibraltar (http://www.fsc.gi/amlguide/chapter11.htm). (I'm not suggesting that this is the right approach, but it's a definite contrast.)

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

See earlier comments on these issues - none of which is clarified sufficiently in guidance.

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

N/A

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?

It's very muddled - particularly for overseas firms who are trying to establish whether a UK firm is regulated and therefore equivalent. And I am concerned that some of the supervisors - particularly OFT for estate agents and HMRC for high-value dealers - are extremely ill-equipped for this difficult task. Some client firms in these sectors have told me scary things that their regulators have told them - totally misleading and revealing a worrying lack of understanding of the AML regime.
I don't think it's right to use professional bodies as supervisors for this purpose. I can see the efficiency of the system, but I am concerned that there is a lack of independent scrutiny, and a quite natural tendency to interpret the requirements in the manner most beneficial to their member firms. We also end up with anomalies like this: the Law Society has appointed 192 business and Accuity as their "approved suppliers" of PEP-checking databases; the ICAEW has appointed C6; the FSA refuses to provide any commercial endorsement. So who is right? Which supplier (if any) provides a safe harbour?

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?

N/A

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

I can't imagine how they could.

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

N/A

18. How effective and proportionate is the enforcement regime?

N/A

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

N/A
Questions about Industry Practice

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

I see this as an outside adviser, but I would say that many firms are struggling with the risk-based approach. They understand the theory and the justification, and are able to make a good first stab at their risk analysis, but what they lack is any checking of their approach - in short, they would like to know whether they have got it right. I know that there is no "right" risk analysis, but it is hard for the MLRO to justify the time and expense of such an exercise without being able to tell his Board that the result has been signed off by the supervisor as acceptable.

Equivalence - see comments above.

PEPs - the main question is whether the MLRO should buy in a commercial PEP-checking database, and then whether he can rely on it.

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?

Reliance - see comments above. I do know that many firms refuse to provide certificates for reliance purposes because their legal department will not let them - a bit like providing only bland references.

In my experience, MLROs are reluctant to use SDD in case they get it wrong - they would rather do too much than too little. Whether this approach is supported by their sales staff is another question. More guidance on what is appropriate for EDD would be useful - particularly what evidence of source of funds could (should?) be gathered.

There is some confusion about what is expected during ongoing monitoring. I advise firms: "Look at the file, and ask whether the information you are holding is still appropriate and proportionate to the money laundering risk this client now presents." Some firms think it means they have to get up-to-date passports and utility bills when the old ones expire.

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

N/A
23. Are "fit and proper" tests being conducted in an effective and proportionate manner?

N/A

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

N/A

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

We need more feedback (in fact, any feedback) from SOCA. Industry needs to know that its efforts are appreciated and productive, in terms of SARS leading to convictions (not just ML convictions - anything would be nice to know).

Questions about the Customer Experience

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

The public often blame "money laundering stuff" for having to provide what they see as too much information. Often, it is the regulated firm that has misinterpreted the Regs (or interpreted them lazily or inflexibly) - the Regs themselves are perfectly reasonably. As well as looking for firms that are not doing enough, supervisors need to check for firms that are doing too much, or the wrong things (e.g. "We must have your passport - without a passport you can't open an account" - the Regs do not even mention a passport).

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

N/A
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?

With the reservations outlined above, I think it is a fine system, and one that deserves our continued support and effort.

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 have a real problem here in the UK. Perhaps we need to stress the increasing danger from tax evasion and white collar crime, as well as from traditional "street" crimes - people often underestimate, forget or even support white collar crime.

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

I'd like to participate more!

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Toynbee Hall welcomes the opportunity to respond to the Review of Money Laundering Regulations 2007.

1. Introduction to Toynbee Hall

Toynbee Hall produces practical innovative programmes to meet the needs of local people, improve conditions and enable communities to fulfil their potential. The organisation makes a difference by producing local programmes that have the power to become national solutions, with a constant and ongoing commitment to the development of social policy and networks for positive change.

Toynbee Hall has been a pioneer of financial inclusion work in the UK third sector for some years, and continues to develop services and projects to help improve the lives of people facing financial exclusion.

Toynbee Hall’s financial inclusion work began in early 2002 with the initiative SAFE. Since then Toynbee Hall has supported over 10,000 people to manage their money more effectively and access basic financial products appropriate to their needs; trained over 1000 intermediary organisations across London to support their work and support to their clients; recruited over 1500 members to Transact, the national forum for financial inclusion; delivered a range of events; and published a series of resources, including the Personal Finance Handbook and guides around banking and financial capability.
Toynbee Hall is now a leader in financial inclusion in London and across the UK, recognised in the voluntary sector and within Government, with a presence on the Financial Inclusion Taskforce.

Rather than respond to every question in the document, we will be focusing on those questions where we feel the experience and knowledge we have gained through our work will add value to the review. Our response will be primarily be based on the following:

- Our SAFE team’s work since 2002 in assisting over 1500 adults on low-incomes in London to open basic bank accounts. As part of this work the team developed the resource ‘ID Guide – How to prove your Identity’, of which over 1000 have been distributed to intermediaries working across the UK. The team has also produced two research reports: ‘Banking the Unbanked – a snapshot’ (November 2005) and a follow up report ‘From Access to Inclusion’ (July 2008). ‘Banking the Unbanked’ reported evidence drawn from 2437 client records and 83 bank branch experience surveys and From ‘Access to inclusion’ followed up with 40 of those clients 3 years on.

- Transact’s Banking Project. The banking project worked to encourage strategic and systematic change to banks’ account opening procedures by sharing examples of good practice within the sector. The project produced guidelines for the banking sector titled ‘Developing Inclusive Banking – suggested approaches to improve access to your banking products and services’. To complement this it developed a new resource to build capacity within UK intermediaries to support the unbanked and under-banked (together the ‘marginally banked’) around

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1. visit [http://www.toynbeehall.org.uk/page.asp?section=00010001000100010001&sectionTitle=Tools+&Resources+to+download+a+copy](http://www.toynbeehall.org.uk/page.asp?section=00010001000100010001&sectionTitle=Tools+%26+Resources+to+download+a+copy)
2. A copy can be downloaded from [http://www.transact.org.uk/page.asp?section=293&sectionTitle=Reports+and+Research](http://www.transact.org.uk/page.asp?section=293&sectionTitle=Reports+and+Research)
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accessing and using banking services. To inform this work a briefing paper 'Access to Banking in the UK - a snapshot of intermediaries' was produced in which Transact members who work with adults that have experienced difficulty in accessing financial services were surveyed on their experience of the barriers faced$^5$.

For more information on any of our answers or work we have undertaken please contact Chris Hobson at chris.hobson@toynbeehall.org.uk or call: 020 7392 2932.

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

Our experience of the Regulations has come both directly through our work helping individual clients access financial services and indirectly through our work with Transact members. In both cases the contact is at the point of implementation, most typically in trying to access a product in a bank branch. We will look in more detail at specific points when answering other questions, however, in general terms we have found there to be inconsistencies in the way the Regulations are implemented at ground level. These inconsistencies may occur across different businesses, within businesses and across time. This can lead to confusion and frustration on behalf of the customer and staff member serving them, often resulting in incorrect exclusion from a product and in other cases a customer opting to self-exclude.

For someone looking to access a product or service, the member of staff serving them is in effect a gatekeeper to that product or service – the more information and support the member of staff can be provided with the more confident they will feel in doing their job and the better equipped they will be to communicate effectively with the customer about the procedures and options in front of them.

$^5$ Visit [http://www.transact.org.uk/page.asp?section=295&sectionTitle=Banking+Project](http://www.transact.org.uk/page.asp?section=295&sectionTitle=Banking+Project) for more information and to download a copy
32. How easy is it to provide acceptable forms of identification to the businesses you deal with?

Many of our SAFE clients and the clients of Transact members will not have the ‘traditional’ forms of identification. The reasons for this are many, including low-income, irregular housing arrangements, theft of documents, having to take flight from an abusive relationship, or maybe never having experienced circumstances where such documentation can or needs to be obtained. For this reason providing documents from the lists provided in a firm’s own printed literature can prove difficult. With support from ourselves or Transact members, individuals often have to request the full list of all acceptable documents, not shown on the primary consumer-facing documents. Once the full list has been provided it is very rare that someone, with support, will not be able to provide something acceptable. However, the step between not being able to provide anything from the initial list and receiving the full list is often one that is not made. In our experience this can be due to:

- a lack of knowledge on the part of the customer that other documents can be used
- a lack of knowledge on the part of the staff member that other documents can be used
- Poor communication between the member of staff and the customer
- The full list not being immediately available to the member of staff

In a 2008 survey of Transact members\(^6\) 74% of respondents identified ‘access to banking and saving’ as being one of the top three issues affecting their clients. 30% of this figure (21% of the total respondents) identified ‘access to banking and saving’ as the number one issue affecting their clients and 46% of respondents felt that improving access to banking was one of the top three things the financial services industry should be doing to improve financial inclusion. A follow up survey (see footnote 5) found that 89% of

\(^6\) To download a copy visit [http://www.transact.org.uk/page.asp?section=0001000100010010](http://www.transact.org.uk/page.asp?section=0001000100010010)
members who rated access as an issue, deemed ID issues to be a large or severe obstacle for their clients. Case studies collected during the course of this work included:

**CASE STUDY:** A victim of domestic violence was forced to give up her job of 10 years when she escaped to live in refuge accommodation. Prior to living in refuge she operated a bank account and was always in credit. She took considerable risks to keep her money from her violent partner and had to ask relatives and friends to keep money for her. However when she tried to move her account to another branch of her bank and gave a PO Box number as a contact, she experienced negative comments and unhelpful attitudes. This has continued whilst she has been in refuge (case study provided by Refuge).

**CASE STUDY:** A Lithuanian man who was street homeless in London needed an account to have his wages paid into. He went to a high street bank with his passport to enquire about opening a basic account. He had limited English and the only address he had for correspondence was that of a day centre, which had agreed beforehand to act as a care of address as they already did this for other clients. In the first branch he visited he was told that they were unable to accept this as an address and so couldn’t open an account for him. He visited a separate branch of the same bank the following day and, using the same details, was able to open an account (case study provided by SAFE).

**CASE STUDY:** A 20 year old woman from Chippenham with learning difficulties tried to open an account with a high street bank but was unable to provide the bank with traditional forms of photo ID. She was initially advised by a member of staff to apply for a provisional driving licence, something that she was unable to do due to the expense involved, and it was unnecessary as she is not intending on learning to drive. She was subsequently advised that, as she was under 21, she would be able to use a birth certificate along with a secondary document as address verification. After paying the money to have her birth certificate reissued, she was again turned down as her secondary document for address verification was not recent enough. By the time she had obtained a suitable, valid secondary document, and bank staff had processed her application, she had turned 21 and received a text message from the bank saying that they could no longer accept her birth certificate. With assistance provided by North Wiltshire CAB, the branch contacted NatWest head office and the woman was finally able to open an account 6 months after her initial visit (case study provided by North Wiltshire CAB).

In addition to experiencing problems in-branch, there are often occasions where a customer will need to go away after the visit and obtain a document in order to access a product – for example a Benefits Notification Letter or a Housing Association Confirmation letter. While this may not be an issue for the Regulations, the time and cost involved in obtaining relevant documentations can also act as a barrier. This can often be exacerbated by being issued with documents where an individual’s details have been misspelt. Some documents that are acceptable may be uncommon and not
recognizable on sight to the member of staff to whom they are presented – for example a Construction Industry Scheme Card or Leave to Remain letter from the Home Office.

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 discussed in the above answer, it is not always obvious in consumer facing material that the list of documents required is not exhaustive. In our experience staff are not always informed of what the full list is or where it can be obtained. There are also variations between different banks and branches of banks within the same organisation, which can cause confusion. As an organisation working with clients one of the things we do to seek to negate this as a barrier is to visit local branches build up a list of acceptable documentation and relationships with branch staff. However, difficulties arise when bank policy changes (for example, an area is identified as being ‘high risk’) or when staff move on.

We have also experienced instances where accounts have been opened in the branch and subsequently closed after documents were sent to a central processing unit and customers were informed that the information they originally provided wasn’t in fact sufficient. As one respondent in the ‘From Access to inclusion’ explained:

“I was quite angry and I didn’t even appeal..., I told them that I found it very strange – if I hadn’t shown them enough ID documents why was my account opened in the first place?”

Again, the inconsistency can lead to frustration and confusion. In this instance the individual did not opt to attempt to open another account.
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?

We understand the reasons why a Regulated Firm places demands on individuals but we do not believe the burden is proportionate.

Other Comments
Given our experience and that of Transact members, we feel that, while the regulations and the guidance given around the regulations by the JMLSG allow for flexibility, due to inconsistencies in their implementation at ground level they often act to exclude customers from products and services that, within the parameters set by the restrictions, they should be able to access.

Exclusion from financial services and products can seriously hinder a person’s ability to interact in society and can be detrimental to them and to any dependents they may have. Lack of a bank account can restrict employment opportunities, increase costs (both financial and time), restrict access to other products and services and leave an individual vulnerable to theft. We would urge the review to consider ways in which regulated organisations can work towards greater consistency in application of the regulations among front-line staff. If the full list of acceptable ID were to be displayed more prominently, as opposed to only made available on request, we believe this would benefit both staff, who would feel more confident in what is and isn’t permissible, and customers, many of whom at present mistakenly believe that only a very restricted list of documentation is valid. At present our work supporting individuals to access financial services and products is very resource heavy. In addition to there being fewer instances of exclusion due to miscommunication and misinformation, having this clarity would result in a smoother account opening process, reducing the current costs – borne by all parties – involved in accessing products and services.
HM TREASURY REVIEW OF THE MONEY LAUNDERING REGULATIONS 2007

SUBMISSION BY TRANSPARENCY INTERNATIONAL UK

DECEMBER 2009

Contact: Chandrashekhar Krishnan, Executive Director
A description of Transparency International UK (TI-UK) is provided in the Annex.


TI-UK has recently published a detailed report on anti-money laundering (AML) - Combating Money Laundering and Recovering Looted Gains - Raising the UK's Game¹. We would like this Report (specifically, paras. vii to xii of the Executive Summary and Part 2 of the main Report) to be treated as our submission in response to Part A of HMT's Call for Evidence, particularly in relation to Questions 2, 3, 9, 14, 19 and 28. An electronic copy of the Report is attached.

Transparency International UK (www.transparency.org.uk), the UK national chapter of TI, fights corruption by promoting change in values and attitudes at home and abroad, through programmes that draw on the UK’s unique position as a world political and business centre with close links to developing countries.

TI-UK:

- Raises awareness about corruption
- Advocates legal and regulatory reform at national and international levels
- Designs practical tools for institutions, individuals and companies wishing to combat corruption
- Acts as a leading centre of anti-corruption expertise in the UK.

TI-UK’s vision is for a world in which government, politics, business, civil society, domestic and international institutions and the daily lives of people are freed from corruption, and in which the UK neither tolerates corruption within its own society and economy, nor contributes to overseas corruption through its international financial, trade and other business relations.
COMBATING MONEY LAUNDERING AND RECOVERING LOOTED GAINS

RAISING THE UK’S GAME
TRANSPARENCY INTERNATIONAL

Transparency International (TI) is the world's leading non-governmental anti-corruption organisation. With more than 90 Chapters worldwide, and an international secretariat in Berlin, TI has unparalleled global understanding and influence. Transparency International (UK) fights corruption by promoting change in values and attitudes at home and abroad, through programmes that draw on the UK's unique position as a world political and business centre with close links to developing countries.

- We raise awareness about corruption
- We advocate legal and regulatory reform at national and international levels
- We design practical tools for institutions, individuals and companies wishing to combat corruption
- We act as a leading centre of anti-corruption expertise in the UK.

Transparency International (UK)'s vision is for a world in which government, politics, business, civil society, domestic and international institutions and the daily lives of people are freed from corruption, and in which the UK neither tolerates corruption within its own society and economy, nor contributes to overseas corruption through its international financial, trade and other business relations.

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Structural Hurdles

Cost

Judicial

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<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AFWG</td>
<td>Asset Freezing Working Group</td>
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<tr>
<td>AML</td>
<td>Anti-money laundering</td>
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<tr>
<td>ARA</td>
<td>Assets Recovery Agency (now absorbed into SOCA)</td>
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<tr>
<td>BBA</td>
<td>British Bankers Association</td>
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<td>CARIN</td>
<td>Camden Assets Recovery Inter-Agency Network</td>
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<td>CD</td>
<td>Crown Dependency</td>
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<td>CDD</td>
<td>Customer due diligence</td>
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<tr>
<td>CFT</td>
<td>Combating the Financing of Terrorism</td>
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<tr>
<td>CNCP</td>
<td>Commonwealth Network of Contact Persons</td>
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<tr>
<td>COSP</td>
<td>Conference of States Parties</td>
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<td>CPS</td>
<td>Crown Prosecution Service</td>
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<td>DFID</td>
<td>Department for International Development</td>
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<td>EEA</td>
<td>European Economic Area</td>
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<tr>
<td>ECHR</td>
<td>European Convention on Human Rights</td>
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<tr>
<td>FATF</td>
<td>Financial Action Task Force</td>
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<tr>
<td>FCLIO</td>
<td>Fiscal Crime Liaison Officers</td>
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<tr>
<td>FO</td>
<td>Foreign and Commonwealth Office</td>
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<tr>
<td>FLI</td>
<td>Financial Intelligence Unit</td>
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<tr>
<td>FP</td>
<td>Foreign Public Official</td>
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<tr>
<td>FSRB</td>
<td>FSB-Type Regional Body</td>
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<tr>
<td>FSA</td>
<td>Financial Services Authority</td>
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<tr>
<td>HMRC</td>
<td>Her Majesty’s Revenue &amp; Customs</td>
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<td>HMT</td>
<td>Her Majesty’s Treasury</td>
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<tr>
<td>ICAR</td>
<td>International Centre for Asset Recovery</td>
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<tr>
<td>ICAEW</td>
<td>Institute of Chartered Accountants of England and Wales</td>
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<td>JMLSG</td>
<td>Joint Money Laundering Steering Group</td>
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<tr>
<td>KYC</td>
<td>Know your customer</td>
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<td>KYCB</td>
<td>Know your customer’s business</td>
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<tr>
<td>ML</td>
<td>Money laundering</td>
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<td>MLA</td>
<td>Mutual legal assistance</td>
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<td>MLR</td>
<td>Money Laundering Regulations (2007)</td>
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<tr>
<td>MPS</td>
<td>Metropolitans Police Service</td>
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<td>MSB</td>
<td>Money service business</td>
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<tr>
<td>NAO</td>
<td>National Audit Office</td>
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<td>NCIS</td>
<td>National Criminal Intelligence Service (absorbed into SOCA)</td>
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<td>NI</td>
<td>Northern Ireland</td>
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<tr>
<td>NTFIU</td>
<td>National Terrorist Financial Investigation Unit</td>
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<tr>
<td>OACU</td>
<td>Overseas Anti-corruption Unit of the City of London Police</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td>OFC</td>
<td>Offshore financial centre</td>
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<tr>
<td>OT</td>
<td>Overseas territory</td>
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<tr>
<td>PACE</td>
<td>Police and Criminal Evidence Act 1984</td>
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<td>PEP</td>
<td>Politically exposed person</td>
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<td>POCA</td>
<td>Proceeds of Crime Act 2002</td>
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<tr>
<td>POCU</td>
<td>Proceeds of Corruption Unit of the Metropolitan Police</td>
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<tr>
<td>RCPD</td>
<td>Revenue and Customs Prosecuting Office</td>
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<tr>
<td>Requested state</td>
<td>The state receiving requests for mutual legal assistance in criminal investigations and criminal proceedings (or civil forfeiture proceedings)</td>
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<td>Requesting state</td>
<td>The state requesting mutual legal assistance in criminal investigations and criminal proceedings (or civil forfeiture proceedings)</td>
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<tr>
<td>SAR</td>
<td>Suspicious Activity Report</td>
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<td>SFO</td>
<td>Serious Fraud Office</td>
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<tr>
<td>SOCA</td>
<td>Serious Organised Crime Agency</td>
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<tr>
<td>SOCPA</td>
<td>Serious Organised Crime and Police Act 2005</td>
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<tr>
<td>SRA</td>
<td>Solicitors Regulation Authority</td>
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<tr>
<td>STAB</td>
<td>The Stolen Asset Recovery Initiative</td>
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<tr>
<td>TCSPL</td>
<td>Trust and company service providers</td>
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<td>TI-UK</td>
<td>Transparency International UK</td>
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<tr>
<td>UKCA</td>
<td>UK Central Authority for mutual legal assistance</td>
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<tr>
<td>UNCAC</td>
<td>United Nations Convention Against Corruption</td>
<td></td>
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<tr>
<td>UKFII</td>
<td>UK Financial Intelligence Unit</td>
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<tr>
<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
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As an anti-corruption body, Transparency International UK (TI-UK) is concerned with preventing money laundering since the facility to launder the proceeds of corruption gives rise to the commission of bribery and corruption offences in the first place. TI helped international banks to establish the Wolfsburg Principles (the global anti-money laundering guidelines for private banking) in 2000. Reports by TI-UK in 2003 and 2004 focused on corruption and money laundering in the UK and the regulation of trust and company service providers, respectively.

This report focuses on the following main areas:

- Strengthening the UK’s defences against dirty money with particular emphasis on improving due diligence by financial and other institutions and organisations required to conduct due diligence on Politically Exposed Persons;

- Criminal and civil mechanisms for the recovery of assets that are the proceeds of corruption; and

- Bolstering the efforts of the UK’s law enforcement agencies and improving the UK’s ability to help developing countries in identifying and recovering stolen assets through more efficient processes and procedures.

In preparing this report, TI-UK drew on the valuable expertise and advice of the following experts: Martin Polaine and Arvinder Sambel, Amicus Legal Consultants Ltd; Alan Baerese, International Centre for Asset Recovery in Basel; James Maton, Edwards Angell Palmer & Dodge UK LLP (formerly Kendall Freeman); and Richard Pratt, formerly with the Jersey Financial Services Commission and Her Majesty’s Treasury. TI-UK is extremely grateful to them for contributing so much of their time to this project on an entirely voluntary basis. The views expressed and the recommendations made in this report should not in any way be attributed to them, but rather to TI-UK.

We are grateful to the Department for International Development (DFID) for funding the initial phase of this project as well as the publication of this report. We would like to thank the officials and representatives of the following organisations who were willing to meet our team during the course of the preparation of the report: British Bankers Association, Crown Prosecution Service (Fraud Prosecution Service and Central Confiscation Unit), DFID, Financial Services Authority, Her Majesty’s Revenue and Customs, Her Majesty’s Treasury, Institute of Chartered Accountants of England and Wales, Law Society, Overseas Anti-Corruption Unit of the City of London Police, Proceeds of Corruption Unit of the Metropolitan Police, Revenue and Customs Prosecuting Office, Serious Fraud Office, Serious Organised Crime Agency, Solicitors Regulation Authority and UK Central Authority for Mutual Assistance at the Home Office. We would also like to express our appreciation to Graham Rodmell (Senior Adviser to TI-UK), who coordinated the report’s preparation, and to Simon Heazell and Jan Lanigan for their contributions.

Acknowledging the debt TI-UK owes to all those who have contributed to and collaborated in the preparation of this report, we should make clear that TI-UK alone is responsible for the content of the report. While believed to be accurate at this time, the report should not be relied on as a full or detailed statement of the subject matter.

John Drysdale, Chairman, TI-UK

Chandrashekar Krishnan, Executive Director, TI-UK

June 2009
EXECUTIVE SUMMARY AND MAIN RECOMMENDATIONS

i. Corrupt leaders of poor countries steal as much as US $40 billion each year and stash these looted funds overseas. UK financial institutions have been used as repositories, and other UK institutions and organisations used as intermediaries for stolen funds from several countries. Money launderers find it easier to mingle their dirty funds in a large financial centre like London. The UK’s defences against money laundering (ML) should be robust enough to prevent corrupt money from finding sanctuary in the UK. When these defences are breached, the UK must cooperate promptly to enable stolen assets to be repatriated to requesting states.

ii. The UK has a wide range of anti-money laundering (AML) powers to deal effectively with ML and to counter the financing of terrorism (CFT), as well as asset recovery (AR). At every stage of the process of AML and AR there is a multiplicity of UK agencies involved but none has overall responsibility. International cooperation appears to be frustrated at times because some foreign governments are apparently unable to access the right UK authorities for help with investigations and AR. Often this is because of a lack of understanding of UK processes.

iii. What is needed is a more coordinated proactive approach that makes the best use of the powers the UK has: strengthens the identification and monitoring of Politically Exposed Persons (PEPs); ensures AML obligations are implemented consistently and effectively across different institutions; identifies the countries that need help with investigations and AR; strengthens the UK Central Authority’s (UKCA) capacity to respond quickly and helpfully to requests for assistance; and removes obstacles that impede criminal and civil processes for AR.

The UK and International Context

iv. The UK is a member of the Financial Action Task Force (FATF), the international body that oversees AML worldwide. It is a party to the AML/AR instruments and initiatives adopted by the United Nations (UN), the European Union (EU), the G7 and G8, the Organisation for Economic Cooperation and Development (OECD), the World Bank and the Commonwealth. The UK has ratified the UN Convention Against Corruption (UNCAC), which includes a comprehensive framework for mutual legal assistance (MLA) and AR. Because of its key international connections, its position as a leading international financial centre and its links with many of the world’s offshore centres, the UK should be prepared to take a lead in implementing AML standards and in assisting victim countries to recover stolen assets and the proceeds of corruption.

v. The UK implements the current AML standards of FATF through the Proceeds of Crime Act (POCA) 2002 and the 2007 Money Laundering Regulations (MLR). The Financial Services Authority has published Rules on AML and guidance for the financial sector and the relevant professions is provided by the Joint Money Laundering Steering Group (JMLSG). Other enforcement agencies have provided guidance for other sectors subject to the Regulations.

vi. Particular challenges arise in respect of some of the UK Overseas Territories (OTs) that are offshore financial centres. They are constitutionally not part of the UK and in some of them, the Governor-General is accountable for financial services. All the OTs have implemented AML regimes. However, some of the smaller OTs have very limited regulatory and law enforcement capacity making it difficult to address ML risks effectively. This vulnerability has serious implications for the UK’s reputation. Recent allegations of fraud and corruption in Turks and Caicos have underlined the need for urgent action to mitigate risks.
11 December 2009

Review of the Money Laundering Regulations 2007
Financial Crime Team, HM Treasury
1, Horse Guards Road
London SW1A 2HW

mlr.review@hm-treasury.gsi.gov.uk

By courier and by email

Dear Sir/Madam

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

Travelex Limited is pleased to submit its responses to the October consultation on the Review of the Money Laundering Regulations 2007. In this regard, Travelex Limited ("Travelex") is responding on behalf of all members of the Travelex Group of companies ("Travelex Group") in the United Kingdom.

BACKGROUND INFORMATION CONCERNING THE RESPONDENT

The Travelex Group operates globally and is established in approximately 30 jurisdictions. The ultimate holding company of the Travelex Group, Travelex Holdings Limited, is an English company and the Group's senior management is primarily located in the UK. The Travelex Group currently has three business lines:

(a) **Global Business Payments** – The Global Business Payments division is the UK's and the world's largest non-bank provider of commercial cross-border payment and remittance services. Through this division, the Travelex Group provides international payment and remittance services to commercial and personal customers, with products including multi-currency spot contracts and forward contracts.
(b) **Currency Services** – The Currency Services division represents the UK's and the world's largest non-bank retail currency exchange specialist, with over 700 branded retail branches, principally in airports and tourist locations. This business provides currency exchange and travel-related products and services to individuals travelling for business and leisure purposes. The Currency Services division also provides outsourced travel money services by supplying the foreign currency needs of financial institutions and travel agencies, as well as by fulfilling the individual FX orders of such businesses' customers.

(c) **Cards & Mobile Payments** – The Cards & Mobile Payments division is an issuer (outside the EU) and also (through third-party issuers) a distributor of prepaid cards and a supplier of dynamic currency technology and is also pursuing various alternative money transfer / payments businesses.

**RESPONSES TO THE CONSULTATION DOCUMENT:**

**Question 1**

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

Travelex acknowledges that the 2007 Money Laundering Regulations (‘MLRs’) represent a significant move away from the historic, prescriptive nature of anti-money laundering legislation. However, it believes that there are inconsistencies in relation to the spirit of a risk-based approach (‘RBA’) and the reality of the requirements outlined in the MLRs.

Whilst it is accepted that minimum standards in relation to specific information (e.g., identification and verification of individuals, based on certain criteria) provides comfort that financial institutions will always have a baseline of information for clients, the regulations impose requirements that in practice are far from risk-based when marginally more complex relationships are involved, for example, where Politically Exposed Persons or Ultimate Beneficial Owners are considered.

For instance, the requirement to identify and verify the ultimate beneficial owners (‘UBO’) of clients that fall outside the criteria for applying simplified due diligence,
creates an unnecessary burden on financial institutions with adequate and well constructed risk based policies and procedures. In such circumstances, financial institutions should be empowered to determine the level of detail required, based on their own assessments of risk.

Instead, however, financial services firms must increase headcount and invest time and resource into the identification and verification process. Significant amounts of money are required to sustain what amounts to an investigatory function, utilising expensive third party agencies and tools, as well as engaging professional services firms.

Travelex would like to see amendments made to the MLRs that support a genuine risk based approach, but that set higher expectations on firms to properly identify and mitigate their risks and provide for more severe sanctions where a firm cannot justify, by way of documented evidence, its rationale.

**Question 3**

**To what extent are Customer Due Diligence (‘CDD’)** requirements effective in the fight against money laundering?

Travelex agrees that CDD can represent an effective deterrence to criminals who wish to use financial products and services to facilitate money laundering activity. However, the Group also believes that without genuinely risk based CDD provisions, it can also represent a barrier to legitimate business.

The beneficial ownership provisions contained within the MLRs do little to deter financial crime in practice. For example, it has been established that there have been no recent Suspicious Activity Reports (‘SARs’) disclosed by the Group (in the United Kingdom) that directly related to concerns over the UBO.

Similarly, provisions for reliance are rarely utilised and did not serve to reduce the burden of compliance with the Regulations. In particular, it was noted that even within the Travelex Group, a distinct legal entity could not technically rely on CDD completed by another Group entity, as Regulation 17(5) specifically excludes money service businesses (‘MSBs’).
As already highlighted in the response to Question 1, Travelex would welcome changes to the Regulations that allowed for a more risk based approach to the identification and verification of UBOs and also changes that enabled the reliance provisions to be more widely applied, particularly for intra-group purposes.

It is acknowledged, however, that the concept of equivalence is helpful and that it benefits financial services firms during the customer acquisition process insofar as evaluating country risk was concerned.

**Question 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?**

Travelex agrees that the regulations provide, generally, for a suitable system of registration and ‘fit and proper’ testing. However, additional clarity around which individuals are subject to such ‘fit and proper’ testing dependant on group structure and the size and complexity of the business would be beneficial. Furthermore, there is inconsistency across different supervisors as to who (and what functions) should be subject to such testing.

Within the MSB sector, it is not apparent that the registration and testing requirements have achieved the ultimate goal of preventing unsuitable or unqualified individuals from providing bureaux de change, money remittance and cheque encashment services.

Travelex believes the sector would benefit from the publication of statistics around how successful these initiatives have been and if the regulator feels that the requirements go far enough to have a genuine impact.
QUESTIONS ABOUT GUIDANCE

Question 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?

Travelex accepts that producing guidance that is not prescriptive and that addresses the concerns of multiple financial services firms, each with different product offerings and of varying size and complexity is not straightforward. However, it is also noted that guidance is not comprehensive in any sector and that there is rarely an occasion where a decision could be reached by referring to only one source.

It is agreed within the Group that a revision of the guidance available in conjunction with a wider consultation of the industry would be of use.

Question 12

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

Travelex considers that the guidance available today is significantly better than that which preceded it, but also believes that guidance on the practical application of the Regulations is limited and lacks specificity.

In particular, details in the guidance around the implementation of a comprehensive risk based approach to anti money laundering are extremely poor. This leads to extreme variations in quality and consistency of risk based policies and procedures.

As a result, Travelex often considers the risk associated with doing business even with organisations in its own sector (Money Service Businesses) as being too great, given the lack of appropriate risk based policies and procedures found at MSBs with limited compliance resources and knowledge.

Travelex believes that more proactive consultation and engagement with a wider variety of financial services firms, would produce guidance that facilitated the
implementation of strong anti money laundering control frameworks across the industry.

QUESTIONS ABOUT SUPERVISION

Question 17

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

The Travelex Group considers that the Supervisor (HMRC) has begun to address some of the problems commonly associated with MSBs, in particular the sanctioning of unregistered and non-compliant bureaux de change. However, there is no method of determining whether its monitoring of compliance is proportionate and risk based, as there is no publically available methodology.

The focus appears to be predominantly on low value, high volume bureaux de change businesses, with no clear emphasis on complex, international money remittance providers.

It is suggested that the Supervisor works towards publishing and implementing a monitoring methodology that clearly accounts for risk, probability and impact, in an effort to both reassure the industry and increase transparency.

Question 19

In what ways could the registration process for Regulated firms be improved?

At present, the registration process and ongoing supervision provision for MSBs is hindered by a lack of resource, funding, technology and understanding of more complex international payments businesses.

The Travelex Group regularly receives communications addressed to the wrong individuals at non-existent legal entities, despite having spent considerable time and effort attempting to ensure that the Supervisor has the correct details.
Such issues present a number of challenges to businesses like Travelex and the Group believes that the Government should consider whether, particularly in respect of MSBs, a single regulator across all regulated firms would be better placed to administer the UK’s money laundering regime.

QUESTIONS ABOUT INDUSTRY PRACTICE

Question 20

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

In practice, it is agreed that the single biggest barrier to implementing risk based policies for Travelex, was the fact that there is no requirement for customers to provide the information the Group is obliged to obtain. With requirements for company incorporation falling rather than rising (i.e., recent changes to the Companies Act) the burden on financial services companies to gather such information without having a central, appropriately regulated repository to access, greatly reduces the ability for firms to acquire new business in an efficient manner.

Travelex believes that it should be a requirement for all newly incorporated businesses to submit detailed and authenticated supporting documentation to Companies House on their ownership structures and officers, should financial services companies continue to be required to obtain this.

In respect of Travelex’s Retail business, a significant amount of opposition is encountered by the business from customers who are concerned with data security, identity theft and fraud.

Travelex would urge HMT and the Government to ensure more emphasis is placed on educating the public in respect of the requirements that are imposed on the financial services industry to help combat money laundering and indeed, the social and economic harm that is caused by money laundering and underlying crimes.
Question 22

To what extent do the Regulations support or complement Regulated Firms' 'business as usual'?

Particularly in relation to Travelex' bureau de change operations, the Group believes that the Regulations do not support 'business as usual' activities.

In respect of additional provisions related to combating terrorist financing, the regime is not consistent or commensurate with 'walk – up', non account holding, customers and is geared more towards the banking sector, where firms are already in possession of the majority of the information required to fulfil their obligations.

Travelex believes that more consideration should be given to how the inflexible aspects of the Regulations and associated legislation, impacts the normal course of doing business.

QUESTIONS ABOUT THE CUSTOMER EXPERIENCE

Question 26

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

It is the opinion of the Travelex Group that the Regulations do not generally appear proportionate to the customer, particularly as already mentioned, there is little or no publicity of changes in the law or indeed existing requirements by the Government.

Instead, it often appears to the customer that the financial services industry is enforcing its own, often extremely onerous, policy requirements. This is the case whether dealing with multi-national, private companies with complex ownership structures or individual customers utilising Travelex' bureau de change facilities or pre-paid card products.

Travelex urges the Government and regulators to educate the public and industry at the same time as acknowledging the need to harmonise applicable legislation (e.g., the Companies Act) with the provisions of the Money Laundering Regulations
QUESTIONS ABOUT THE REGIME

Question 30

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

Travelex does not believe that all relevant stakeholders are engaged in the development of the Regime. In particular, there is little consideration for the MSB sector where the concerns of groups such as Travelex, with multiple product and service offerings ranging from currency exchange through to international payments and plastic card issuance, are not addressed. This is particularly evident in the development of guidance, where the MSB sector was left to develop a subset of the JMLSG guidance in conjunction with its supervisor, rather than be included in the development of the main text.

It is acknowledged that the Call for Evidence represents an excellent opportunity for the Travelex Group to participate in the ongoing development of the Regime, but that more must be done to ensure that the concerns of the MSB sector are not placed secondary to those of the banking and investment sectors.

Question 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?

This question was used to summarise the main points of discussion considered by the Travelex Group.

1. Whilst the move towards risk based requirements and away from prescriptive requirements following the introduction of the Money Laundering Regulations 2007 was welcome, it has not gone far enough and in some cases, the inflexibility of the regime presents a barrier not only to criminal enterprise, but also legitimate business.
The regime in the UK must allow more flexibility for the financial services industry to assess risk and determine the appropriate level of due diligence. It must also refocus some of the burden away from the financial services sector and foster an environment which facilitates financial services firms complying with the regulations through the harmonisation of other relevant laws and provisions with the anti-money laundering regime.

2. Although guidance in the UK is useful, it is not comprehensive, specific or practical enough to guide the financial services industry in implementing some of the key concepts of the anti-money laundering regime.

In particular, this is evident in the application and implementation of a risk-based approach, which anecdotally, many financial services firms struggle to implement successfully. Although not limited to the MSB sector, this is where problems are most acute.

3. The registration, supervision and enforcement regime in the UK, particularly in respect of Money Service Businesses is inadequate. In particular, there are not proportionate penalties for non-compliance and the Supervisor does not adequately risk assess the industry.

4. The Government does not do enough to educate businesses and consumers of the social and economic harm caused by money laundering and the legal requirements placed on the financial services industry (and others) in an effort to combat the problem. This has a direct impact on financial services firms' ability to comply with the legislation, whilst at the same time developing sustainable business relationships.

Yours faithfully,

[Signature]

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3rd December 2009

Review of Money Laundering Regulations 2007 – UKMTA response

Sir

We are responding to the invitation to provide an input to the present review of the money laundering regulations.

Our response is submitted on behalf of the 200 money transfer companies which are presently in membership of our Association. Further details are available at our website: www.ukmta.org.

As you appreciate, our members are presently supervised by HM Revenue and Customs under the 2007 MLR’s, so we have considerable experience of the impact of these laws for our collective businesses. We observe that some of the comments below reflect negatively on the supervisory role of HMRC. Can we ask that our views are not shared with HMRC, as this would adversely impact on the relationship which we do have with HMRC (such as it is).

As a general comment, we observe that HMRC have at all times made it clear that it is not their job to interpret the MLR’s - this has meant that in HMRC guidance they have preferred to re-state the law, rather than give the precise guidance which clarifies the procedures which HMRC will expect companies to implement operationally.

This has led to widely divergent approaches in terms of what money transfer companies do to comply with the MLR’s – as a result, it is our view that we do not have the level playing field in AML (and broader anti financial crime) regulation which the industry needs to create a fairly competitive market place which would benefit the consumer.

Questions about the Regulations

Question 1 – ‘The risk based approach’

It is understood that the ‘risk based approach’ is a key underlying theme of the MLR’s. However, we believe that it is difficult to define a valid and consistent range of risk factors for the wide range of businesses which are covered under the MLR’s.

Accordingly, the range of ‘high risk’ factors identified in MLR’s 2007 is quite small: non face to face transactions, PEP’s and other ‘high risk’ situations. Whilst the first two are clear enough, the other high risk situations is not precisely defined. The intention was no doubt that industry specific guidance would fill this gap. We feel that HMRC have not done enough to identify, prioritise and highlight the AML risks within the money transfer sector.

HMRC has not made it clear what companies are required to do operationally to manage higher risk situations – all HMRC do is restate in guidance the information requirements as stated in MLR 14 (2).
We note, for example, that based on FATF assessment, Pakistan appears to be the highest risk geographic area — but what would a firm have to operationally to manage this risk? HMRC do not specify in their MLR8 guidance or any subsequent guidance whether firms dealing in Pakistan should, as a matter of obligation, implement systems and controls which are different to what would be appropriate for a lower risk destination country.

We notice the question regarding PEPs. In relation to domestic PEPs, we do not see any specific value in extending the PEP checking regime to this constituency. We do not think they form a large part of our customer or client base.

It is recognised that simplified due diligence is possible in certain circumstances under the RBA.

Some MSB’s are in situations where they apply SDD when they enter a business relationship with another MSB. That is, the intermediary (wholesale) MSB will accept from the originating MSB a copy of the MLR certificate as proof that it is a regulated financial institution.

There is a question about the level/nature of monitoring which the intermediary MSB has to carry out in relation to the underlying transactions processed by the originating MSB. HMRC does not provide any consistent guidance on what would be an industry wide bench mark for ongoing monitoring of these transactions (we find the guidance in HMRC MLR8 20.9 unclear).

Given the evidence from a recent money laundering case (Iktilat and Frigeri) involving an intermediary MSB, we think that the failures in procedures here can be related back to a lack of appropriate guidance/supervision from HMRC. If appropriate risk based supervision had been in place, HMRC would have intervened at a much earlier stage. As it was, MTA had to alert HMRC to what was going on.

**Question 2/3 – CDD requirements**

We believe that the requirements for CDD set down in the MLR’s are not explicit enough to manage the money laundering risks associated with the money transfer sector.

Specifically, we think that the regulations are not granular enough to manage the ML risks associated with large numbers of smaller remittance based transfers, particularly those sent through companies with large numbers of agents.

The key issue about CDD in our view is that it obliges the company to verify the identity of the customer on the basis of some independent form of ID.

The MLR’s specify the situations when the firm must carry out CDD (namely when a business relationship is established, carries out an occasional transaction (i.e a transaction of EUR15K), suspects money laundering or doubts the data provided).

From a CDD perspective, the problem is that there is a lack of clarity about when a business relationship has objectively started. The present definition in the MLR’s is that a business relationship ‘means a business, professional or commercial relationship between a relevant person and a customer, which is expected by the relevant person (i.e the business, our comment) at the time when contact is established, to have an element of duration’.

This seems to suggest that it is the number of transactions over a period of time which is crucial to defining a business relationship. So, we assume if the same customer sends £500 two or three times
through the same money transfer principle in a one month period, then presumably a business relationship has started? (certainly, one of the major banks dealing in MSB activity assumes that this is a reasonable definition of a business relationship).

However, in guidance, HMRC does not take the view that this is the defining feature. They state that a business relationship may exist if: a customer account is set up, a loyalty card is issued, preferential rates or services are given, etc. They do not refer to the regularity of the transactions.

In these circumstances, where HMRC guidance is so vague, there is insufficient clarity for a money transfer principle to define a business relationship as having started. As a result, the company is under no obligation either to request customer ID or to ensure that it is has sufficient information about the source of funds/purpose of transaction etc, and no obligation to monitor the transactions which the customer processes.

There is nothing in the MLR’s about the level of monitoring required in respect of transactions which take place outside a business relationship – the MLR’s seem to assume that most transactions do take place within a business relationship. This is not the case in the money remittances sector.

In the absence of a business relationships, then, under the MLR’s, companies should be looking out for transactions which are ‘linked’ and which total EUR15,000 or more (i.e. occasional transactions). CDD is required at this point.

However, the MLR’s fail to define the circumstances in law in which transactions are ‘linked’. There is no reference in HMRC guidance (MLR8) as to situations when money transfer transactions are ‘linked’.

In light of the above, we believe that the present ML regulations are wide open for abuse by the criminal who wishes to engage in low value transaction/high volume ‘smurfing’ activity.

We believe that companies with large numbers of agents are particularly vulnerable to this kind of activity. The criminal will know that he will not be expected to provide ID for transactions below EUR1,000 (EU Payments Regulation threshold). The criminal can process a transaction under this amount without providing personal ID (and hence can change the personal information he provides each time he processes a transaction).

There is then a responsibility for the money transfer principle to identify suspicious linked transactions received from his agents (probably by way of monitoring against payer or payee address/telephone details).

If the money transfer principle is operating through more than one master agent (as one or two of the major money transfer companies do), then there must be considerable questions as to whether the principle is able to adequately link together the transactions processed by an individual sending customer (or indeed criminal) who may be sending transactions through the individual agents of different master agents.

We think there is a significant ML financial crime risk here.

In summary, further clarification of the law in relation to ‘linked’ transactions and the on going monitoring associated is necessary if the risks of money laundering are to be mitigated.
We also mention that, through absence of sufficient controls, some money transfer companies with many agents (particularly high profile money transfer branded companies) have demonstrated that they are open abuse of their systems for purposes of customer initiated fraud.

We attach an article referencing a case in the Canada, but similar instances of fraud have occurred in the UK, always through large branded money transfer companies, where the principle has not put in sufficient controls to manage their agents.

In relation to issues around beneficial ownership – this is not difficult to establish in circumstances where the customer is a limited company. There would be difficulties in situations where an individual customer is processing a single transaction which constitutes funds received from a number of other individuals. The only way firms have to get around this problem is to ask the customer to declare that he is processing only his own funds – this puts the responsibility on to the customer.

Reliance is not a live issue for money transmitters - the MLR’s 2007 explicitly rule out one MSB as being able to have reliance in terms of customers referred on by another MSB. However, we assume that, going forward, MSB’s which are regulated also by the FSA can be relied on?

The provisions in the MLR’s 2007 around equivalence have not been generally used by money transmitters.

**Question 4 – record keeping/procedural requirements**

No objections to keeping the five year limit for record keeping.

**Question 5 – monitoring/enforcement/penalties for non compliance**

We believe that the MLR’s do enable HMRC to monitoring and enforce compliance but we are doubtful as to whether HMRC has appropriately used the powers which it has available.

HMRC have told us (MSB Forum, April 2009) that, under MLR’s 2007, they have issued 8 penalties for non registration by MSBs (out of 688 businesses which were identified as trading whilst not registered under MLR’s 2007). There were a further 10 penalties for ‘serious non compliance’ with the MLR’s.

This level of sanction seems at a somewhat small level, given that there were 3,775 MSB’s registered as at that date (operating through 34,832 premises). As far as we are aware, there has not been any use of criminal penalties by HMRC, even though these sanctions are available. Of course, this raises issues as to whether there has been criminal abuse of money service business – neither HMRC (or for that matter SOCA) routinely provides us with information which would clarify this.

At the same time, we feel that HMRC has not been candid enough about the reasons why it has issued the penalties which it has issued. There is a culture of secrecy at HMRC and an unwillingness to share information with the industry. We contrast the secretive approach of HMRC with the more open approach of the FSA, where explanations for fines imposed are published.

We believe that information from the regulator is fundamental in helping firms to develop a more comprehensive risk based approach – at present, the ML major risks around money service business has not been adequately and objectively identified by law enforcement agencies.
We highlight that the regulator (HMRC) only has discretion in those areas where it has powers under the MLR’s. For example, we think that there has been a lack of joined up thinking in respect of issues such as financial sanctions – this is the responsibility of HMT, not HMRC and their inspectors do not monitor to see whether a firm as adequate systems and controls to deal with their financial sanctions obligations. Neither do HMRC have any specific obligations in relation to anti-fraud procedures.

We think (see below) that the remit for money transfer regulator should be financial crime more broadly – there are then questions as to who is the best regulator (see below) to deliver anti-financial crime supervision.

**Question 6 – ‘Fit and proper’ tests**

HMRC stated (April 2009) that out of 12,140 applicants under the F and P test to date, 56 failed. HMRC have not provided any information as to why these applicants failed or about situations in which they took a decision to ‘just pass’ a particular applicant. We think this is a shame, as more information is always useful.

We are not certain whether the apparently low failure rate under the HMRC F and P test truly represents the level of ML risk associated with those managers/owners who took the test.

We are not certain whether the HMRC ‘fit and proper’ scheme is working properly. We are aware of individuals who have passed the HMRC test, notwithstanding negative history associated with criminality and/or illegality in the country. We do wonder whether the test is effective in focusing on those individuals who actually run an MSB – we believe the test may be in practice ‘optional’ and that some who are involved in running MSB’s avoid doing the ‘fit and proper’ test.

Obviously, the ‘fit and proper’ tests only applies only to those running MSB principles – there is no obligation for those who run agencies to be subject to a ‘fit and proper’ test. We think this is a gap in the AML infra-structure, given the large number of agents presently active in the market place.

The ‘fit and proper’ test applies under the MLR’s but also for those owning or directing authorised (but not registered) firms under the PSR’s. Would it be possible to develop a single ‘fit and proper’ test regime, common to both regulators?

**Question 7- compatibility with other AML/financial crime legislation**

As mentioned above, there is no joined up thinking at present in relation to supervision by HMRC under the MLR’s and the asset freezing agenda (which is owned by HMT). This is a gap. Similarly, HMRC has no specific remit on issues such as fraud.

We are not certain whether the CDD procedures as implemented by UK money transfer companies are consistent with international standards.

**Question 8 – communication and engagement**

It is recognised that the anti-financial crime information which HMT can provide will be generic rather than industry specific. As such, the industry does not anticipate that HMT will be a source of much day to day operational support in relation to managing financial crime risks.
The Treasury does publish the sanctions list (updates available by email request) and a financial crime email has also been established (although this has not been a generally prolific source of information).

HMT does not otherwise engage with the MSB industry on AML issues, except in the context of (rather infrequent) reviews of legislation (such as the present review).

Our industry has not been invited by HMT to attend any other on going taskforces/discussion groups.

We had formed the view that HMT had delegated operational implementation of the MLR’s to HMRC – and we have sought to maintain this relationship, such as it is, through the MSB Forum. We comment further on our relationship with HMRC below.

Questions about Guidance

Question 9 – role of guidance in promoting effective/proportionate approach to AML

HMRC guidance for the sector is provided in their document MLR8. This document was prepared by HMRC. It contains a first section with generic material (summary of the law, etc) but then does have a section specific to money transfer companies.

MLR8 is substantial but suffers from a reluctance of the supervisor to highlight ‘best practice’ approaches to compliance with regulatory requirements. In key areas where firms want certainty, the guidance creates a fudge. This is because HMRC refuse to ‘interpret’ the law, (in their words).

One example of this relates to processes for enhanced customer due diligence, which tend to suggest that (in summary) ‘requesting more paper’ will provide the reassurance being sort. This is not clear guidance.

Certainly, firms are looking for guidance to be legally enforceable – they want to assume that it should provide ‘safe harbour’, but where the guidance fudges problematic issues, that assurance is lacking.

We do not believe that the guidance on carrying out a ‘risk assessment’ is effective. We think that HMRC lack the knowledge and/or confidence to identify and quantify high, medium and low risk activities with the money transfer environment. We mention that HMRC is currently in the process of updating MLR8, but they have not embraced any significant re-write (although we have suggested that this might be appropriate).

It might be that if the regulator was to work more closely with an industry body (such as the UKMTA) that it would be possible to generate materials and standard approaches which would give companies the comfort they seek around regulatory issues.

We should mention that, in early 2007, the UKMTA did undertake a process (with a consultant) to write guidance for the sector (based on draft MLR’s) which we had hoped to pass to HM Treasury for approval. However, when we ran the draft guidance past HMRC, they indicated that, for their purposes, they would not accept or abide by any guidance which was not HMRC generated. We felt that this was a missed opportunity.

We also mention that the MTA has been active in promoting ‘industry standard’ approaches to regulatory compliance (that is, standardised compliance policy documents, etc) which firms could
immediately adopt, whilst adapting as necessary to reflect that company's particular business profile.

**Question 10 – guidance across sectors**

Given that authorised PI's are now falling within the remit of the FSA (including for financial crime issues), we suggest that there will be the potential for conflict between HMRC guidance and JMLSG guidance. We believe that the 'dual regulator' is not optimal for MSB's offering payment services.

**Question 11 – guidance/CDD measures**

See response above (question 2/3).

**Question 12 – guidance/support for firms AML procedures**

HMRC assert that their guidance (MLR8) helps firms to manage money laundering risks (reflecting HMRC roles as responsible under the MLR's). MLR8 is also intended to provide guidance on combating terrorist finance. HMRC do not mention other financial crime risks.

The guidance does summarise a range of financial crime legislation, including POCA, Terrorism Act, CTA 2008, Payments Regulation, etc. However, in the context of their inspections to MSB's, HMRC are very clear that their responsibilities as a regulator only relate to the MLR's, Payments Regulation and CTA 2008. That is, they have no responsibilities in relation to sanctions legislation. Nor in relation to anti-fraud procedures.

As such, HMRC does not have the powers in law to cover the full range of financial crime threats which money transfer businesses will encounter.

**Question 13 – availability of Guidance**

Guidance is available on HMRC website. We think that HMRC have generally retreated, in recent years, from a willingness to inter-act with a broad range of money transfer companies (so preventing a dialogue on the guidance).

**Questions about Supervision**

**Question 14 – the supervisory framework**

We predict that, given the launch of the Payment Services Regulations in November 2009, there is a potential for regulatory confusion in respect of FSA authorised PI's which are also registered as MSB's with HMRC.

We are confident that the FSA financial crime division will, in due course, begin to set out how authorised PI firms should be meeting their obligations for dealing with financial crime. It is not clear whether FSA will have the same priorities as HMRC. Certainly, FSA will potentially be highlighting issues which have never been a focus for HMRC (such as sanctions compliance, anti-fraud procedures, data protection).

We are also unclear about FSA anti-financial crime responsibilities in relation to the small PI's which register with them. FSA appear to be saying at present that they have no responsibilities to supervise these firms for financial crime issues. We do think that this will be a difficult position to sustain in the situation that a small PI becomes caught in a high profile financial crime case.
As an Association, we do not wish to take on the role as supervisor, but would like our knowledge and experience about the practical implementation of regulations to more directly inform both issued guidance to the sector and the associated regulator supervision.

**Question 15 – supervisor engagement**

On a range of measures, supervision by HMRC is not entirely satisfactory.

HMRC provide support to the MSB sector through their general HMRC telephone helpline – but the level of information available through this mechanism on AML related issues is non existent.

HMRC do provide a written enquiries service for help with ML related queries. This is generally quite useful, but HMRC do not promote it to a wide audience.

Many companies complain about a lack of contact from HMRC – some companies have gone several years without any HMRC inspection visit. HMRC do not provide sufficient information as to why they may visit some companies repeatedly and other companies not at all.

HMRC have never provided information on the number of inspection visits they make, nor do they identify generic deficiencies in AML procedures across the sector. There is no feedback provided on cases where enforcement activity has taken place.

HMRC information on general statistics about the sector is poor.

HMRC struggle to provide a figure for the number of registered money transfer principles as a subset of the broader registered MSB community. HMRC can not indicate how many of these MSB principles should also be registered or authorised as Payment Institutions (we estimate this could be anywhere between 1,500 and 2,800 firms).

Prior to 2008, HMRC held regular regional seminars at which large numbers of companies could come and hear from HMRC about the regulations and how HMRC enforce them. For some reason, HMRC have discontinued this practice.

As an Association, we have invited HMRC to attend our regular conferences, which they did do up to this year when they indicated that they would not attend our May 2009 conference. We had to put considerable pressure on HMRC before they did, eventually, allow a speaker to attend. They declined altogether to send a speaker to our November 2009 conference.

We do feel that it should not be too much to ask HMRC to send a speaker to UKMTA conferences.

We don’t understand why there has been a change in heart, because previously HMRC had been quite willing to engage with the UKMTA.

The UKMTA does attend the HMRC organised MSB Forum as the representative of smaller companies. However, when the Association asked HMRC in December 2008 if they would be willing to send a UKMTA promotional leaflet to money transfer companies on their register, they refused (again, they had done this willingly prior to 2008, why was there a change in their policy?)

We should mention that in October 2008, the Serious Organised Crime Agency commissioned KPMG to carry out independent research into the most effective mechanism for regulated firms (particularly hard to reach firms) to receive information on financial crime issues. This research was
considered by the Vetted Group of industry specialists (including HMRC) at a meeting at SOCA in December 2008.

Based on feedback from money transfer companies respondents, it is clear that 30% of companies receive most of their feedback on financial crime issues through the trade body, rather than through a regulator. We think that HMRC have not thought through clearly enough the value of having a strategic relationship with a trade association such as the UKMTA.

HMRC have preferred to keep our Association at arm’s length, which we think is a missed opportunity in terms of a joined up approach.

**Question 16 – consistency of supervisory approach**

It is not yet possible to establish a clear picture as to the consistency of the supervisory approach, either by one supervisor or across supervisors.

We do not yet have a picture as to the risk factors which would cause HMRC to visit one firm five times in a year (for example) and another not once in five years. The HMRC supervisory regime appears arbitrary in terms of how visits are prioritised.

Despite requiring firms to take a risk based approach (and to document this), HMRC have never provided any document which analyses the risks of the 3,500 plus MSBs which they supervise and their programme for action arising out of this.

HMRC have not, to date, provided case studies (even made anonymous) in relation to MSBs which have proved deficiencies in relation to AML procedures.

Separately, there has never been any programme of outreach activity by any agency of HM Treasury in relation to the Asset Freezing regime.

We have no information yet as to how FSA will exercise their anti-Financial Crime supervisory responsibilities.

SOCA have made efforts to reach out to inform firms of their reporting responsibilities in relation to suspicious activity.

**Question 17**

See comments above.

**Question 18 – enforcement regime**

There is now some general information on enforcement issues on the HMRC website – this refers back to information in MLR8.

We have had no information on use of appeals system against sanctions imposed – as far as we know, there have been no appeals under MLR’s 2007.

There is no comparison available from HMRC regarding sanctions imposed in other countries.

**Question 19 – registration**
The registration scheme operated by HMRC under the MLR’s is not working effectively.

We are certain that responsibility for MSB supervision is a low priority for HMRC. The service suffers from being under-resourced – by their own figures, HMRC has less than £6 million annually to administer all activities related to supporting the MLR regime. Yet there are at least 3,775 MSBs and 30,000 plus premises.

We believe there are many firms offering payment activities which should be registered but which have not done so. We think that in some cases, firms are unaware of the need to register. We think many are put off by the costs associated with compliance and the difficulty of obtaining an MSB bank account. Some firms hide their MSB activity in other business activity (such as import/export).

We believe that it might be worth carrying out some independent research to identify a figure for non registered MSBs.

HMRC lack much energy to pursue and prosecute non registered firms. There is little help given to those who want to report non registered firms.

As of today’s date, HMRC have still failed to make the register of MSBs available in a searchable format online. They had previously committed to do this at least two years ago.

Law abiding firms want an effective system of regulation, so that money transfer companies which are acting in compliance with the law are supported. Failures by HMRC around the (non) registration issue are a sore point. And combined with a lack of clarity in relation to HMRC guidance and supervision, it all creates an unfairness which penalises firms which are trying to manage things lawfully.

We believe there are strong arguments to pass responsibility for the register to FSA, which now has a supervisory interest in the money transfer sector.

**Question 20 – Barriers to implementing risk-based policies**

In relation to the risk based approach, there has to been an awareness that much activity which a firm is doing (or should be doing) in relation to AML compliance can not be processed on the basis of risk. Many procedures, such as CDD, are standardised, not risk based. For example, firms will turn away customers who don’t have standard ID, rather than go through lengthy and expensive alternative procedures to establish their ID.

Firms themselves lack the skills in house necessary to implement risk assessments. The more professional will often turn to external consultants to provide methodologies and products which will help demonstrate compliance with the regulations.

Firms generally prefer not to rely on the equivalence provisions (generally not valid since transfers are going to non equivalent countries). PEP’s has not been an issue in the money transfer market to date. Certainly, it is not an issue which HMRC has prioritised.

**Question 21 – CDD/risk assessment**

We refer to the answers given above under question 2/3. Additionally, we comment below.
In relation to third party information, we would note further that electronic verification sources (provided by companies such as Equifax, Experian, etc) do offer some help with CDD but are often problematic. They are not a universal solution.

Issues for smaller remittance companies are that the commercial lists available do not create a probability of a match with the given customer base. The banks have indicated that firms cannot rely on electronic data searches for CDD, but must use it as an additional check. Additionally, the costs of this information are often a barrier to their usage.

In relation to ongoing monitoring, this is only required in the context of a business relationship. As stated previously, money transfer companies often choose not to have a business relationship with their customers.

**Question 22 - 'Business as usual'**

In well run businesses, the requirements under the MLR's and other regulations are at the core of what the business does and how it operates.

There is some overlap now in terms of AML requirements (e.g. customer ID requirements) with new obligations arising out of the PSR's, which focus on the obligation to satisfy the customer.

**Question 23 - 'Fit and Proper' tests**

We have commented above on the operation of the 'Fit and Proper' test regime. At present, firms will rely on 'Fit and Proper' tests carried out by HMRC on owners/managers of firms. Most firms do not carry out any 'Fit and Proper' test on other staff lower down in the operation.

At present, under MLR's, those who manage agencies are not subject to the 'Fit and Proper' test in law (though HMRC guidance suggests it is best practice to test them). However, the PSR's mandate that authorised PI's (but not registered PI's) must carry out 'Fit and Proper' tests on those who own/manage agencies.

**Question 24 - reporting/record keeping requirements**

We believe that firms are generally improving their understanding of their obligations to report suspicious activity to SOCA. This has been helped by the fact that SOCA has held a number of well attended outreach conferences in the last year.

As regards record keeping, there is a mixed picture. If firms have a money transfer software system in place, it is likely that they will easily be able to comply. But many firms do not have such systems in place — and it is not required in law. We believe that under a risk based approach, companies which do not have compliant software systems in place should be subject to a higher level of scrutiny by the regulator.

We think that it would be useful if the regulator could promote a scheme which would endorse effective software systems which help deliver compliance with the regulations. In our view, there are a number of software systems on the market now which fail to meet the necessary standard for regulatory compliance.

**Question 25 - communication with stakeholders**
We have communicated above (question 15) the difficulties we have in engaging in dialogue with HMRC.

By comparison, we think that SOCA has made positive steps to engage with the sector in recent years.

We think that feedback from customers about their experience of dealing with the regulations is to date, non-existent. This is a missed opportunity.

**Question 26 – proportionality/experience of the regulations from the customer perspective**

We believe that customers are totally confused by their experience of the regulations, as there is no consistency across firms as to what information is required.

When using some small firms, customers may be required to provide ID before the first transaction. By comparison, if they choose to transact through the agent of a large branded firm, they may never be required to provide ID. The smaller firms believe they are properly following the regulations, and are losing customers as a result to firms where ID is not a requirement.

There is a lot of inconsistency across firms on other issues such as requests for information such as source of funds, purpose of transaction and on issues such as when to update customer information previously provided.

We believe this relates back to the basic lack of clarity in the regulations on issues such as CDD, business relationships, linked transactions and on going monitoring obligations.

To deliver a fair and consistent regulatory regime, we believe effective regulation means that we should move to a standardised ‘no ID, no transaction’ regime.

We believe that this would bring the UK regime into line with the customer experience in other European countries.

**Question 27**

No comment.

**Question 28/29/30 – effectiveness, proportionality, engagement of the regime**

We believe that, at present, there is some way to go to achieve the effective, proportionate and engaged regime AML regime which we all want to see.

The MLR regulations can only form part of the broader anti-financial crime agenda. Inevitably, there is a real danger that gaps emerge in the anti financial crime project if the supervisor only has a circumscribed remit. To deliver an effective response, it makes sense to have one regulator with a sufficient understanding of all of the anti-financial crime laws and the powers to educate and deliver enforcement based on a realistic risk based assessment of where the major threats lay.

From a money transmitter perspective, and based on the fact that our firms operate internationally, we think it is important that the supervisor has credibility in the international context. We suspect that HMRC does not deliver this now, and, given the low priority which it gives to MLR issues, will not be able to deliver this in the future.
By comparison, the FSA does have credibility internationally, and can supervise on the broader anti-financial crime agenda. Companies in our sector (which are both MSB and Payment Institution) would see benefits commercially from having the FSA as the designated regulator on financial crime issues. And this would create a single regulator (where there are presently two), so avoiding the risk of competing supervisor regimes.

As an Association, we would be willing to deepen and broaden our relationship with the anti-financial crime regulator and associated bodies. In an environment where there are so many smaller companies, it will always be helpful for the regulator to have an intermediary which can help disseminate information on financial crime issues and provide support to companies on compliance issues.

We believe that HMRC has failed to recognise the value of such an intermediary and has made it difficult for our Association to promote itself as widely as possible to the MSB’s on the HMRC register. We think this is a missed opportunity in terms of the wider anti-financial crime agenda.

This concludes our comments on the HMT consultation on MLR’s 2007.

If you would like to discuss any of our comments in more detail, please don’t hesitate to get in touch.

Yours sincerely

Dominic Thorncroft
Chairman, UKMTA
MoneyGram to Pay $18 Million to Settle FTC Charges That it Allowed its Money Transfer System To Be Used for Fraud

Company Also Required to Implement Comprehensive Anti-Fraud Program and to Monitor its Agents

MoneyGram International, Inc., the second-largest money transfer service in the United States, will pay $18 million in consumer redress to settle FTC charges that the company allowed its money transfer system to be used by fraudulent telemarketers to bilk U.S. consumers out of tens of millions of dollars. MoneyGram also will be required to implement a comprehensive anti-fraud and agent-monitoring program.

The FTC charged that between 2004 and 2008, MoneyGram agents helped fraudulent telemarketers and other con artists who tricked U.S. consumers into wiring more than $84 million within the United States and to Canada — after these consumers were falsely told they had won a lottery, were hired for a secret shopper program, or were guaranteed loans. The $84 million in losses is based on consumer complaints to MoneyGram — actual consumer losses likely are much higher.

The FTC charged that MoneyGram knew that its system was being used to defraud people but did very little about it, and that in some cases its agents in Canada actually participated in these schemes. According to the FTC’s complaint, MoneyGram knew, or avoided knowing, that about 131 of its more than 1,200 agents accounted for more than 95 percent of the fraud complaints it received in 2008 regarding money transfers to Canada, a similarly small number of agents was responsible for more than 96 percent of all fraud complaints to the company in 2009.

“Money transfer services have a responsibility to make sure their systems don’t become conduits to rip people off,” said David C. Vladeck, Director of the FTC’s Bureau of Consumer Protection. “In this case, MoneyGram not only ducked this responsibility, but also looked the other way while its agents took part in the scams.”

Minneapolis, Minnesota-based MoneyGram operates through a worldwide network of approximately 180,000 agent locations in 190 countries and territories. In its complaint, the FTC charged that in recent years this network has increasingly been used by telemarketing scammers to prey on U.S. consumers. Con artists prefer to use money transfer services because they can pick up transferred money immediately, the payments are often untraceable, and victimized consumers have no chargeback rights or other recourse.

In 2007, 72 percent of all complaints received by the FTC involving Canadian-based fraud reported using money transfer services to make payments. According to a recent FTC survey cited in the complaint, at least 79 percent of all MoneyGram transfers of $1,000 or more from the United States to Canada over a four-month period in 2007 were fraud-induced. The Commission’s complaint further stated that based on the more than 20,600 fraud complaints MoneyGram itself received, U.S. consumers lost more than $44 million to cross-border money-transfer frauds between 2004 and 2008 alone. When combined with losses reported by U.S. consumers on money transfers within the United States, that number grows to $84 million.

In many of the scams that used MoneyGram’s money transfer system, the con artists used counterfeit checks to induce consumers to send money back by wire transfer. The most prevalent of these scams were lottery or prize schemes in which consumers were told they had won thousands of dollars and just had to pay a fee for “taxes,” “customs,” or “insurance” to a third-party to collect their winnings. Consumers paid the fee using MoneyGram, but received nothing. In another scheme, telemarketers told consumers they were guaranteed loans, regardless of their credit score. All they had to do was pay “insurance,” “paperwork,” or “processing” fees to complete the transaction. Consumers who sent funds using a money transfer service got nothing in return.

In mystery shopping scams, the con artists called U.S. consumers or sent them a piece of direct mail in which they claimed to be hiring consumers to visit stores such as Wal-Mart to evaluate MoneyGram money transfer operations. The con artists sent consumers a cashier’s check, telling them to deposit it in their checking account and then send most of the money back using a money transfer at Wal-Mart. When the counterfeit checks bounced, consumers realized they had lost the money they transferred. By this time, however, the money transfer agents had already received and paid out the money, often either...
MoneyGram to Pay $18 Million to Settle FTC Charges That it Allowed its Money Transf... Page 2 of 4

without checking IDs or by using fake drivers license information.

The FTC’s complaint alleges that MoneyGram ignored warnings from law enforcement officials and even its own employees that widespread fraud was being conducted over its network, claiming that proposals to deal with the problem were too costly and were not the company’s responsibility. The company even discouraged its employees from enforcing its own fraud prevention policies or taking action against suspicious or corrupt agents. Some employees who raised concerns were disciplined or fired, the FTC charged.

In addition, at least 65 of MoneyGram’s Canadian agents have been charged by Canadian or U.S. law enforcers with, or are currently being investigated for, colluding in fraud schemes that used the MoneyGram system.

The complaint charges MoneyGram with violating both the FTC Act and the FTC’s Telemarketing Sales Rule by helping sellers or telemarketers who it knew – or consciously avoided knowing – were violating federal law, and for not taking adequate steps to prevent fraud.

The agreed-upon court order settling the FTC’s charges bars MoneyGram from knowingly providing substantial help or support to any sellers or telemarketers that are violating the Telemarketing Sales Rule and requires it to implement a comprehensive anti-fraud program. Under the anti-fraud program, MoneyGram must conduct background checks on prospective agents; educate and train its employees about consumer fraud; institute agent monitoring; and discipline agents who don’t comply with the rules. The order also requires MoneyGram to provide a clear and conspicuous fraud warning on the front of all its money transfer forms. The order’s conduct provisions apply to all MoneyGram money transfers sent worldwide from either the United States or Canada.

The order contains monitoring and discipline provisions that will ensure MoneyGram is properly training, monitoring, and taking actions to address problems related to its agents. To do this, the order requires MoneyGram to develop and maintain a system for receiving consumer complaints and data, and to provide that information to the FTC upon request. MoneyGram also must take all reasonable steps to identify agents that are involved in fraud. It must review its transaction data to identify any unusual or suspicious activity by its agents and fire any agent who it believes may be participating in fraudulent activities. It also must fire or suspend any agent who has not taken appropriate steps to stop fraudulent money transfers.

Finally, MoneyGram will pay the Commission $18 million, which will be used to provide redress to consumers.

Consumer Education

The FTC has a new Consumer Alert, available on its Web site at http://ftc.gov/ocp/edu/pubs/consumer/alerts/ait034.shtm, titled “Money Transfers Can Be Risky Business.” It includes useful information on how consumers can avoid telemarketing and money transfer fraud, including the following tips. Don’t wire money to:

- someone you don’t know, in the U.S. or in a foreign country;
- someone claiming to be a relative in the midst of a crisis and who wants to keep the request for money a secret;
- someone who says a money transfer is the only form of payment that’s acceptable; or
- someone who asks you to deposit a check and send some of the money back.

Consumers interested in the process of redress administration should call 202-326-3755.

The FTC’s case was investigated with the assistance of the Toronto Strategic Partnership, Project Colt, Project Emporium, and the U.S. Postal Inspection Service. Additional assistance was provided by the Durham Regional Police Service, Ontario, Canada, and the Canadian Anti-Fraud Call Centre (PhoneBusters).

The Toronto Strategic Partnership includes the FTC, the U.S. Postal Inspection Service, Competition Bureau Canada, the Toronto Police Service Fraud Squad – Mass Marketing Section, the Ontario Provincial Police Anti-Rackets Section, the Ontario Ministry of Consumer Services, the Royal Canadian Mounted Police, and the United Kingdom’s Office of Fair Trading. Project Colt includes the FTC, the Royal Canadian Mounted Police, Surete du Quebec, City of Montreal Police Service, Canada Border Services Agency, Competition Bureau Canada, U.S. Homeland Security, U.S. Postal Inspection Service, and the Federal Bureau of Investigation. Project Emporium includes the FTC, the Business Practices and Consumer Protection Authority of British Columbia, the Royal Canadian Mounted Police, Competition Bureau Canada, the Federal Bureau of Investigation, and the U.S. Postal Inspection Service.

The Commission vote approving the complaint and proposed consent order was 3-0, with Commissioner Pamela Jones Harbouer recused. The complaint and order were filed on October 19, 2009, in the U.S. District Court for the Northern District of Illinois, Eastern Division.

NOTE: The Commission authorizes the filing of a complaint when it has "reason to believe" that the law has or is being violated, and it appears to the Commission that a proceeding is in the public interest. A complaint is not a finding or ruling that the defendants have actually violated the law. A stipulated court order is for settlement purposes only and does not necessarily constitute an admission by the defendants of a law violation. Stipulated orders have the force of law when signed by the judge.

Copies of the complaint and stipulated order are available from the FTC's Web site at http://www.ftc.gov and from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spot, stop, and avoid them. To file a complaint in English or Spanish, visit the FTC's online Complaint Assistant or call 1-877-FTC-HELP (1-877-382-4357). The FTC enters complaints into Consumer Sentinel, a secure, online database available to more than 1,700 civil and criminal law enforcement agencies in the U.S. and abroad. The FTC's Web site provides free information on a variety of consumer topics.

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(FTC File No. 062-3187; Civ. No. 1:09-01-06576)
(MoneyGram.final)

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Click here for more information about money transfer scams


the Northern District of Illinois, Eastern Division
Case No. 1:09-cv-06576
FTC File No. 062 3187
Money Transfers Can Be Risky Business
Declaration of Kay Corbin
Declaration of Louise Precht
Money Transfers Can Be Risky Business

You've won a prize!
I'm in a foreign country, and I need cash.
We're temporarily unable to accept credit cards.
Your dream apartment is available immediately at an incredible price!

Scam artists use a number of elaborate schemes to get your money, and many involve money transfers through companies like Western Union and MoneyGram. According to the Federal Trade Commission (FTC), the nation's consumer protection agency, money transfers may be useful when you want to send funds to someone you know and trust — but they're completely inappropriate when you're dealing with a stranger.

Why do scammers pressure people to use money transfers? So they can get their hands on the money before their victims realize they've been cheated. Typically, there is no way you can reverse the transaction or trace the money. Another reason: When you wire money to another country, the recipient can pick it up at multiple locations, making it nearly impossible to identify them or track them down. In some cases, the receiving agents of the money transfer company might be complicit in the fraud. Money transfers are virtually the same as sending cash — there are no protections for the sender.

Many money transfer scams involve dramatic or convincing stories that play on your optimistic nature, your altruism or your thriftiness. But no matter how you parse it, they always cost you money. Here are some scams involving money transfers that you may recognize:

Counterfeit Check Scams

Someone sends you a check with instructions to deposit it and wire some or all the money back. By law, banks must make the funds from deposited checks available within days, but uncovering a fake check can take weeks. You are responsible for the checks you deposit, so if a check turns out to be fraudulent, you will owe the bank any money you withdrew.

Counterfeit check scams have many variations:

Lotteries and Sweepstakes: You just won a foreign lottery! The letter says so, and a cashier's check is included. All you have to do is deposit the check and wire money to pay for taxes and fees. Oops: The check is no good. Although it looks like a legitimate cashier's check, the bank eventually
will determine that it is a fake. The lottery angle is a trick to get you to wire money to someone you don't know. If you deposit the check and wire the money, the check will bounce — and you'll be responsible for the money you sent.

*Overpayment Scams:* Someone responds to your posting or ad, and offers to use a cashier’s check, personal check or corporate check to pay for the item you're selling. At the last minute, the so-called buyer (or the buyer’s “agent”) comes up with a reason to write the check for more than the purchase price, and asks you to wire back the difference. The checks are counterfeit, but very often, good enough to fool bank tellers. Acting in good faith, you deposit the check and wire the funds back to the “buyers.” Oops: the check bounces. You are liable for the amount you wired.

*Mystery Shopper Scams:* You are hired to be a mystery shopper and asked to evaluate the customer service of a money transfer company. You’re given a check to deposit in your personal bank account. Then, you’re told to withdraw the amount in cash and wire the money using a certain money transfer service. Often, the instructions say to send the transfer to a person in Canada or another foreign country. You’re then asked to evaluate your experience — but no one collects the evaluation. Oops: the check you deposited bounces. You are responsible for the money you withdrew.

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<tr>
<td>• a stranger — in this country or anywhere else</td>
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*Other Money Transfer Scams*

*Online Purchase Scams:* If you are buying something online and the seller insists on a money transfer as the only form of payment, consider it a red flag: ask to use a credit card, an escrow service or another way to pay. No matter what story the seller tells you, insisting on a money transfer is a signal that you won’t get the item — or your money back. Find another seller.

*Advance Fee Loans:* Ads and websites that guarantee loans or credit cards regardless of your credit history may be tempting. The oops moment is when you apply for the loan or credit card and find out you have to pay a fee in advance. If you have to wire money for the promise of a loan or credit card, it’s likely you’re dealing with a scam artist.

*Family Emergency Scams:* You get a call out of the blue from someone who claims to be a member of your family and needs cash to get out of a jam — to fix a car, get out of jail or leave a foreign country. He begs you to wire money right away and to keep the request confidential. Check it out with your family. It’s likely they know nothing about it. If you absolutely, positively
cannot ignore the request, try to verify the caller’s identity by asking very personal questions a stranger couldn’t possibly answer. And keep trying to reach the family to check out the story.

**Apartment Rental Scams:** Some scammers hijack bona fide rental or real estate listings by changing the email address or other contact information, and placing the altered ads on other sites. Other rip-off artists make up listings for places that aren’t for rent or don’t exist, and try to pique your interest with the promise of below-market rent. But once they have your attention, a skilled scammer asks you to wire an application fee, a security deposit or the first month’s rent. It’s never a good idea to send money to someone you’ve never met for an apartment you haven’t seen. If you can’t meet in person, see the apartment or sign a lease before you pay, keep looking.

If you’ve wired money to a scam artist, call the money transfer company immediately to report the fraud and file a complaint. You can reach the complaint department of MoneyGram at 1-800-MONEYGRAM (1-800-666-3947) or Western Union at 1-800-448-1492. Ask for the money transfer to be reversed. It’s unlikely to happen, but it’s important to ask. Then, file a complaint with the FTC. Visit ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261.

The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. The FTC enters consumer complaints into the Consumer Sentinel Network, a secure online database and investigative tool used by hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.