Review of the Money Laundering Regulations 2007 - A call for evidence

1. Introduction

The AAT is a professional body and money laundering supervisory authority (SA) for accountants. Established in 1980 to provide a recognised professional qualification and membership regulatory body for accounting technicians, the AAT is now well-established and respected worldwide, with more than 120,000 members, including qualified accountants and students.

The AAT prides itself on high professional standards. Entry to the AAT register is dependent upon the demonstration of competence and integrity. Individual members who breach professional standards are subject to disciplinary proceedings.

The AAT is sponsored and supported by the four main UK chartered accountancy bodies, each of which has three nominated members on the AAT Council:

- Chartered Institute of Public Finance and Accountancy (CIPFA)
- Institute of Chartered Accountants in England and Wales (ICAEW)
- Chartered Institute of Management Accountants (CIMA)
- Institute of Accountants of Scotland (ICAS)

The AAT is the only membership body accredited to offer NVQs/SVQs in Accounting at Levels 2, 3, and 4. The AAT qualification attracts generous exemptions from the above-mentioned chartered bodies' qualifications, and also that of the Association of Chartered Certified Accountants (ACCA). Although AAT membership and study can be a major route to individual accountants' attainment of chartered status, many AAT members are content to act as professional internal or external accountants without obtaining membership of a chartered accountancy body.

AAT 'membership' consists of students and qualified accountants. Students are officially classified as members for very limited purposes of the AAT's Articles and Memorandum of Association. They are not regulated by the AAT and are prohibited from describing themselves as members, associates of, or otherwise publicising their relationship with the AAT.

Qualified members act as internal and external accountants. The internal accountants are employed by commercial entities or by Government bodies, such as the NHS and local government. Approximately 3000 members are external accountants within the meaning of the Money Laundering Regulation 2007. The AAT admits firms to membership, purely for the purposes of money laundering supervision. To maintain standards of competence and integrity, the entry criteria for firms require all principals to hold membership of a supervisory authority, unless they provide administrative support only to their firms.

Individual members who act as external accountants are referred to by the AAT as Members in Practice (whether they are sole traders or principals of firms). Their practice profiles vary, from part-time sole practitioners performing purely bookkeeping services, to highly successful group practices dealing with complex matters. However, the profile is pyramidal, with the majority of members providing low-complexity accountancy and taxation services. Group practices in which members practise can consist either exclusively of AAT members or of individuals belonging to a variety of professional bodies.
Members in Practice are strictly governed by the AAT, and are obliged to comply with rigorous professional and ethical standards encoded in the document Regulation and Guidelines for Members in Practice, available at www.aat.org.uk. To help compliance, the AAT provides:

- Access to free business support and technical help lines
- Ethical advice and guidance
- Newsletters full of useful articles, information and technical updates
- Specially organised continuing professional development (CPD) events
- A dedicated support team within the AAT

Further, the AAT monitors quality control and regulatory compliance of members' practices. In particular, the AAT has dedicated significant resources to understanding the anti-money laundering and counter terrorism legislation as it relates to AAT members' practices and has developed detailed guidance and CPD events to assist AAT members' compliance with their legal obligations within the context of their practices.

AAT members' niche within the wider accountancy profession is, in the main, providing low-complexity, low-turnover, low-risk accountancy and taxation services. The AAT is dedicated to providing AAT members with clear, pragmatic advice on compliance within a predominantly low-risk professional environment.

The AAT has profession-long contact with its members, including:

- awarding its NVQ accountancy qualification
- providing CPD for members
- supporting a network of regional branches
- issuing practising certificates
- providing practice support
- conducting quality control review visits
- conducting Anti Money Laundering/Counter Terrorist Financing (AML/CTF) reviews

We are participating in this call for evidence as part of our contribution towards our object of promoting the sound administration of law for the public benefit. The issues raised in this call for evidence will affect our members in public practice and in industry.

1. Background

The AAT was given supervisory status under Part II of Schedule 3 of the Money Laundering Regulations 2007. The supervisory audience consists of our Members in Practice, of whom we supervise 180 firms and 2434 individual members. This reflects approximately 87% of our potential supervisory audience.

Our members in practice can be licensed in all or any of the following areas, following demonstration of their competence in the particular license area:

- Book keeping
- Financial Accounting and Accounts Preparation
- Budgeting & Forecasting
- Management Accounting
- Payroll
- Independent Examination
- Limited Assurance Engagement
- Taxation (VAT, Personal, Business, Corporation, Capital Gains, Inheritance)
- Business Plans
- Computerised Accountancy Systems
- Company Secretarial Services.

Our members are not permitted to undertake self employed work in the areas of audit or insolvency unless they are additionally regulated by another regulatory body in these areas.

Some of our student members are self employed providing accountancy services. They explicitly fall outside the AAT's jurisdiction for AML supervision because they are not entitled to register on the AAT's scheme for members in practice, and are directed toward HMRC for supervision.

2. Scope of response

The AAT welcomes the opportunity to reflect on the effectiveness of anti money laundering regulation since the 2007 Regulations came into force.

In general, we consider that in terms of the regime, our supervisory firms and members are now in a position where they understand what is required of them in effectively discharging their obligations under the regulations, and in light of this, it is premature to consider a wholesale rewrite of the Regulations incorporating significant changes. There are however some opportunities for changes which would bolster the effectiveness of the regime.

In particular the AAT considers that with the year of experience we have had of operating a money laundering supervisory regime, the rationale for dividing the supervisors between parts 1 and 2 of schedule 3 of the regulations has lessened, and in fact puts in place barriers to the proportionate risk based approach for a number of reasons. This will be discussed below.

In preparing this response, the AAT has consulted with its membership by way of an online survey. The AAT has also urged members to respond directly on questions designed for regulated firms. Where appropriate, the feedback received has been incorporated into this response.

The AAT response will cover sections 4, 5, 6 and 9 of the Call for evidence as these are the sections we consider most relevant to our relationship with the anti money laundering regime as set out in the Money Laundering Regulations 2007.

3. Questions about the Regulations

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

The 2007 Regulations have provided much more flexibility in relation to risk based application to business activity than the 2003 Regulations allowed for. The major criticism of the 2003 Regulations was that it was overly rule based and encouraged a box ticking approach to compliance which led to complacency. We believe the flexibility offered by the principles based approach of the 2007 Regulations allow the regulated audience to consider the risks associated with their particular areas of business or their client base and to therefore design systems and policies to prevent their businesses being used to facilitate money laundering. It is important to our category of members who work with relatively low risk small and medium enterprises that compliance with the Regulations do not become burdensome when compared to the risk of money laundering posed by their client base.

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

AAT Chief Executive: Jane Scott-Heal AAT is sponsored by CIFFA, ICAEW, CIMA and ICA
The CDD requirements permit a firm to exact appropriate customer due diligence depending upon the risk any particular client may pose, and it is made clear through the regulations and reinforced by both sector specific and supervisory guidance. The Customer Due Diligence principles appear to be working effectively in ensuring that the regulated audience do not have to do more than is necessary for the majority of their clients. The Enhanced Due Diligence requirements provides an extra layer of protection in that where any of the conditions in Regulation 14 are present or there are other concerns about the identity or purpose of transaction, members can carry out a higher level of verification. Due to fast changing criminal trends, we believe the risk based and principles led approach to compliance with the Regulations is the most effective option.

Informal feedback from members suggests that at times undertaking CDD when working to tight deadlines can be difficult, and that an extension of the application of reliance by virtue of removing the distinction between part I and part II supervisors may support the ease of any transitional relationships, bearing in mind that in normal circumstances an accounting technician would send a professional clearance letter to a former accountant in line with ethical requirements.

The AAT has no view in relation to the list of activities providing Simplified Due Diligence and requiring Enhanced Due Diligence.

We have been asked on a number of occasions by our regulated audience to explain the reasoning behind the exclusion of UK politicians including UK members of the European Parliament and their associates/family members from the definition of Politically Exposed Persons in Regulation 14(5). Some of the queries we have received have suggested that if the intention of the Regulation is to identify potentially corrupt politicians, there is no justification for excluding UK politicians who may be exposed to the same threats of corruption and money laundering. We do not have any views on the appropriateness of including UK politicians within the definition of PEP's and our general advice to members has been that adopting the risk based approach should mean that a UK politician can still be subject to Enhanced Due Diligence checks if factors exist that heightens the risk of money laundering and/or terrorist finance on a risk sensitive basis.

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

It is difficult to measure the effectiveness of the CDD requirements in the fight against money laundering. This is because the impact would only be apparent based on whether a reduction in financial crime has ensued since the overhaul of CDD and KYC as contained in the 2007 Regulations from which inference can be drawn as to its effectiveness. However, anecdotal evidence and feedback from members indicates confidence that CDD acts as a deterrent to money launderers, and limits their opportunity to launder money.

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

The Regulations have afforded supervisors with a number of monitoring and enforcement powers, which support already existing disciplinary processes and procedures designed to uphold professional standards of members. The AAT’s preferred approach is to support and guide firms in complying with the provisions of the money laundering regulations and this approach has worked well in ensuring compliance of the membership. We will only use the enforcement powers available to us where there is evidence of flagrant disregard for the Regulations and/or guidance or repeated breaches.

The Regulations provide appropriate compliance monitoring and enforcement powers and penalties to deter non compliance. These are consistent with the AAT’s disciplinary sanctions. In general the most significant deterrent to non compliance of our members tends to be the threat of criminal proceedings under POCA, and the message reinforced by the AAT is that compliance with the Regulations will equip members with adequate processes and procedures to guard against any involvement in money laundering activity.
3.5 To what extent do the Regulations provide for a suitable system of registration and ‘fit and proper’ testing to be carried out on a risk basis?

The AAT considers the application of the ‘fit and proper person test’ to work well in the context of professional membership bodies who already undertake above and beyond the criteria of the fit and proper person checks as requisites of membership and licensing. The AAT continuously monitors fitness to practice of members, and where a member might be considered no longer suitable for money laundering supervision, this would be addressed via the Association’s disciplinary procedures.

The Regulations are limited in the case of HMRC, the default supervisor for any Accountancy Service Provider (ASP) who (for whatever reason) is not eligible for, or who has opted out of, supervision by a professional membership body. This means that HMRC may have to register individuals considered by professional membership bodies not to be fit and proper persons, including those individuals and firms who have been expelled from membership as a result of misconduct. This may be seen to undermine the spirit of the risk based approach to supervision in that HMRC is in effect, having to supervise a high risk audience including those who are considered not to be fit and proper persons by professional membership associations.

For this reason, the AAT would welcome an extension of HMRC’s powers to conduct a broader fit and proper person test to include any previous disciplinary history with another supervisor. Further, we endorse the view of the ICAEW that HMRC issue a standardised form of wording for ASPs it supervises to use, that ensures the public are not mislead as to a non professional ASPs relationship with HMRC.

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

The AAT actively participates in the Money Laundering Supervisors’ Forum, at which HM Treasury engages with all supervisors, taking feedback gleaned from supervisory audiences, and affording early opportunities to consult on a range of issues. Where queries arise and we seek guidance or clarity on the Regulations, HMT have always engaged helpfully and promptly.

4. Questions about Guidance

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

Guidance for the accountancy sector is consistent with the CCAB Guidance, which is of benefit to ensuring an effective and proportionate approach to money laundering, factoring in the differences between the different practice areas. The Guidance is an effective tool for organisations like ours. Our members sometimes perceive the wordings of the Regulations to be very high level and focused on core financial services providers. The Guidance provides us with an opportunity to put the spirit of the legislation into context for our members and focus on areas that may be most applicable to their areas of work.

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

The accountancy sector benefits from the CCAB guidance which affords individual supervisors with the opportunity to ensure consistency in practices through the sector. The AAT has drafted tailored guidance for our membership, which is consistent as far as possible with the Guidance, but factors in specific issues of relevance to our membership in particular.

4.3 In what ways does Guidance assist with a risk based implementation of CDD measures within your sector?
The AAT guidance has been specifically tailored to indicate to the membership in light of key practice areas where risks might lie, and appropriate response actions. Case studies are used to indicate how risks may come to be realised and how risks can be avoided, and members are given high level guidance to inform them of where to start in identifying risk and managing it accordingly.

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

As stated in paragraph 4.3 above, AAT members are guided through key risk indicators which in turn give members the opportunity to inform their own anti-money laundering policies and procedures.

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

The AAT Guidance is published on our website and available as a hard copy publication on request. The Guidance is supported by a helpline with which members can call with specific queries and requests for clarification. This is publicised on our website and using our regular publications, in particular our monthly newsletter to our Members in Practice.

The AAT affords members the opportunity to engage with its formulation by way of volunteer engagement on the Money Laundering Think Tank, feedback received by way of review visit activity and input from Council members, some of whom are in practice and able to provide practitioner perspective to any changes. Additionally, discussions at the supervisor’s forum inform necessary changes to ensure consistency within the sector.

5. Questions about Supervision

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

The Regulations allow for a number of accountancy professional bodies to supervise their membership. This is of benefit because it allows for sector specific advice and guidance to be given whilst the spirit of the guidance is drawn from the CCAB guidance to ensure consistency between supervisory bodies.

There is a disparity within the supervisory structure in relation to Parts I and II of Schedule 3. This has an impact on provisions such as reliance, which were intended to reduce the administrative burden on firms in undertaking CDD, but is only applicable to those supervised by a Part I body. The situation is further confused by HMRC’s position as default supervisor for those ASPs who are no longer eligible for supervision by a professional membership body. Using the example of reliance, any firm supervised by a Part II body cannot be relied upon for CDD. However, any firm taking on work from a firm supervised by HMRC can rely on their CDD. By virtue of its position as default supervisor, HMRC oversees a high risk group of including (but not representative of its entire supervised population) non professional ASPs, or those who have been refused supervision by a professional body, which is counter-intuitive to the intended position of the reliance provisions. This increases the risk and therefore exacerbates reluctance of firms to utilise the reliance provisions as articulated in the Regulations.

5.2 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?

At the AAT, we communicate and engage with the firms we regulate using the following methods:

- AAT guidance on money laundering;
- Review visit activity and feedback;
- Our website;
- Attendance at events;
- Provision of ad hoc money laundering advice and guidance to the supervisory population;
- Provision of technical advisory services;
- Use of the branch network to present money laundering events; and
- A Money Laundering think tank, engaging supervisees in issues arising and affording the AAT the opportunity to pro-actively support the supervisory population in addressing such issues.

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

All supervisors attend and engage with the Money Laundering Supervisors' Forum, which affords the opportunity to discuss key issues and identify any sector specific disparity or issues arising with a view to negotiating a pragmatic and consistent way forward.

5.4 To what extent is the Supervisor's monitoring of compliance targeted, proportionate and risk based?

The AAT is committed to ensuring that compliance monitoring is risk based and targeted in light of its obligations under the Regulators Compliance Code 2009. All our licensed members are required to complete an annual return in which key information is gleaned to support the risk based review visit activity, and each member is required to declare continued compliance with the provisions of the Regulations.

Historically, a random sampling exercise in addition to risk based targeting has provided the opportunity to ensure that risk parameters identified continue to be appropriate in light of changing trends on an annual basis, although this is no longer permitted by the code.

Key risk indicators are used to support a risk based compliance monitoring exercise by way of review visit to member firms. Where issues arise, there are mechanisms to enforce compliance, including designing an action plan to assist compliance, support and guidance in achieving compliance and ultimately disciplinary action if a member is persistent in non compliance.

5.5 How effective and proportionate is the regime?

Overall, the regime is considered to be both effective and proportionate to the ongoing fight against financial crime. However, it is of concern to the AAT that in the absence of HMRC having the opportunity to consider the risk indicators used by professional bodies in determining whether someone is a 'fit and proper person', it may be that individuals meet the criteria of the 'fit and proper person test' as outlined in paragraph 28 of the regulations, but pose a significant risk of money laundering in light of a finding by a professional body. Therefore the opportunity and risk is not managed appropriately in the context of the regime, and undermines the ethos of the anti money laundering regime and in particular, the fight against financial crime.

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

There is currently disparity between the registration processes for firms supervised by a professional body and the position of the default supervisor in that professional bodies impose more stringent 'fit and proper person' test in that previous disciplinary history is factored in to licensing provision in the first instance, and then considered in the context of whether or not to supervise a firm.

7. Conclusion

The AAT considers that there is a strong case for removing the distinctions between supervisors as drafted in Schedule 3 of the 2007 Regulations given the length of time that has elapsed in which Part II supervisors have had the opportunity to demonstrate their effectiveness as supervisors. The distinction is a barrier to reliance and therefore does not allow for Regulation 17 to be utilised
effectively to reduce the administrative burden CDD places on firms. The impact ultimately falls on
customers, a position which the spirit of the 2007 Regulations seek to avoid.

The AAT further considers that this review affords the opportunity to reconsider the criteria of the 'fit
and proper person test', to ensure that the supervisory regime is applied consistently by all
supervisors, including the default supervisor. This will ensure that the risk of unsuitable persons
registering with HMRC and continuing to have the opportunity to support money laundering activities is
adequately curtailed.

Tania Hayes
Conduct and Compliance Manager
AAT
t: +44 (0)20 7397 3051
f: +44 (0)20 7397 3099
e: tania.hayes@aat.org.uk
w: www.aat.org.uk
Review of the Money Laundering Regulations 2007
Response from the Association of British Credit Unions Limited (ABCUL)

Contact details

Mark Lyonette – Chief Executive
mark.lyonette@abcul.org
Tel: 0161 819 6997

Or

Abbie Shelton – Policy and Communications Manager
abbie.shelton@abcul.org
Tel: 0161 819 6994

www.abcul.coop
1. Introduction

1.1 We welcome the opportunity to respond to this inquiry. ABCUL represents 70% of credit unions in England, Scotland and Wales who in turn represent 85% of credit union membership. ABCUL is the main trade association for credit unions in Britain. Credit unions are not-for-profit, financial cooperatives owned and controlled by their members providing safe-savings and affordable loans facilities. Increasingly credit unions offer more sophisticated products such as current accounts, ISAs, Child Trust Funds and mortgages.

1.2 At the end of June 2008, credit unions in Great Britain were providing financial services to 655,000 adult members\(^1\) and had £429 million out on loan to members.

1.3 In June 2009, the 325 credit unions belonging to ABCUL were managing around £450 million of members' savings on behalf of over 550,000 people, and had approximately £370 million out on loan.

1.4 The Credit Unions Act 1979 sets down in statute the objects of a credit union; these are four-fold:

- The promotion of thrift among members;
- The creation of sources of credit for the benefit of members at a fair and reasonable rate of interest;
- The use and control of their members' savings for their mutual benefit and
- The training and education of members in the wise use of money and in the management of their financial affairs.

1.5 A recently published Legislative Reform Order and corresponding FSA review of credit union regulation are expected to be in force by April 2010. Legislative reform will create a looser framework within which credit unions will be able to grow much faster – the World Council of Credit Unions (WOCCU) has described the current regime as 'amongst the most restrictive in the world'.

1.6 The main reforms included will allow credit unions to be more flexible in their 'field of membership' – choosing freely which groups they will serve, allow credit unions to serve groups and bodies corporate and to pay interest – as opposed to a discretionary dividend – on deposits\(^2\).

1.7 Legislative reform is likely to expand credit union services greatly over the coming years.

2. Credit unions and Financial Inclusion

\(^1\)Figures from unaudited quarterly returns provided to the Financial Services Authority

\(^2\)For a full draft of the LRO and background to the consultation process see: http://www.hm-treasury.gov.uk/consult_credit_union.htm
2.1 Because of credit unions' ethical practices and not-for-profit model, in addition to the fact that many are based in local, low-income communities, they have consistently been placed centre stage in Government’s Financial Inclusion Strategy and Action Plan.

2.2 Credit unions are tasked with extending the reach of affordable credit and are supported in doing so by the Financial Inclusion Growth Fund, which provides capital for on-lending through credit unions and community development finance institutions (CDFIs). This fund is administered by the Department for Work and Pensions (DWP) and, after the addition of £18.75 million in this year’s budget, has provided almost £100 million to extend the reach of affordable credit.

2.3 In addition to this, ABCUL and two of our member credit unions are delivery partners for the FSA’s ‘Moneymadeclear’ money guidance pathfinder which provides people with impartial money guidance to improve consumer confidence and decision making. Both the Government and the Conservative financial services white papers have pledged their support to rolling this service out nationally, and ABCUL are committed to promoting further engagement of credit unions with the service as a means to better complement our statutory responsibility to promote financial capability within our membership.

2.4 In the course of these inclusive activities, our members consistently come into contact with financially excluded, vulnerable individuals and those that are most at risk of being excluded by – or excluding themselves due to their perceptions and/or experience of – Money Laundering regulation. Often potential credit union members are seeking financial services having been unfairly denied access by the mainstream because of inflexible application of the regulations.

2.5 The nature of credit unions, their centrality to Government’s financial inclusion strategy and their commitment to promoting sound finances within their membership creates a tension between their commitment to extending affordable and accessible services and their obligations as regards Money Laundering regulation.

3. Regulations

3.1 The Money Laundering regulations as they stand currently are sufficient to address the problems of financial crime as far as credit unions are concerned.

3.2 The nature of most credit unions' businesses are such that the financial processes and behaviour that they undertake is relatively simple and unsophisticated – they accept deposits from their membership which is then drawn upon to issue loans the revenue from which, as well as investments, is used to contribute towards covering costs, building reserves of capital and distributing amongst the membership as a dividend.

3.3 Furthermore, credit unions are restricted on the amount of deposits and/or loans that they can accept and/or provide to any individual member – this is based on the size of the credit union in question. Therefore, the sums of money dealt with by credit unions are relatively small. In addition, they are local in nature and unable to operate internationally.
3.4 Managing and monitoring flows of cash through this system is therefore relatively straightforward. And it is unlikely that large-scale, organised crime or international terrorism would target credit unions because of their fundamental nature.

3.5 We feel that, for credit unions, the regulations therefore are proportionate to the risk that they pose and are sufficient to manage this risk.

4. Guidance

4.1 As the main trade association for credit unions in Britain, ABCUL sits on the Joint Money Laundering Steering Group (JMLSG) providing guidance to the financial services industry on the Money Laundering Regulations. JMLSG has provided comprehensive guidance for credit unions as to the processes and procedures they should undertake to ensure compliance and effective Money Laundering prevention.

4.2 We feel that the guidance ensures that credit unions are aware of their responsibilities and of the flexibility that is built into the regulations for financial inclusion purposes. ABCUL provides information resources – based upon the guidance provided by JMLSG – which supports our members’ understanding of their responsibilities.

4.3 We are working with JMLSG and the FSA to ensure sectoral guidance for credit unions is updated in line with the legislative and regulatory reforms currently under consideration.

5. Supervision

5.1 The FSA regulates credit unions and as part of this regulates compliance with Money Laundering regulations.

5.2 Supervision of credit unions – apart from the very largest that qualify for ARROW visits – is largely desk-based and therefore is not particularly close. Given the sheer number of credit unions and their relatively small size – and therefore lack of systemic risk – close supervision faces significant restraints due to resources.

5.3 There is potential for concern on this basis, however, on balance we believe that for reasons mentioned earlier credit unions do not warrant closer supervision for Money Laundering purposes and are well-informed – through the actions of JMLSG and ourselves – of their responsibilities as per Money Laundering and are in a good position to monitor their businesses due to their relative simplicity.

6. Industry Practice

6.1 Credit unions’ main concern is extending inclusive financial services to the population of Britain and we have concerns that Money Laundering regulations can sometimes be inappropriately applied resulting in exclusion from the mainstream.
6.2 Our members are regularly approached by members of the public who have been advised that they cannot open a bank account because of a lack of appropriate ID documents or are self-excluded because of negative experiences in the past.

6.3 Credit unions work to make services available by applying the flexibility in-built within the Money Laundering regulations - by accepting alternative forms of ID outside of the standard passport and driving license documents. Furthermore, credit unions work to make their service more approachable and in doing so endeavour to explain why such documentation is needed and to suggest ways in which a potential member can appropriately identify themselves.

6.4 We feel that greater emphasis needs to be placed upon the flexibility within the Money Laundering regulations and the obligations all financial services providers have to ensure that the regulations are not inappropriately applied and transformed into a barrier to inclusion.

6.5 We do not believe that such barriers are imposed as a policy of larger institutions, instead due to a lack of awareness of flexibility and issues of financial exclusion amongst staff.

7. Customer Experience

7.1 As detailed above, we believe that there are significant issues that need to be better addressed by financial services in order that Money Laundering regulations do not inadvertently become a barrier to access.

7.2 One of the often overlooked points about financial inclusion is self-exclusion, and whilst financial service providers might make every effort to accept unorthodox ID, explanation and information is critical for a customer to feel comfortable with what they might not appreciate is a standard procedure required by law. This is something credit unions seek to do routinely, however greater emphasis needs to be placed on this for all financial services.

7.3 The consequences of financial exclusion can be far-reaching and impact upon critical aspects of an individual's quality of life – paying more for necessities, facing difficulty obtaining employment, struggling to find appropriate housing and going without important safeguards. The application of Money Laundering regulations should not act to reinforce these issues.

8. Conclusion

8.1 For credit unions, the Money Laundering regulations are effective and proportionate as they relate to their relatively simplistic financial activity.

8.2 We have concerns, however, that the application of the regulations can create a barrier to access for those who are vulnerable to financial exclusion – this needs to be better addressed.

December 2009
Dear Sir/Madam

HM Treasury Review of the Money Laundering Regulations 2007
Response from the Association of British Insurers

The ABI is the voice of the insurance and life investment industry, with nearly 400 individual companies in membership, which represents 90 per cent of the insurance market in the UK and 20 per cent across the EU. They control assets equivalent to a quarter of the UK's capital. They are the risk managers of the UK’s economy and society. Through the ABI their voice is heard in Government and in public debate on insurance, savings, and investment matters. And through the ABI they come together to improve customers' experience of the industry, to raise standards of corporate governance in British business and to protect the public against crime.

We would like to thank you for meeting with us on 25th November 2010 and discussing with us in detail our member's thoughts around the current regulations.

Our written response to the HM Treasury (HMT) review, is as follows, under the headings of, Regulation, Guidance, Supervision, Industry Practice and Customer Experience.

Regulation

Recommended amendments to the ML Regulations 2007:
  • General Points of Clarification
    o Could Part 6 clearly link back to 5 (b) - to differentiate between 'identify' and 'verify' for beneficial owners?
    o Part 2, 6(b) is not clear and clarification would therefore be welcome.
    o 13 (1) allows SDD to be applied if 7(d) applies, but 7(d) also covers 'doubt of veracity'?
    o 13 (7) 'a' to 'b' would benefit from adding 'and' or 'or' at the end of 'a' and 'b' (which are also missing from the Third EU Directive). There should be an 'or' after 'a', but clarification is required as to whether there should be an 'and' after 'b', which would in line with the previous ML regulations.
    o Schedule 2, Simplified Due Diligence 3 (d) (i), differs to regulation 13 (7) (a). Regulation 13 refers only to life insurance in conjunction to the 1,000 and 2,500 Euro limits, however Schedule 2 refers to insurance policies or savings products of a similar nature, in conjunction to the same thresholds.
    o Is there also scope for the limits above to be increased?
Implementation

- We note that some other EU countries have still not implemented the Third EU Directive and the Financial Action Task Force (FATF) have only just issued their Life Assurance paper covering the risk based approach, for the wider world audience. There is therefore some cross border disparity, as other countries fall behind the UK’s pace. This potentially makes the UK uncompetitive.

- Pragmatic ways of improving the application of the Regulations in the UK are generally covered well by the JMLSG Guidance Notes. However there are some practical issues:
  - The JMLSG Guidance Annex 5 includes standard ‘confirmation of verification of identity’ certificates, some of which are for completion by an FSA-Regulated Firm when introducing business. These are used typically by Independent Financial Advisers (IFAs) when introducing business to a life assurance company.

Prior to the January 2006 JMLSG Guidance, these certificates contained full details of how the applicant had been verified by the adviser, eg. specifying Driving Licence, with the licence reference number and expiry date etc. The Life Assurance companies would then check that the reference numbers looked correct and the document had not expired etc.

The current ‘confirmation of verification of identity’ certificates do not contain the details of the underlying verification, just whether the verification meets or exceeds the JMLSG standard.

Life Assurance companies would be happy to accept the current certificates from IFAs, on the basis that the IFA is regulated by the FSA. However, as the certificate does not contain the underlying verification detail, the FSA insist that reliance on the fact that the IFA is regulated by the FSA is not adequate and further due diligence of the IFA is required to check their reliability (Reg 17 and Reg 2(9) Schedule 1 as per the board approved Part I November 2007 Guidance Notes 12/11/07 – Reliance on third parties 5.6.4 and the bullet points within 5.6.13).

Due to the 5.6.13 requirements, some of our member firms are reluctant to accept the current certificates.

If a firm is regulated by the FSA, we believe that this should be sufficient for full reliance.

- Within the UK financial services industry there is significant duplication of verifying a customer’s identity. For example most Life Assurance customers transfer funds from UK bank accounts, for which they would have already had their identity verified. This will then be duplicated by the adviser/or the Life Assurance Company. We would therefore support further scope for reliance.

Customer Due Diligence

We would suggest that HMT liaise with law enforcement as to the effectiveness of customer due diligence.
Politically Exposed Persons
The current requirement is to only cover non-domestic PEPs. We would support applying a risk based approach to also including domestic PEPs. A number of our member firms already include UK domestic PEPs when scanning their customer databases.

Sanction Orders
There is disparity in the timing requirements under the Money Laundering regulations to those of the Sanctions Orders. ML Regulation 9 (3) and (4) allows verification to take place during or after establishment of the business (where there is no risk of ML or TF occurring) and we would welcome a similar approach for Sanction Orders checking.

Supervision
There currently appears to be some disparity in the approach of the FSA to that of HMT, particularly around the area of addressing Sanction Orders. HMT are taking more of a consultative, practical and pragmatic approach and we would welcome the FSA to follow suit.

FSA enforcement action, including the monetary amount of their fines, has recently become disproportionate to the breaches. The breaches identified by the FSA are often not based on the regulations or the JMLSG guidance, but rather under SYSC – for systems and controls not being to a standard as deemed fit by the FSA at that time. Their findings from such enforcement action and ‘good practice’ findings from Arrow visits or thematic reviews are seemingly becoming back door regulation. For example the FSA asked the JMLSG Editorial Panel to include a link to their AON fine, within sections 7 and 7a of Part II.

The FSA also appears to focus their resources on the larger firms, rather than the IFAs, for whom they appear to passport some responsibility to our members, for example as with the “confirmation of verification of identity” point mentioned earlier.

Industry Practice and Customer Experience
Although we are supportive of the risk based approach, it has meant differences in approach by different companies in the financial sector and by different trade associations.

Some companies, who try to keep their procedures simple, are also reluctant to accept the risk based approach or even that one document can be seen for evidence of identity. This can therefore lead to confusion for IFAs and customers.

Yours faithfully

John MacKenzie
Policy Adviser, financial Crime
Review of the Money Laundering Regulations 2007
Financial Crime Team
HM Treasury
1 Horse Guards Road
LONDON SW1A 2HW

11 December 2009

Dear Sirs

REVIEW OF THE MONEY LAUNDERING REGULATIONS 2007

I write to convey ACCA’s separate response to Part A of the call for evidence issued as part of the above project; this complements the paper from CCAB already submitted to you. As indicated on the appended pro-forma form, ACCA is a supervisory body under the Regulations and performs similar statutory functions under the Companies Act 2006 (with regard to company auditors), the Insolvency Act 1986 (with regard to insolvency practitioners) and the Financial Services and Markets Act 2000 (with regard to members providing incidental investment advice).

The contents of this letter focus on the first group of questions posed in the paper and take into account not only our experience as a regulator but that of our members in dealing with the Regulations in practice.

General comments

We welcome the fact that the review is being undertaken and approve of the three guiding principles chosen to guide the review, as set out in Box 2A on page 7. We believe that, after a difficult initial phase of implementation, accountants in practice now generally support the aims of the anti-money laundering regime and understand that the rules can benefit them in practical ways.

There are, however, two very obvious limiting factors to the current review. The first is that the UK’s rules in this area are to a great extent pre-determined by the content of the EU’s Money Laundering Directive, and no deviation is possible from those provisions of the Directive that are mandatory, even if to do
so was considered to be desirable in the light of the review’s guiding principles. We do not therefore comment in this response on

The second is that the Proceeds of Crime Act is outside the review’s scope. Because of this, no change can be contemplated in respect of the ‘all crimes’ definition of money laundering, a definition which has substantial consequences for the proportionality of the UK’s regime and, in particular, for the burden of compliance with the Regulations. Neither can any change be contemplated regarding the circumstances in which regulated entities can be considered to have tipped off third parties. The result of these two factors is that the scope for achieving any substantial improvements to the regime in terms of effectiveness and proportionality is necessarily restricted.

Our principal reaction to the questions posed in the call for evidence is that it is not possible for regulated entities and supervisory bodies to make meaningful comment on how effective the AML regime actually is. Regulated entities have made substantial investment over the past six years in terms of training and other in-house procedures and they will continue to absorb such compliance costs. They have also had to come to terms with the often difficult processes of deciding whether to make SARs and avoiding the offence of tipping off. But it is a feature of the regime that little if any direct feedback is received by regulated entities from the authorities as to whether their efforts are making any meaningful contribution to the fight against crime. Consequently, most of these entities will not be in a position to judge whether their efforts are effective, whether by reference to their cost or to their active contribution to the fight against crime. Professionally-qualified accountants will not be deterred by this from continuing to comply with their obligations, not least because they are now supervised to make sure that they do so. But there is a danger that, unless more is done to engage with the regulated community about the effectiveness of the contribution they are making, entities will come to view their compliance obligations as being essentially bureaucratic in character and will lose confidence in the idea that there is a direct connection between their statutory functions and the fight against serious crime.

With regard to the implementation of any new changes that might flow from this review, we would underline the point that any reform to regulatory requirements imposes costs on businesses, and the more frequent these occur the greater the accumulated compliance costs will be. So at this early stage we would ask that any changes be brought into effect at the same time and with as much lead in time as can be arranged.
Our responses to the questions on the Regulations posed in the call for evidence are set out below.

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

The 2007 Regulations now apply risk-based criteria to many of the individual provisions. This applies in particular to the way in which a regulated entity carries out CDD, on-going monitoring and enhanced DD. We would say that, in principle, the application of risk-based criteria to these procedures is appropriate, even if the implication is that diligence checks in respect of the larger cases will necessarily involve more time and expense for the regulated entity (with no automatic co-relation to the real risk of money laundering). The one section of the Regulations where there is no application of the risk basis is Part 3 (Record-Keeping, Procedures and Training). As a result all entities, regardless of size, have to, inter alia, keep records for a specified time and adopt policies and procedures on a number of specified matters. If the UK were free to restrict or extend the risk-based approach as it saw fit, this might be an area where more could be done to acknowledge the differing resources of smaller regulated entities.

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

As stated above under General Comments, it is not possible for commentators to offer any informed opinion as to the effectiveness of any element of the AML regime. That said, we believe that the carrying out of CDD procedures is, in principle, a reasonable precaution against the threat of an entity being used to launder money. Such procedures are very familiar to accountants and other categories of professional adviser who have long been expected to carry out Know Your Client (KYC) measures at the outset of a professional relationship. The very fact of having standardised expectations about obtaining background information about clients may be of help to regulated entities in terms of dissuading money launderers to use their services. Several of our members have told us that they have undertaken initial meetings with a prospective client, at which they explain the CDD information they would ask for (along with other AML information), and have never heard from that individual or business again: this may very well happen for reasons unconnected with money laundering but...
it is at least conceivable that prospective clients may be dissuaded from engaging accountants if they think that their activities would give rise to a SAR.

On the positive side, if the CDD procedures result in accountants not taking on clients who are involved in criminal activities, then this will be a welcome outcome for them. But it must be remembered that complying with the CDD requirements will always involve a financial cost, and in some cases, where the risk associated with the relationship is considered to be higher, that cost can be significant. It may be that the cost of carrying out the CDD will be so great that it would exceed the value of the prospective business relationship, in which case the fact of having to undertake risk-based CDD, or enhanced DD, will cause the entity concerned to consider whether it really wants to perform the work at all. In the sort of scenario referred to above, where a regulated entity conducts a free initial meeting with a prospective client, the cost of that first meeting will have to be written off (whether the client disappears for reasons connected with money laundering or not). With regard to complex business structures, whether or not they are covered by the rules on enhanced DD, it will frequently take several full days’ work for an entity to gather the required data, a time commitment which may comfortably exceed the time it subsequently takes to provide the service requested.

The question of whether the cost of carrying out the appropriate level of due diligence procedures is proportionate to the value of the prospective business relationship will be a decision for the individual regulated entity to take. As regards the proportionality of the rules to the threat of money laundering, this must be unquantifiable.

The one specific aspect of the diligence requirements which has perhaps caused most uncertainty, and which might be usefully addressed by the present Review, concerns the position of politically exposed persons (PEPs). The drafting of the Regulations in this respect could, we suggest, be improved - there is in fact no express requirement in the Regulations for regulated entities to take steps to identify whether a prospective client is a PEP: the wording only covers what an entity is supposed to do if one of its clients is a PEP. But more substantially, the rules appear to assume that regulated entities will be able to identify, firstly, persons who are PEPs and, secondly, persons who are family members and associates of PEPs. While we accept that persons who meet the definition of PEP will often carry a high risk of money laundering, we suggest that the relevant regulations could be amended so as to recognise that most
regulated entities will not come across PEPs and to provide that, where they do, risk-based criteria may be applied in the course of identification.

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

As already stated, the regulated sector is not in a position to offer more than anecdotal evidence in response to this question. As a regulatory body we would agree that the carrying out of CDD procedures is essential for enabling practising accountants to provide a thorough and professional service to their clients. We would also agree that they serve the interests of the AML regime by putting accountants in a position whereby they are able to identify normal and usual patterns of business behaviour, and by extension abnormal and unusual patterns of behaviour, as well as illegal acts. We would therefore agree that CDD procedures carried out by regulated entities represent a valuable and essential precaution against the risk of money laundering. As a supervisory body, we are satisfied that there is a high level of compliance with the CDD requirements on the part of our members.

4 To what extent do the record-keeping and policy and procedural requirements support firms' anti-money laundering efforts?

The requirements in Part 3 of the Regulations are in our view largely administrative and serve mainly to influence firms' practices with regard to due diligence, on-going monitoring and reporting. To this extent it is true that they 'support' firms' anti-money laundering efforts. The main cost associated with these requirements is probably the on-going cost of training relevant staff in money laundering and terrorist financing issues.
5 To what extent do the Regulations provide Supervisors with appropriate compliance monitoring and enforcement powers and penalties to deter non-compliance?

We think the powers and responsibilities delegated to the private sector supervisory authorities under the Regulations are appropriate for the purposes of ensuring that their members comply with their own responsibilities.

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?

In the case of the recognised private sector supervisory bodies, each will be required to satisfy the authorities that they have internal procedures to ensure that persons subject to their regulation are fit and proper persons. We believe the recognised bodies can be relied upon to ensure that this happens in practice.

7 Are the requirements of the Regulations compatible with and complementary to the requirements of a) other aspects of the UK’s broader AML regime/legislation and b) international standards and practice.

We think that the Regulations are compatible with POCA and the corresponding legislation on terrorist financing. As regards international comparability, the Regulations, taken together with the primary legislation, are in our view more than consistent with the standards expected to be followed by the EU’s Money Laundering Directive and the FATF Recommendations. Other jurisdictions, notably the US, are significantly behind the UK in terms of imposing AML/CTF responsibilities on accountants and other categories of professional adviser. And because of the much wider legal definition of ‘money laundering’ in the UK, the number of SARs filed by accountants and auditors (and other types of entity) is very considerably higher in the UK than is the case in other member states of the EU.
8. How well does HMT engage with you in developing the Regulations and are the requirements of the Regulations clearly communicated?

We think that HMT has consulted effectively with the regulated sector on the drafting and revision of the Regulations. In common with other professional and trade bodies, ACCA has communicated the requirements of the Regulations to its members by means of its website, CPD events, guidance in its internal publications and access to its own advisory helpline. CCAB has also coordinated the development of the accountancy profession's supplementary guidance and this is made available free of charge to members of each of the participating bodies. ACCA has also prepared a more concise guide for practitioners on the requirements of the primary and secondary legislation and this too has been made available to ACCA member firms free of charge.

One other comment we would make on the Regulations concerns the provision contained in regulation 17 to the effect that regulated entities may place conditional reliance on the CDD checks carried out by certain other parties. We are not aware that any significant use is being made of this entitlement by accountants. The feedback we have from our members is that accountancy firms will invariably carry out their own CDD checks even when relevant data is available from another professionally-qualified accountant. We do not suggest that the option be removed, and accept that there may be types of regulated entity which make more use of it. But this would appear to be a provision which is having minimal impact on at least one element of the regulated sector.

I hope these comments will be of help

Yours sincerely

J P Davies
Head of Business Law
Response to HM Treasury Review of the Money Laundering Regulations 2007
A Call for Evidence (Part B)

December 2009

All rights reserved. Third parties may only reproduce this paper or parts of it for academic, educational or research purposes or where the prior consent of Age Concern and Help the Aged has been obtained for influencing or developing policy and practice.

Laura Tidbury
laura.tidbury@ace.org.uk

Jane Vass
jane.vass@ace.org.uk

Age Concern and Help the Aged
Astral House, 1268 London Road
London SW16 4ER
T 020 8765 7200 F 020 8765 7211
E policy@ace.org.uk
www.ageconcern.org.uk

Age Concern and Help the Aged
207-221 Pentonville Road
London N1 9UZ
T 020 7278 1114 F 020 7278 1116
E info@helptheaged.org.uk
www.helptheaged.org.uk

Age Concern England (charity number 201794) has merged with Help the Aged (charity number 222769) to form Age UK, a charitable company limited by guarantee and registered in England: registered office address 207-221 Pentonville Road, London, N1 9UZ, company number 0825796, registered charity number 1128267. Age Concern and Help the Aged are brands of Age UK. The three national Age Concerns in Scotland, Northern Ireland and Wales have also merged with Help the Aged in these nations to form three registered charities: Age Scotland, Age NI, Age Cymru.
HM Treasury is undertaking a post implementation review of the Money Laundering Regulations 2007 which implemented the EU’s Third Money Laundering Directive in the UK and replaced the 2003 legislation with a simplified, more risk based approach.

The Call for Evidence seeks information to support a review of HM Treasury’s Money Laundering Regulations 2007.
Key points and recommendations

1. The experience of older people who have come into contact with the Regulations is disappointing. Age Concern and Help the Aged still receive complaints regarding unreasonable barriers faced by older people who are asked to prove their identity by a financial services company.

2. We believe that the burdens placed on older people, in terms of cost, delay and distress, are not reasonable given their risk profile and business relationship. These burdens also affect friends, family and advice agencies who support older people.

3. Currently 6% of people aged 85 and over have no bank account. There is a risk that those without may be deterred from accessing financial products due to difficulties in proving their identity.

4. We also receive reports of difficulties where customers have had a long-standing relationship with the firm. Where customers have already provided non-standard forms of identification in the past and had it accepted by the firm, more should be done to ensure that they do not face unnecessary barriers with the same firm at a later date.

5. Although the banking sector seems to be the main source of difficulties for older people based on our experience, we also receive reports of problems in relation to other financial transactions, including purchasing an annuity, moving house, or transferring a utility account into a different name on bereavement.

6. There is a clear lack of consistency in how the regulations are applied across the industry and within firms. Where firms do have flexible policies in place to allow alternative forms of identification, these are often not translated into practice at local level. Guidance to consumers on proving identity, such as the Toynbee Hall ID Guide, should be provided within branches.

7. The review of the Regulations should look at the role of staff in implementing the Regulations. Staff should be trained and empowered to deal with customers themselves, recommend alternatives where possible and explain why the requirements are in place.

8. The FSA should conduct a review of how the way in which firms’ implementation of the money laundering regulation impacts on consumers, either thematically or as part of their normal supervisory relationship with firms.
1. Introduction

Age Concern England and Help the Aged are pleased to have the opportunity to respond to the review's call for evidence. In preparing the submission we have considered evidence that reaches us through our advice line and through our local information and advice services; we may also supply further evidence following this submission.

Age Concern England and Help the Aged work at local and national level with an interest in older people and ageing issues.

Through our national information line, which receives over 250,000 telephone, postal and email enquiries per year and the information services offered by local Age Concern and Help the Aged organisations, we are in day to day contact with older people and their concerns.

Many older people regularly come into contact with the Money Laundering Regulations. These require financial services companies to satisfy themselves that their customers are who they claim to be, on first opening an account, on undertaking certain transactions (e.g. for large amounts) or, sometimes, during the course of the customer relationship.

Guidance has been agreed with the financial services industry on how customers can prove their identity, usually by showing various documents. This can cause problems for groups without the relevant documentation, for example people without existing financial products, people living in accommodation not held in their own name, and newcomers to the country. Although the difficulties experienced by these groups when opening a new bank account also exist for older people, the Regulations may also cause problems for older people who have long-standing relationships with their bank or other financial service provider, for example because it is not uncommon for older people who have large amounts of money deposited with firms to be asked to prove their identity.

Currently 6% of people aged 85 and over have no bank account. There is a risk that those without may be deterred from accessing financial products by onerous identity requirements.

2. Questions

Q31. How satisfactory is your experience in situations where you believe you have come into contact with the Regulations?

The experience of our service users who have come into contact with the regulations remains disappointing. We continue to receive complaints regarding the difficulties that older people have had with their banks and other financial service providers. The requirement to provide photo identification to prove identity is one the main areas of grievance for older people as many do not
have the standard forms such as driving licences and passports. We also receive complaints regarding repeat requests for information from the same firm where the customer already has an ongoing relationship.

There are a number of situations where older peoples’ experience with the Regulations is often unsatisfactory:

- Opening a new account for the first time
- Opening a new account to receive Direct Payments for care
- Withdrawal/Deposit of large amounts of money
- Moving home
- Those who are bereaved
- Those who suffer from a disability

Age Concern and Help the Aged also receive complaints from employees and volunteers regarding inconsistencies in how different banks and staff within banks understand and apply guidelines for identification verification where the individual lacks the standard forms. For example, firms often have policies in place at national level setting out what alternative options people have to verify their identity, however in many cases these policies are not understood or applied at local level. Where flexible policies for identification are already in place, further training is required to communicate these policies to local staff. Even where local employees have followed the British Bankers’ Association (BBA) guidance on (for example) allowing letters from care home managers who vouch for the client, applications may then be declined when being passed to head office for secondary approval.¹

Q32. How easy is it to provide acceptable forms of identification to the business you deal with?

Although the British Bankers’ Association has issued guidance on identification requirements, Age Concern and Help the Aged still receive reports of difficulties that older people have in supplying the relevant documents to verify their identity. Older people are less likely to have the standard types of identification documents including passports, driving licences and utility bills. Utility and council tax bills are a particular problem for those living in care homes or using a pre paid utility card. Older women in particular tend to encounter problems in verifying their identity as utility bills are often held in their partner’s name.

A 96 year old female who was partially sighted and suffered from short term memory loss was unable to provide the required photo identification including a passport or driving licence when carrying out a number of transactions with her bank. The customer had to visit a lawyer in order to get an

¹ Age Concern – An inclusive approach to financial products – the views of Age Concern forums
http://www.ageconcern.org.uk/AgeConcern/Documents/Beyond_Financial_Inclusion_Annex_2.pdf
alternative photo identification card (a taxi-card). The bank reluctantly accepted the card as identification after a long delay.

The above case is a typical example of the types of complaints we receive. The delays experienced by customers cause significant distress for the customer both psychologically and financially. It also causes problems for family members, friends or carers and may also result in burdens on local advice centres or advice lines run by organisations such as Age Concern and Help the Aged.

Such delays also often have a disproportionate effect on older people as it is not uncommon to be moving large amounts of money to fund care, move house or downsize for example. Those who struggle with mobility problems or other disabilities may be forced to seek help from friends and family members to deliver documents on their behalf, therefore the impact can be more widespread than solely on the customer involved.

Age Concern and Help the Aged also receive complaints from those who have recently lost a partner or where their partner has become disabled and therefore may need to provide proof of their identity for the first time in a number of years. Many may struggle to provide the required documentation as utilities and other bills are listed in their partner’s name.

Although the rules do allow more flexibility in what documentation is suitable, this does not seem to translate into practice for many who come into contact with the regulations. Indeed, the majority of queries and complaints which Age Concern and Help the Aged receive in relation to money laundering regulations specifically relate to inflexible requirements when being asked to prove their identity. Even where the guidelines are being applied, experiences do not seem to be consistent across sectors and even within firms.

Further training is therefore required for local staff on what alternative forms of identification can be accepted and why the regulations are in place. Appropriate measures need to be put in place to ensure that the identification procedures do not unreasonably deny access to services to customers who cannot reasonably be expected to produce the standard forms of identity.

It is also important that staff at local level are empowered to make decisions themselves regarding the suitability of identification in order to reduce delays. Staff appear to be very willing to adhere to a rules-based approach when applying the regulations, however it would be more appropriate to foster a principles based approach in line with the regulations which would allow staff more discretion when dealing with non-standard cases.

Q33. How often and in what context have you been asked to provide repeat information to businesses with which you have an ongoing relationship?
Age Concern and Help the Aged still receive reports from older people regarding the identify requirements when dealing with firms with whom they already have an ongoing relationship, possibly lasting many years. This type of conduct does not always appear to be commensurate to the degree of potential risk given the circumstances (i.e. the type of transaction involved and the clients risk profile). For older people in particular, who may be more likely to move large amounts of money more frequently than others to fund their retirement, this can cause significant difficulties.

An older gentleman wanted to open a new bank account with a firm with which he already had a long standing relationship - the only photo identification he had available was a taxi card which the bank refused to accept despite him providing the same document to the same firm in the past and having it accepted. The gentleman did not understand why the ID was declined considering it had been accepted in the past.

The approach adopted by the bank in the case above demonstrates the confusion that can be caused by the inconsistencies in the way in which banks deal with the requirements.

Training is required to allow staff to better understand the options available for those with non standard forms of ID and also to explain why the requirements are in place to customers. Staff should also be empowered to make decisions about what is suitable themselves to avoid unnecessary delays.

More should be done to ensure that older people who already have an ongoing relationship with firms do not regularly face barriers in verifying their identity. Where firms have previously accepted non standard forms of identity from a customer, they should ensure a clear record is kept of what form of identity was accepted in order to avoid unnecessary barriers at a later date.

Q35. How does your customer experience compare across different sectors, between different sized firms and internationally?

Although the banking sector seems to be the main source of difficulties for many, it needs to be recognised that the problems do not lie solely within the banking sector. For example; traditionally, annuities have been purchased from an individual's pension provider, however with the open market option, individuals are encouraged to shop around to get the most competitive annuity rates available. This means that individuals may be required to provide identification verification to a firm where they do not already have an ongoing relationship which can often be difficult for older people who may not have the standard types of identification.

One lady wished to purchase an immediate needs annuity to fund the cost of her care. The insurance company required photo identification which the client did not have. The client was able to get an alternative form of photo identification, which the firm agreed would be suitable however the firm was still
cautious to accept it and the decision had to be referred to head office. The delay caused significant financial distress for the client as she had to fund the cost of care by other means.

Age Concern and Help the Aged have also received reports regarding problems with providing identification to an estate agent when moving house or downsizing in retirement.

Q36. How easy do you find it to check what information is needed from you and it is clear to you why the information is needed?

Based on the anecdotal evidence that Age Concern and Help the Aged receive, consumers do not seem to understand (or have explained to them) what is required of them and why the information is needed. Although information is available such as the BBA guidance and other leaflets in branches which set out why the identity requirements are in place and what documents are required, this relies on an individual proactively seeking the information. However, in our experience, many individuals do not seem to be aware of what information is needed and why.

We heard from one of our volunteers who said:

'It's a 32-mile round trip for me to visit my client – you need to make it clear before hand what documents I should bring in. When you ring up to ask they stop you and say "we can't do this on the phone".'

There also appears to be some confusion as to why the identification is necessary. For example we understand that some customers are told that the Regulations are in place as a result of the Data Protection Act.

Training is needed to enable branch staff to better provide this information to customers. Bank staff should be aware of why the regulations are in place and be able to communicate this to its customers. Firms should also be encouraged to empower branch staff to make decisions themselves as to what is appropriate identification based on their own policies as opposed to relying on head office or more senior management to make the decision.

Where consumers do not have the standard forms of identity, more should be done to ensure that information is provided on what alternative options are available. Age Concern and Help the Aged believe that firms should provide specific, detailed guidance on how to prove identity, for example by making the Toynbee Hall ID Guide accessible in branches.

Q37. Overall, based on what you understand about why the Regulations exist, and the kind of procedures Regulated Firms have in place, do you feel that burdens they impose on you are reasonable?

Age Concern and Help the Aged believe that the burdens imposed on older
people as a result of the Regulations are not reasonable given their risk profile and business relationship. The regulations appear to affect older people (some of whom have a long standing relationship with the firm) disproportionately as they often do not have the required documents and the implications of this are often great. Many older people will also suffer as a result of delayed action both financially and psychologically.

One case we received concerned a couple who wanted to move their money in order to fund their retirement. The bank asked for photo identification which they did not have and they did not want to renew their passport due to the costs involved. Bank staff were unable to recommend alternatives that could be used, the couple were told to contact head office by telephone which was difficult and resulted in a long delay and caused significant inconvenience.

Training and empowering staff would allow them to deal with customers themselves, recommend alternatives where possible and explain why the requirements are in place. This would reduce inconsistencies, avoid unnecessary delays and allow flexibility for customers who may not have the standard forms of ID.

Senior management has overall responsibility for the establishment of effective anti money laundering systems and controls; therefore it would be disappointing if bank staff felt personally accountable for the application of the regulations. Although staff should be empowered to make decisions about non standard forms of identification, in line with the firm’s policy, we also accept there is a tension between empowering employees and recognising that they are not personally accountable for the application of the Regulations.

With the increased focus of the Financial Services Authority on assessing the outcomes for consumers and the recent introduction of the Banking Conduct of Business rules (which include requirements for the firm to ensure prompt, efficient and fair post sale service including switching and closing accounts) Age Concern and Help the Aged believe there is scope for the FSA to conduct a review either thematically or part of their normal supervisory relationship with firms, specifically in relation to the consumer impact of the money laundering regulations and the outcomes for consumers.

The FSA handbook states that a firm should have appropriate measures in place to ensure that procedures for identification of customers do not deny access to its services for those who cannot reasonably be expected to produce detailed evidence of identity. With this in mind, the FSA could consider focusing their firm risk assessments not only on the adequacy of the anti money laundering systems and controls that firms have in place but also on how these translate into outcomes for consumers.

LT/December 2009
Money Laundering Regulations – Evidence for the review by HM Treasury

This evidence is of a private customer living elsewhere in the EU, and who remained a customer of UK financial institutions after receiving emigration treatment in 1973 from the Bank of England, under the Exchange Control Act 1947 (and which was abolished in 1979).

Following the introduction of the 2007 Money Laundering Regulations, the Head of Retail Services of JP Morgan Asset Management, citing the Regulations, required me to provide

1. A certified copy of my passport or driving licence, using a precise formulation in English (the Embassy would charge at least £25 for the certification),
2. A certification that the photo is a true likeness, again using a precise formulation in English (another £25?),
3. A certified copy of evidence of my address, again using the precise formulation (another £25).

The letter concluded (in bold): “Please be aware that if you do not provide these documents we will not be able to forward any future redemption/transfer proceeds”.

This letter related to a holding in an OEIC made up of an initial purchase in 1964 (in the preceding unit trust) supplemented by monthly contributions of £4 and by dividend reinvestment until 1991. The value of the holding at the time of the letter was about £5,500.

I considered that, given the nature of my holding and the small amount involved, the firm was illegally denying me access to my capital, by prescribing in detail an inordinate amount of certified documentation, and this in an authoritarian way. I therefore complained to the FSA that the JP Morgan letter ignored the risk-based approach in the EC Directive and the Treasury regulations, and carried through by the JMSLG into its Guidelines. I therefore asked the FSA to rule whether the company’s letter complied with the Money Laundering Regulations 2007. I mentioned that I would be prepared to provide a simple copy of my Belgian residence permit which would confirm all the details already held by the firm. Although the risk-based approach was confirmed in the material sent to me by the FSA Consumer Contact Centre and by the FSA Company Secretariat, the FSA declined to rule on the legality of the letter. I found unconvincing the FSA’s justifications for its refusal to act, since it simply carried over the argumentation then applicable to its core function of financial supervision, which meant leaving decisions to firms’ ‘commercial judgement’. This surely should play no part in the supervision of money-laundering regulations.

I was given leave to appeal to the Complaints Commissioner, who considered that my complaint was not receivable as it related to the FSA’s legislative functions under the FSMA 2000. I find the use of the term ‘legislative function’ by the FSA misleading, since the legislator here is the European Parliament and the Council of Ministers. The Complaints Commissioner did observe that “It is clear that the FSA consider firms are entitled to fulfil their money-laundering requirements in the manner that they see fit”. This observation by the Commissioner, with its implication that firms are free to operate outside the law, made my case for me. The Commissioner went on to suggest that I take the matter to the Financial Ombudsman in “England”.
I ignored this advice and wrote to the Treasury Minister, Lord Myners, not so much to get a reply from him, but to make sure the letter went to the right place. In due course, I received a considered and sympathetic reply from an official, but “it would be inappropriate to offer you legal advice on your final question” (as to whether the firm’s letter was unlawfully denying me access to my holding). I have to mention that I recently instructed the firm to sell the holding, and to credit the proceeds to the UK bank account to which they had continued to send my dividends despite the contents of their letter. This was done without demur although I had never provided the requested documentation. So maybe finally the FSA or the Treasury had a word with the firm.

More generally, the way UK financial institutions use the money laundering regulation works against the interests of British citizens living outside the UK. I have read about how some expatriates have lost money in the Isle of Man because UK banks dissembled that money-laundering regulations prevented them opening accounts for non-residents. In my own case, I feel obliged to stay with my existing UK bank account and credit card, however bad the service, for I cannot be sure that another bank would accept me (and that the FSA would back me up). In the case of my daughter who tried to sell £1000 of privatisation shares some years ago, through a bank with whom she had had an account since her first months, the bank said that FSA regulations prevented them from accepting the instructions. I never got any reply for my request to the bank to cite the actual regulation, so I wrote to the FSA. I eventually got the bank to admit that their refusal was for commercial reasons. I eventually found a financial services firm who had once brokered an insurance policy for me to undertake the transaction.

I made a point of mentioning the Exchange Control Act at the beginning of this evidence, because at least the decisions were being taken by officials in the Bank of England (or the Treasury) citing an act of Parliament. But in the case of the money laundering regulations, decisions are being made by private sector employees who behave as if they are agents of the state, but against whom there seems to be no recourse.

Alan Reid
Brussels, Belgium

30 November 2009
HM TREASURY: REVIEW OF THE MONEY LAUNDERING REGULATIONS 2007
RESPONSE FROM THE ASSOCIATION OF PRIVATE CLIENT INVESTMENT MANAGERS AND STOCKBROKERS (APCIMS)

Questions about the Regulations

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

The Money Laundering Regulations (MLRs) are applied in the regulated financial sector in large part through rules promulgated by the UK Financial Services Authority (FSA). The FSA's Systems and Controls, or SYSC, Handbook on Financial Crime (SYSC 6.3.1-6.3.10) is designed on a risk-based approach and states that systems and controls (including policies and procedures) must be firm specific and based on the particular money laundering risks that a firm is faced with.

SYSC 6.3.1 sets the overall framework:

- SYSC 6.3.1 R 01/04/2009:

  "A firm must ensure the policies and procedures established under SYSC 6.1.1R include systems and controls that:
  1. enable it to identify, assess, monitor and manage money laundering risk; and
  2. are comprehensive and proportionate to the nature, scale and complexity of its activities."

We are however concerned at the low quality of implementation of these policies by FSA staff undertaking the supervision of firms. In practice, they seldom adopt a risk based approach during an inspection. As a membership based body APCIMS receives substantial information from its member firms. The larger of these are relationship managed by the FSA under the ARROW system. They have made it plain to us over a period of time that FSA supervisors mostly lack sufficient industry knowledge, or knowledge about APCIMS' firms' business models, to understand how the risk based approach can be appropriately applied to them. This includes the application of policies and rules relating to money laundering. Our smaller firms are not visited by FSA supervisors and so do not have the experience of interaction from which to comment on this issue.

1 http://fisahandbook.info/FSA/html/handbook/SYSC/6/3
As regards definitions, scope, and activities covered by the MLRs, our views on aspects of these are made clear in the responses to individual questions below. As we indicate, APCIMS is a member of the Joint Money Laundering Steering Group and supports any comments made by that body on these issues.

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

CDD: We consider that, broadly speaking, the CDD requirements set out in the MLRs are proportionate to the threat from money laundering, and that the permissions and requirements given for SDD and EDD are appropriate. But in making this general observation it is important to recognise that the different business models of different firms have different risks associated with them and that there are consequent differences in the way due diligence procedures are carried out.

Costs and SDD: The way that costs drive the choice of diligence process should also be noted: firms need to set up systems to handle the processes required and where SDD may be possible CDD is often done anyway because it is faster and cheaper to use existing mechanisms in all cases rather than go to the lengths of determining a situation in which a simplified approach may be desirable and then applying a bespoke but lengthy and costly exceptional process. This situation means that SDD is in effect often a redundant category.

EDD and PEPs: While we agree that EDD measures should in principle be applied to managing the risks presented by PEPs, we note that there is little guidance given on how or how often PEPs should be adequately verified and monitored. APCIMS' firms in general feel that this lack should be rectified. They are for example unsure about how far up the chain it is necessary to go to verify individuals and their relevant "associations", and about how to interpret some of the PEP definitions such as "associations" and the family members of those in the political office. They are also concerned about the time taken to obtain information on PEPs in order to be sure that they have covered all angles. Better guidance could alleviate these burdens.

Small Firms and Verification: Smaller firms do not have the in-house capacity to undertake verification to the same degree as their larger colleagues. But the costs of buying client screening services via an outsourcing arrangement is high and not all such anti-money laundering service suppliers are guaranteed to ensure that PEP checks are performed. For a small to medium firm to buy in a SARS solution the cheapest package from a vendor is between £70,000 to £100,000 as a one-off cost with on-going costs ranging from £15,000 to £20,000 per annum. For smaller firms developing their in-house verification systems costs will include not only the considerable time of staff who in a small enterprise typically wear a number of hats and cannot be dedicated to a single task, but also the costs of the system hardware and software which run to several tens of thousands of pounds. The downstream task of regularly updating the status of PEPs without having a supplier client database is also onerous. For all the above reasons it is almost impossible to ensure that every PEP is identified.

Domestic PEPs: APCIMS does not think that UK domestic PEPs should be screened. We believe the current exclusion should remain in place and that the application of a risk-based approach leads to this conclusion.
PEP requirements and criminal sanctions: APCIMS adopts a neutral stance on the issue of whether or not criminal sanctions should be introduced in relation to non-compliance with PEP requirements provided that whatever sanctions are in place are proportionate and appropriate in both design and execution.

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

APCIMS' view is that the CDD requirements are very effective in anti-money laundering work and that the findings made possible by careful and thorough CDD activity assist with the detection and deterrence of money laundering, especially through the route of reporting suspicions. Our discussions with official agencies and others involved in this area suggests that the information discovered through CDD procedures can be of broader benefit in the fight against other crimes, including fraud.

There are however difficulties. Beneficial ownership in particular is often hard to ascertain, especially when trusts are located offshore and the beneficiaries are also abroad. There is a distinct unwillingness on the part of a number of key financial institutions to rely on information obtained from regulated firms in offshore jurisdictions and APCIMS' members are required in consequence to use lengthy, time-consuming and expensive methods of fact-finding to establish beneficial owners. This means that, as with SDD as noted above, reliance, while a well-intentioned part of the MLRs framework, is working sporadically and inefficiently and not achieving in full the objectives set out for it. More certain guidance about where reliance can be placed, and some reassurance about using it, may be necessary.

As regards the 25% figure, we believe this should remain a percentage formulation rather than be recast as a monetary amount, as calculating this figure accurately and credibly in some instances – for example in relation to investment trusts – would be difficult and thus hazardous for the agency responsible for producing it.

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

Documentation and other information kept in compliance with these requirements assist firms in their own work to detect suspicious activities and persons and report them, and are invaluable for anti-money laundering investigations. We are aware that authorities such as FSA and SOCA welcome such information from firms. We believe that the current 5-year time limit and reliance provisions are appropriate and note that any changes would be at cost to firms, which in the case of APCIMS' members would be passed on to retail clients but for no necessary gain in anti-money laundering ability or investor protection. Any policy and procedural changes would also have to meet data protection requirements.

We have no comment on the non-EEA member state issue mentioned in the second bullet point of this question. In general, APCIMS' members do not have such branches and subsidiaries.

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

APCIMS' members essentially deal with the compliance monitoring and enforcement powers implemented by the FSA.
We have mentioned above our concerns regarding the implementation of supervisory responsibilities in relation to anti-money laundering and other issues by FSA personnel. More attention should be paid to what it means to carry out inspections in a risk-based manner. As part of this, APCIMS believes it imperative for supervisors to understand the industry they are supervising and to have adequate knowledge of the business models of regulated firms. This would help to make the supervisory process both credible and meaningful. In this context we note the inconsistency between the supervision of larger ARROW relationship-managed firms by the FSA, in which inspections can be lengthy and detailed, as opposed to the smaller firms with whom the FSA has negligible communication. Such discrepancies do not encourage the view that the FSA knows the APCIMS' sector well.

We consider that the duties of supervisors in relation to compliance monitoring on anti-money laundering issues should be made much clearer to them and that greater proportionality of action would derive from better adoption of a risk-based approach. A "one size fits all" attitude to firms should be avoided, especially with regard to dealing with larger and smaller firms. We think that practical concerns such as these are the issue rather than the quantity of duties.

As regards enforcement and penalties for misdemeanours, we note that FSA penalties are due to increase in spring 2010 when the enforcement regime changes and believe that this development will support the FSA in achieving its goal of credible deterrence.

- **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?**

APCIMS considers the FIT sourcebook within the FSA Handbook to be a suitable system of registration (authorisation) and of fit and proper testing for all in the regulated sector. The risk-based nature of the process means that only the more senior individuals are expected to follow it in full. FSA's additional guidance on its website about these issues is also helpful to firms.

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

  - In our view there are discrepancies between the requirements of the MLRs and other aspects of the UK's broader anti-money laundering regime and legislation, especially where different definitions of terms are used. Difficulties arise because of contradictions in the system. For example, it would be practical to ensure that Counter-Terrorism and anti-money laundering legislation are fully aligned. The absence of a consolidated central data source for firms to access makes the verification process more time consuming and resource intensive. And at an implementation level APCIMS is concerned about the time lag between the submission of a suspicious activity report to SOCA and the formal response. Firms are not able to act for the client until approval is received and if the gap is too great it may deter a legitimate client from engaging a firm's services, leading to loss of business.

1 http://fsahandbook.info/FSA/html/handbook/FIT
We support work to keep the MLRs compatible with and complementary to international standards/practices and are aware that the UK in practice takes the fight against financial crime more seriously than many other nations, including a number of EU member states. The 3L3 Compendium Paper1 for example stated that the current status of EU Member States’ implementation of the 3MLD as at 15 October 2009 was varied and that there remained member states who had not implemented, or fully implemented, the legislation by that time. Discrepancies of this kind create an unlevel playing field for UK firms and undermine fair competition. We have also noted European Commission statistics about the huge differences in the numbers of suspicious transaction reports submitted in different member states to the end of 2008: in the UK the figure was over 8,000 while no other member state recorded over 100. In relation to the USA there are also difficulties: those APCIMS firms subject to the US Qualified Intermediary (QI) regime have to document the Know Your Customer (KYC) process twice. This double due diligence is resource intensive, expensive and onerous, as well as being unnecessary in terms of investor protection and money laundering requirements. APCIMS has submitted to HM Treasury information about our concerns with regard to US legislation in this area.

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

APCIMS was pleased to be included in the stakeholder engagement process with HM Treasury regarding the Call for Evidence on the operation of the MLRs and is keen to maintain an ongoing dialogue with HMT on this and other matters. APCIMS' Financial Crime Committee, comprising a number of our key member firms in this area, assists in formulating our policy on anti-financial crime and anti-fraud measures and has twice in the last year been addressed by HMT staff. We also connect with the broader membership on these issues through our monthly Update electronic journal, which is very widely read. Our Financial Crime Conference in November 2009 assisted in engaging a substantial grouping of members with those presenting on money laundering and other financial crime matters, including representatives of HMT. As a member of the Joint Money Laundering Steering Group (JMLSG) APCIMS is fully involved in a collective interpretation process on behalf of its members regarding the MLRs and other anti-money laundering regulations and is party to the publication of the outcome. All these mechanisms enable APCIMS and its members to ensure discussion, interpretation and information flow regarding the MLRs and to maintain a productive relationship with HMT. However, APCIMS takes the view that a 9 week consultation period for evidence gathering is too short and that a longer period would encourage a more meaningful and valuable review. This echoes the absence of consultation on CTA Schedule 7, which was also of considerable concern to us and we hope was a one-off event.

**Questions about Guidance**

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

We believe that both the FSA’s SYSC rules and the JMLSG Guidance promote an effective and proportionate approach to anti-money laundering in the UK.

---

1 The 3 Level 3 Committees Compendium Paper on the supervisory implementation practices of the Third Money Laundering Directive
The Call for Evidence asks whether “it is beneficial that Guidance is legally enforceable in the UK, and that compliance with its provisions can be used as a defence against prosecution for non-compliance with the Regulations.” It is important to contrast this statement with the FSA’s own explanations of Guidance aimed at assisting regulated firms in their use of it:

“Guidance and supporting material are not binding on those to whom the FSA’s rules apply. Rather, such materials are intended to illustrate ways (but not the only ways) in which a person can comply with the relevant rules”

The FSA goes on to say that Guidance may be taken into account in enforcement work:

“FSA guidance and supporting material are potentially relevant to an enforcement case, for example to help assess whether it could reasonably have been understood or predicted at the time that the conduct in question fell below the standards required by the Principles or rules. The extent to which we may take guidance and supporting material into account when considering a matter will depend on all the circumstances of the case.”

APCIMS’ firms are familiar with Guidance being considered in the manner described by the FSA and use it as a means of ensuring they are in compliance with the Regulations, not as a method of justifying getting around them. The Treasury statement is somewhat misleading in this respect. One desirable result of the current review of the application of the MLRs would be absolute clarity about the function of Guidance in the UK’s financial sector.

The value of Guidance to APCIMS’ firms, which in the anti-money laundering context means in particular the JMLSG Guidance, lies in its role in interpreting and elaborating the MLRs in a manner that helps firms in their practical daily work to comply with them. It is therefore very important for the JMLSG material to be carefully considered and drafted and up to date, and to offer an approach to putting the MLRs into effect that is acceptable to all, including both HMT and the FSA. They must not offer a route around the MLRs or show alternative methods of compliance.

At present the JMLSG Guidance fulfils the appropriate purpose very well and is widely used by APCIMS firms to ensure they are complying with the MLRs. In being sector specific it assists understanding and supports risk-based implementation of the MLRs, and our firms regard it as containing invaluable information and as beneficial to their interests. As regards process for keeping it up to date the regular JMLSG meeting and review arrangements are effective and in the current major biannual assessment of the Guidance being conducted by the JMLSG our members have been consulted on concepts and drafts through the sorts of mechanisms outlined at Question 8 above.

It is of considerable help that the composition of the JMLSG Board and Editorial Panel allow APCIMS to participate as an active member and the picture could be different for those not in this position. It should also be noted that the JMLSG Guidance applies to the financial services sector and may be less useful for those outside it.

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?

For APCIMS and its members both the FSA’s SYSC 6.3 and the JMLSG Guidance are clear. We believe from discussions with colleagues, reading drafts prepared by different groupings, and anecdotal evidence that they function consistently across sectors, but our direct experience of this is limited since APCIMS firms themselves are mostly single sector operations.

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

In our view the JMLSG Guidance supports the risk-based implementation of Customer Due Diligence (CDD) measures within our sector as it is structured to address the concerns of different types of investment business activity and to encourage firms to develop processes that take account of risks inherent specifically in their business models.

Our firms spend considerable resources on due diligence processes and in order to control costs while optimising compliance and anti-money laundering outcomes they systematise their processes as much as possible. This means that, even though SDD and EDD situations are explained adequately in the reference material, firms will whenever possible and justifiable in terms of compliance with Regulations use CDD procedures. In practice this means that EDD is implemented as necessary but that SDD is hardly ever used since as a bespoke activity it is more expensive but less efficacious than CDD.

The definitions of PEPs and EDD are appropriately and understandably set out but for further comments on these issues and that of verification please see our response to Question 2 above.

We would like here to draw attention to two further matters in this area. First, we would like there to be more specific Guidance about risk assessments where they incorporate material relevant to an anti-money laundering context or are generated to address money laundering risks. Such Guidance should clearly state that risk assessments should be firm specific and conditioned by firms’ business models along the lines of “an evidential and appropriate risk assessment for your firm”. Firms should be encouraged to document detailed information about their risk assessment processes, especially where such material may be read and have to be justified to external sources such as the FSA or other regulatory authority.

Second, we recommend that there should be greater clarity about reliance in relevant Guidance. Summary requests to APCIMS’ firms from other jurisdictions (such as Ireland and Guernsey) are complex, time consuming and expensive to manage and comply with. In other cases regulatory bodies bombard APCIMS’ firms with information requests, sometimes forcing them to deal with up to 5 or 6 such requests per day. On the other hand, many banks that APCIMS has to deal with through the operation of client accounts will not accept reliance for verification and diligence purposes on information from regulated firms in other jurisdictions, including local offshore centres. This compels APCIMS’ firms to commission or undertake further due diligence themselves, almost always with the same result as they achieved through reliance yet at far greater expenditure of time and money. It would be very helpful if the UK authorities could prepare Guidance that would stop this wasteful, expensive and unnecessary duplication.
12. In what ways does Guidance assist and support Regulated Firms' anti-money laundering policies and procedures?

FSA Rules and Guidance direct APCIMS firms to the JMLSG Guidance as the authoritative source of sector-specific, detailed information on acting in compliance with the MLRs. As made clear above, the Guidance materially assists firms in the development of their risk-sensitive policies and procedures but it also includes information on training and record keeping and generally encourages high standards of practice to ensure compliance with regulatory requirements. It is of good quality, informative and very widely used. However, it is less certain in relation to the interaction of the MLRs with the requirements of POCA and TACT and we believe that work should be done here by HMT and perhaps the JMLSG to advise more clearly on where and what the key linkages are and the need for firms to address them. As a general point it is significant that at APCIMS the anti-money laundering regulatory queries we receive from our membership are almost exclusively about JMLSG Guidance, very seldom about the FSA, and almost never about the MLRs.

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

We have made clear in Question 8 above the various methods we use to ensure that APCIMS' members are fully aware of the JMLSG Guidance and have the opportunity to engage in its formulation through commentaries on drafts. We also take note of comments and complaints we receive throughout the year about issues arising from the use of the Guidance and bring these to the attention of the JMLSG for consideration.

We have also noted in Question 9 above the value we place on active full membership of the JMLSG and the engagement that permits both APCIMS and its members, as key stakeholders in anti-money laundering work, in the Guidance development and production processes. In our view the JMLSG Guidance owes its credibility to many factors, including inter alia its membership structure which reflects industry specifics and its transparent consultation processes which value input from industry stakeholders.

Our experience with FSA's formulation procedures in work which does not purport to be guidance but takes on its characteristics in practice ('non-guidance') has however been more patchy. Due process, including adequate Cost Benefit Analysis, is not always followed and disproportionate, inappropriate and occasionally confused results may arise in consequence. This is particularly awkward when supervisory teams undertaking inspections measure against reports on non-guidance as if they were rules and firms are uncertain about the status of documents for compliance purposes. We made the point about the need for clarity about the use of Guidance in Question 9 above and would repeat it here. APCIMS had to prepare internal guidance on data security for its members following an FSA report because of such confusion, while information on financial crime and anti-money laundering is also published on the small firms section of FSA's website without prior industry consultation or cost benefit analysis. APCIMS is concerned that this may present a regulatory risk since without discussion and information flow it is almost impossible to achieve a proportionate and risk based approach which provides sufficient certainty and clarity to the firms.
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?

APCIMS' member firms are overseen by a single supervisor (the FSA) and are not subject to a multi-supervisor arrangement. APCIMS considers that FSA policy and regulations support an effective, risk-based anti-money laundering regime and help to ensure compliance with the MLRs, but as previously stated in this response does not consider that the implementation of this policy is always evidenced in the supervisory process. We doubt whether FSA supervisors are mindful of the costs and benefits to firms of the anti-money laundering regime and they certainly do not offer ideas to minimize costs or to maximise benefits.

APCIMS' larger ARROW managed firms are concerned that supervisors do not take into account specific business models and associated risks. Firms have often reported to us that inapplicable standards that are neither rule nor regulation based are applied to them and that this is unfair. They have repeatedly called into question the competence and experience of supervisors and claim that many do not have adequate knowledge of the APCIMS sector.

APCIMS smaller firms do not directly engage with FSA. The feedback we receive is that most of APCIMS smaller firms have not seen the regulator since its inception. This is a cause for concern. Small firms are often left to their own devices when having to grapple with FSA rules and guidance and it is common for them to spend considerable amount of money and resources on external support.

The situation regarding supervision that is described above does not support an effective, risk-based anti-money laundering regime and compliance with the Regulations. APCIMS would welcome a better dialogue with FSA on emerging anti-money laundering and financial crime/ fraud trends in its sector.

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 have raised general concerns about supervision in our sector above.

In relation to communication from the Supervisor, APCIMS notes the FSA's range of devices such as online awareness campaigns, their annual Financial Crime Conference, written information and Guidance, and telephone help lines relating inter alia to financial crime. These are welcome elements in the armoury of devices that help to inform the regulated financial sector about anti-money laundering and other issues.

We are concerned however about the suitability of these approaches for smaller firms, which form the majority of APCIMS and indeed FSA's regulated population. Small firms with limited resources require more communication and engagement from the FSA in terms of education and outreach, not less, and the risk-based approach with its focus on systemic impact does not achieve this. Indeed, as noted in question 14 and elsewhere above small firms also lack the same kind of ARROW engagement that larger firms have and as a result do not have any contact at all with the FSA, their only regulator and supervisor.
APCIMS' view is that FSA should encourage more feedback from the firms they regulate and take more notice of the feedback they do receive. Although firms are obliged to report regularly to the regulator on a variety of issues, and the supervisory teams pick up information from the firms they visit, required information gathering of this kind does not constitute a constructive dialogue that illuminates the anti-money laundering situation for either side. Regulated firms would appreciate anti-money laundering intelligence from FSA and receive almost none. This reflects the fact that there is little communication beyond what is required by law and regulation and that the FSA does not provide the industry with feedback the other way on the findings of monitoring and supervisory work. Further to this, APCIMS is unaware of any sector analysis of APCIMS' firms' risks to the FSA in meeting its financial crime statutory objective and firms would be grateful for and interested in a debate about this. At the moment there is little if any flow of this sort.

In the absence of formal regulatory information of the kind outlined above for firms, many try to analyse FSA's enforcement documents such as Warning Notices or Final Notices once they are published in order to extrapolate supervisory themes and trends. This can however produce misleading results as often the full facts of the case are confidential and publicly available information limited. The Notices may also not be current as they may relate to investigations that took place some time, perhaps years, previously. Firms may also be seeking to learn lessons on a cross-sector basis which may lead to confusing or inappropriate outcomes. Firms are in consequence often unclear in practice what the lessons learned are from enforcement cases or how they should be applied to their situation.

In the light of this experience APCIMS does not favour the FSA approach of publishing enforcement cases and expecting firms to read across from them into their own circumstances. It does not necessarily lead to the cherry picking of best practice but rather to confusion and in some cases inadvisable outcomes which serve nobody's interests well.

There should instead be a regular and fluent dialogue between supervisor and industry. Membership associations such as APCIMS can play a major role in acting as an intermediary and conduit between firms and regulator for this purpose. We have excellent connections with all our members, can represent their regulatory and related interests, and the infrastructure for engaging them as stakeholders in the process is in place. In short, we form part of the solution to the problems described above, and APCIMS firms would welcome us playing a greater role in this area.

APCIMS notes the usefulness of SOCA and FATF reports in the communication flows about anti-money laundering matters.

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

We have no information on this issue but note that the FSA is not subject to any requirement to publish performance results or risk reviews for quality assurance purposes of its work and findings in the anti-money laundering area. It is therefore not possible for us to monitor the regulator's cross-regime consistency as implied by the question. This may be a gap that should be addressed by Treasury in its current MLRs review.
17. To what extent is Supervisors' monitoring of compliance targeted, proportionate and risk based?

We are not aware of any dedicated anti-money laundering FSA visits to our firms and for larger firms data gathering would in any case be made as part of the ARROW process. Smaller firms, as we have explained above, are in general not party to any routine information gathering through visits or otherwise. All this suggests to us that in relation to anti-money laundering issues the supervisor's monitoring is targeted on the larger sector but is not necessarily proportionate or risk based.

18. How effective and proportionate is the enforcement regime?

FSA’s enforcement regime will change further in the spring of 2010 not least because until 2008, when some initial strengthening was introduced following the financial crisis and the introduction of the credible deterrence approach, it was considered insufficiently effective and as failing to send appropriate messages about intolerance of financial crime to the markets. However these changes do not relate specifically to money laundering but to financial crime more broadly. Beyond this it is impossible for APCIMS to comment as we are not party to required information.

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

No comment.

Questions about Industry Practice

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

Implementing risk based policies may in general be an unnerving experience for regulated firms as the element of judgment involved may create uncertainty about what approach is most clearly in compliance with what is required. Larger firms will normally obtain compliance assurance from the supervisor only when they are assessed and reviewed, while small firms have recourse primarily to the Small Firms Contact Centre. This is particularly pertinent for smaller firms whose only alternative option is to pay for costly external consultancy (see also Question 2 above).

The effect of this is to generate a view within some firms, especially smaller ones, that they would prefer the certainty and assurance that comes with prescriptive rule-based regulation in which they are required to do some things and not others and from which the element of judgment has been removed. This helps them to avoid the possibility that in implementing risk-based policies they may be assessed as non-compliant by the regulator. For example, we are aware that, in the context of anti-money laundering, some APCIMS firms are not sure whether they do enough to verify PEPS and how to define PEP categories.

Cost is a common and significant constraint on all firms' implementation of regulatory policies and procedures, whether risk-based or not. Regulatory cost is commonly passed on to the client in the form of higher charges and can represent an important component of fees.

Even if a firm has discretion in the rules to apply a lower compliance standard (eg CDD/SDD) to a particular area of business they will not do so if this raises costs.
unnecessarily. As noted at Question 2 it may be costly and disruptive for a firm to alter its internal systems and controls to meet different compliance levels. Firms generally would prefer to apply one rather than several compliance standards to a specific aspect (eg anti-money laundering) of its business.

As regards carrying out risk assessments, the rule of thumb is that the larger the firm the more likely it is that they will have the necessary skills, data, tools, and other resources to do so. It is also the case that the cost and resource diversion required to undertake this kind of regulatory activity hits small firms disproportionately hard, especially if they have to buy in expertise. This differential in cost ratios should be taken into account in the cost-benefit analyses applied to proposed regulatory developments.

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?

The processes will vary from firm to firm.

We have commented above on the CDD/SDD relationship and use patterns as compelled by a mix of regulatory and cost requirements. We have also drawn attention to problems experienced by firms with the use of reliance on third party information.

We have referred to the difficulties of establishing beneficial ownership, especially when beneficial owners are overseas. In these circumstances the process can become complicated, time consuming and expensive and the rule of thumb is that the further removed the beneficial owner is from the business the more complicated the information chain that is created and the more difficult it is to find out what is required. This leads to the paradoxical situation that the more urgent it is to discover who the beneficial owners are the more difficult it is to do so. So diminishing effectiveness of process and greater disproportionality of burden (including costs) go hand-in-hand.

Against this background the ongoing monitoring of businesses in relation to CDD requirements is seen as important and continues. However, in view of the expense and time taken to establish initial processes these continue to be used and updating or review of process to ensure that correct and reliable information is being obtained is rarer. It is probably occasioned primarily when some flaw or difficulty comes to light and the situation needs to be re-examined.

We do not have data regarding the proportionality issues raised at the end of this question.

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

APCIMS' firms have implemented internal systems and processes to comply with the MLRs and JMLSG Guidance. These have been in place for a minimum of two years now and have become integrated into the normal compliance work of regulated financial businesses. For most firms this means that actions to comply with the MLRs and JMLSG Guidance, such as CDD, have become part of their business as usual regime.

The degree of coherence with training and other aspects of a firm's business will vary between firms. Most firms, for example, will not manage training out of the compliance function where the money laundering reporting officer and responsibility for anti-money laundering policy and oversight normally rests, but from HR or a special training unit. So
there will need to be some coordination here. But that is part of normal business management and not exceptional.

Regardless of the efficiency of implementation and the degree of integration, however, all regulation comes at an incremental cost and the MLRs are no exception. So although we are unable to quantify how much additional cost for firms and investors is attributable to the MLRs, some will be.

Good anti-money laundering policy, procedures and practice which are seen to operate effectively in the interests of market integrity, investor protection and financial crime prevention enhance the reputation of a jurisdiction and make it easier for firms from there to win business. APCIMS and its members are aware of this and support the Treasury’s anti-financial crime agenda which they see as being in their reputational and commercial interests.

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

Fit and proper tests have been a long standing requirement of the authorisation process for financial services firms in the UK’s regulated sector. Procedures are well established and integrated into the business practices of all firms. Constant review and revision in line with evolution in the industry has kept them broadly coherent with modern business needs and practices. In general the fit and proper qualification is transportable provided nothing happens in a particular employment to dislodge it.

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

These can be onerous but become easier to meet once appropriate systems are in place and processes are fully automated. But setting up the systems is expensive, often difficult, and frequently time-consuming. It is most difficult and expensive of all when regulators keep changing their specifications and requirements, so constancy should be a keynote for those in authority over the industry.

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

We have dealt with much of the detail on this issue in our response to Question 8 and other Questions above. In addition to the points made there, APCIMS provides a regulatory policy function for our members whereby we represent their interests in consultation rounds, letters, meetings and discussions with a considerable range of authorities in the financial services and related sectors, especially at the national and European levels. This helps to ensure the engagement of our members in policy and guidance development and the provision of appropriate information to those who formulate law, regulation and rules. Any benefits of the MLRs in terms of effectiveness and outcomes are communicated to our members as soon as they are known.

Questions about Customer Experience

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

The verification of non-face-to-face clients has been seen by some firms as disproportionate: and such clients have been increasingly concerned about sending their
personal details in the post. APCIMS’ firms have noticed that their clients are becoming more concerned about the safety of their identification and associated identification risks and have as a result sought assurances from the firms about the security of information they pass over. This places greater onus inter alia on good data security policy and practice in the firms themselves.

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

Yes, we can for example refer them to the JMLSG Guidance and firms generally have their own policies and procedures about ensuring that client needs for information are appropriately met.

Questions about the Régime

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?

APCIMS believes that the Regulations and the accompanying JMLSG Guidance are effective tools in the fight against money laundering. They do help to protect the integrity of the financial system and the reputation of UK business, as indicated in Question 22 above. They have some deterrent and detection value although we cannot quantify how much. As regards reporting they have had a clear impact as demonstrated by the reporting figures quoted at Question 7(b) above. This also shows how well the UK régime compares internationally, especially at the regional level where the UK appears to be the leading member state of the EU on anti-money laundering work. Indeed, the fact that 16 member states still had not implemented the 3rd Money Laundering Directive more than 6 months after 15 December 2007 supports the notion that anti-money laundering may be treated less seriously elsewhere in the EU.

It is hard to judge how well the régime identifies and responds to new and emerging risks. However, as noted in Question 8 above the experience with the development of CIT Schedule 7 was an unhappy one and does not suggest smooth handling and management of the response to new problems. Appropriate lessons should be learned.

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?

On the whole the Régime is proportionate. However the UK has a reputation for being over-zealous in the implementation of new regulations and to go super-equivalent with relative ease. This may be a different way of viewing, for example, the 8,000 plus reports mentioned at 7(b) above. It is important in the light of this perception to maintain a sense of proportion in reviewing the régime and not to allow the process to lead to the development of an over-large and imprecisely targeted edifice that is expensive to run and disadvantages UK firms while offering no additional protection to markets and investors in the fight against financial crime.
30. Would you say that all relevant stakeholders are able to participate in the development of the Regime?

APCIMS’ view is that all relevant stakeholders ought to be able to participate in the development of the Régime, but there is some variation in the extent to which they do, dependant partly on which part of the regime is being referred to. We have noted at the end of our response to paragraph 13 above, for example, a type of situation in which stakeholders participate less than perhaps they might in the development of non-guidance. Communication was also lacking in relation to CTA Schedule 7 until after it was there. However, participation and engagement in other ways, both with the Government and Regulator or through the JMLSG process and the work of associations to inform and involve their members, works well and should continue. On international partnership we think that standards of anti-money laundering work are being raised globally, but in a very sporadic and uneven way between territories and issues. There is a lot of work still to do in this regard within the EU itself as well as with offshore centres and other countries.

APCIMS, December 2009
10th December 2009

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

Dear Sirs


Introduction

The ABB is the principal trade association for high street bookmakers. It numbers amongst its membership the three largest national chains and the Tote. It also represents numerous independent bookmakers (SMEs). In total it represents around 7,000 of the 8,500 betting shops in the UK.

Two of the five major operators are listed on the LSE (with the associated corporate governance procedures), one is state owned and two, including Gala Coral, are large private companies.

Background

The high street betting industry lies outside the sector regulated under the MLR 2007 although, like other such sectors, it is subject to the provisions of the Proceeds of Crime Act 2002. Certainly the five major operators all employ persons who perform the MLRO role and have established reporting procedures for dealing with suspicious activity. Most independent bookmakers, who make up around 16% of the total market, have implemented training in this area.

Despite possible but un-evidenced perceptions to the contrary, betting shops have never been a medium through which traditional money laundering (layering, placement and integration) has taken place on a wide scale. Bookmakers all operate financial risk management systems which, inter alia, highlight unusual betting patterns.
The industry is regulated by the Gambling Commission and, as part of its operating licence application process, the Commission assesses the suitability of betting operators to hold a licence. These checks include an assessment of the source of funds which are used to finance the business and any associations with criminality (including connected persons). Therefore the entry hurdle for those who wish to run high street betting businesses is high. Indeed, the current ABB advice covering POCA, itself based on advice from HM Treasury and reflected in the Gambling Commission’s Licence Conditions, has so far satisfied law enforcement and regulatory requirements.

Betting shops provide a variety of gambling opportunities for customers, but mainly over-the-counter sports betting and gaming machine use (each betting shop can have a maximum of four gaming machines).

Whilst there are isolated examples of identified criminals spending cash in betting shops, the average slip value is around £8. However it is not abnormal for legitimate customers to wager large sums in cash (subject to bet acceptance and payout limits) and many customers still prefer the betting shop environment to gambling on-line.

The majority of bets are accepted near to the “off” and the business is a fast paced, customer interactive, retail environment where relatively low margins and high turnover is the normal trading pattern. As part of that, bookmakers constantly monitor for suspicious or out of profile betting patterns to manage their financial risk.

Although, in terms of the overall number of betting transactions, only a small proportion of the transactions are reported to SOCA, there is no evidence of under reporting. We are aware that, among the more commonplace excuses offered by criminals when caught with illegally acquired proceeds, is that such have been won gambling, when that is not the case at all. We think that perceptions can be and probably are skewed by the regularity with which this excuse is deployed, even if it is groundless. As far as gaming machines are concerned, the main issue has been the use of dyed notes in machines and there are separate reporting procedures for this; again the practice is not widespread. Discovery is normally post event.

Supervision

The Gambling Commission is not a supervisor of the high street betting industry for the purposes of these regulations, but it does carry out a supervisory role insomuch as it enforces a standard operating licensing condition for betting operators that states:

Licensees, as part of their internal controls and financial accounting systems, must have and put into effect policies and procedures concerning the handling of cash, and cash equivalents (ie bankers’ drafts, cheques and debit cards), designed to minimise the risk of crimes such as money laundering, to avoid the
giving of illicit credit and to provide assurance that gambling activities are being conducted fairly.

From a Better Regulation point of view, we feel that the Gambling Commission tends to confuse its supervisory role over the regulated casino sector with its supervisory role in terms of its own licensing conditions which it has applied to betting operators.

The recent guidance issued to betting operators tended to confuse obligations under the regulations for regulated casinos (where both the environment and the business model is completely different), with those of non-regulated betting businesses.

Conclusion

There is no good, evidenced-based reason to bring high street betting within the MLR-regulated sector. Money laundering via high street betting does not hit the radar in terms of the SOCA UK Threat Assessment and the Gambling Commission has not raised any concerns with the industry, or brought forward any data which evidences either lack of knowledge or under reporting in this area.

Arguably, there is a stronger case for deregulating the casino sector than there is for regulating betting shops as far as this review of the current regulations is concerned.

Betting shops cannot be compared to financial institutions such as banks; furthermore, there are continued issues with the prior authority regime because SOCA cannot respond quickly enough and with sufficient expertise to the infrequent, but nevertheless important prior authority requests, once a SAR has been made.

The imposition of customer due diligence within betting shops would be disproportionate and would have a major economic impact on the business model. This cannot be justified on the evidence base of risk.

The industry is nevertheless keen to engage with both the Gambling Commission and SOCA on this issue through the auspices of a POCA forum. We have asked the Commission to establish such a forum and remain hopeful that it will do so.

Yours faithfully

Patrick M B Nixon
Chief Executive
Questions about the Regulations

Q1. To what extent is the scope of the Regulations and their application to business activity appropriately risk-based?

A1. They are not in our view. Our members have, in the main, known their clients for many years and this risk of money laundering abuse is minimal. Further our members’ clients are generally small local traders so again the risk of abuse is minimal or negligible.

Q2. To what extent are the Customer Due Diligence (CDD) requirements set out in the Regulations a proportionate response to the threat from money laundering?

A2. The regulations are a shot gun approach to resolving the problem. There are certain sections of the community which are plainly not a threat as far as money laundering abuse is concerned. For instance, our members would do the tax return of a retired couple residing in their area, all their life. The same rules apply to these people as apply to someone who moves large amounts of money to and from overseas.

Q3. To what extent are Customer Due Diligence (CDD) requirements effective in the fight against money laundering?

A3. We do not believe they are focused on appropriate areas of concern.

Q4. To what extent do the record keeping and policy and procedural requirements upon Regulated Firms support their anti-money laundering efforts?

A4. Our members believe it is a case of paying lip service to the regulations by keeping copies of passports and the like. Like we say above, our members deal with small local businesses which have no national or international dimension! HMRC have always had mechanisms to check on abuse of the tax system for domestic traders.

Q5. To what extent do the Regulations provide Supervisors with appropriate compliance monitoring and enforcement powers and penalties to deter non-compliance?

The Regulations are adequate but, in the case of the default Regulator- HMRC they are not being applied. HMRC has 12,000 Accountancy Service Providers (ASPs) registered with them at a cost to the ASPs in excess of £1.1. This is set to rise next year to in excess of £1.5.
We have enquired of HMRC as to how many ASPs they have paid a compliance visit in the last twelve months. They do not have that information, whilst not being surprised we are appalled. Such a major international initiative and HMRC do not have the detail. We have had to request the information under the Freedom of Information Act.

Q6. 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?

A6. We know of very many ASPs, even some of our members, who are not aware of the need to register with a Money Laundering Supervisory Body. The key issue here is “risk basis”. What risk does a dear old lady with a wool shop pose to the fight against international crime through the Money Laundering Regulations? None.

Q7. 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?

As far as they can be but it is a question of scale! Consideration ought to be given to bringing in de-minimis limits/conditions under which it is not required for traders with nominal income and no international aspects to their business, to register under the Money Laundering Regulations.

Q8. How well does HMT engage with you in developing the Regulations and are the requirements of the Regulations clearly communicated?

A8. HMT does not engage with us. We have more members in public practice than the Institute of Chartered Accountants of Scotland and the Institute of Chartered Accountants of Ireland have member firms in public practice within the United Kingdom.

The Cabinet Office guidelines as regards consultation processes are that they should be open and inclusive and that they should not be directed to what might be considered the usually interested parties.

HMT’s initial consultation was directed to the six bodies of accountants incorporated under a royal charter. There was subsequently 14 (fourteen) accountancy bodies listed in the Regulations. There are still a significant number of accountancy bodies, ourselves included, with ASPs engaged in public practice, who are excluded from the Regulations.

In our attempts to engage HMT on the subject of Money Laundering our letters have either gone unanswered or taken up to five months in which to receive a response. As a major force within the accountancy profession we have a right to expect better than that.

When the Regulations were first introduced we got our members to write to their own Members of Parliament objecting to the process. We have numerous copies of letters back via
our members and their M.P.s., from the then Minister of State responsible advising that the Regulations were to be reviewed in 2009 and that we could apply to become a Supervisory Authority at that time. That time has now arrived and, despite what the Minister of State said, we have not been given the opportunity to apply for Supervisory Authority status.

Questions about Guidance

Q9. To what extent does Guidance promote both an effective and proportionate approach to anti-money laundering?

A9. It is our experience that there is little or no Guidance from the default Regulator other than some information hidden away in HMRC’s website. There have not, as far as we are aware, been any regional training seminars, advice days or telephone support services. Had we been given Supervisory Authority status we would have had a training manual, regional training seminars and a Money Laundering examination.

Q10. How clear and consistent is Guidance including whether Guidance is consistent for those sectors where more than one supervisor exists and generally across sectors?

A10. The feedback we have been given, from our members, is that the Guidance available from HMRC, as default advisor is poor and not easy to access.

Q11. In what ways does Guidance assist with a risk-based implementation of Customer Due Diligence (CDD) measures within your sector?

A11. We have no information available to indicate that it does.

Q12. In what ways does Guidance assist and support Regulated Firms’ anti-money laundering policies and procedures?

A12. Our members have indicated that it does not.

Q13. How is Guidance made accessible and are there opportunities to engage in its formulation?

A13. The only Guidance available by HMRC is difficult to find. Our attempts to be included in the Money Laundering process have been rebuffed by HMT.

Questions about Supervision

Q14. To what extent does the supervisory framework support an effective, risk-based anti-money laundering regime and compliance with the Regulations?

A14. We do not believe the current framework supports an effective, risk based and compliance with the Regulations as there is no training or effective support offered by HMRC, the default
regulator to the 12,000 or so ASPs under its control. Further the chartered bodies only have compliance visits to smaller firms of accountants once every six years. We feel this is wholly inadequate as the perpetrators of any misdemeanours will have been long gone by the time a six year compliance visit comes around. Further we feel there ought to be a Certificate in Money Laundering for all persons seeking Regulation for Money Laundering purposes. This would not need to be onerous. It would involve an appropriate study pack with an independently assessed multi choice examination similar to that which prevails in the residential letting market- Certificate in Residential Letting.

Had we been granted supervisory status, at the proper time, we would have introduced a Certificate in Money Laundering, as outlined above; we would have included, in our regional continuing professional education seminars, regular session on money laundering and undertook annual compliance visits to our members for Money Laundering purposes.

Q15. 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?

A15. We have no knowledge of HMRC communicating with or engaging individual ASPs or groups of ASPs they regulate to ensure a sound understanding of their legal duties and responsibilities under the Regulations.

Q16. How do Supervisors ensure a consistent approach to compliance monitoring and enforcement is taken across the anti-money laundering regime?

A16. HMRC, the default regulator, has no information on the number of compliance visits they have made, since the Regulations came into force. As such we are unable to comment.

Q17. To what extent are Supervisors’ monitoring of compliance targeted, proportionate and risk based?

A17. It would appear to us that HMRC does not have any statistics to support how effective their monitoring of compliance is as they are unable to say how many ASPs they have visited.

Q18. How effective and proportionate is the enforcement regime?

A18. We would say, as far as the default Supervisor (HMRC) is concerned that the regime is wholly ineffective. We have no knowledge of any training, support or compliance visits being made by HMRC.

Q19. In what ways could the registration process for Regulated Firms be improved?

A19. Courtesy could be extended to their own professional bodies to have them included as Supervisory Authorities.
Questions about Industry Practice

Q20. Are there barriers to implementing risk-based policies in practice? If so, what are they?

A20. The main barrier, in our view is one of appropriateness. Our members deal primarily with small traders where the risk is minimal.

Q21. 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?

A21. Again it is a matter of scale. In the instances where our members are concerned as to the conduct of a client they have exercised their judgement.

Q22. To what extent do the Regulations support or complement Regulated Firms’ ‘business as usual’?

A22. They do not. It is another, albeit necessary, burden on business.

Q23. Are “fit and proper” tests being conducted in an effective and proportionate manner?

A23. In the absence of a proper, timely compliance visits the answer has to be no.

Q24. How easy or difficult is it to comply with reporting and record keeping obligations?

A24. It is perceived as an additional, albeit necessary burden.

Q25. What forms of communication and engagement take place with stakeholders, from government agencies through to customers?

A25. We have been specifically excluded from the regime by HMT and misled as to our likely inclusion so cannot comment. Our members have had little or no communication from the default regulator- HMRC.

Questions about the Customer Experience

Q26. How proportionate do you believe the Regulations appear once they reach the customer?

A26. They are not proportionate in the context of micro businesses. They are perceived as an additional burden on business.

Q27. Are you able to provide customers with access to information and resources to check what information is needed from them and why?

A27. We have no direct contact with “the customer” so feel unable to comment.
Questions about the Regime

Q28 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?

A28. As we are unaware of the relevant crime statistics we are unable to comment as to effectiveness of the Money Laundering procedures. Further as we have been excluded from the Regime we also feel unable to comment.

Q29. 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?

A29. They may well be an appropriate response for larger businesses but not so for micro businesses.

Q30. Would you say that all relevant stakeholders are able to participate in the development of the Regime?

A30. No. We have been specifically excluded by HMT from all matters relating to Money Laundering.

K.H.
4.12.09
Review of the Money Laundering Regulations 2007
Financial Crime Team, HM Treasury
1 Horse Guards Road
LONDON
SW1A 2HW

10th December 2009

Dear Sirs,

Review of the Money Laundering Regulations 2007
1. Aviva plc is pleased for the opportunity to provide feedback to HMT on their post implementation review of the Money Laundering Regulations 2007. Overall, we are comfortable with the Regulations and the resultant JMLSG Guidance, however we have made some observations and recommendations which are intended to enhance the overall effectiveness of the regime. In respect of the regulations we have made a couple of specific recommendations where we would welcome clarification.

Customer Due Diligence
2 The implementation of a risk based approach to customer due diligence is welcomed within the insurance sector. As to whether there has been any benefit in the reduction of money laundering, we believe that this is yet to be conclusively determined. Those that seek to use the insurance sector to launder funds through the insurance sector in most cases will have already accessed the financial sector via the banking sector. The CDD regime does assist in the prevention of fraud.

Regulations:
3 We would propose the following minor amendments be made to the Regulations:-
3.1 Section 6 to be referenced to 5(b) to show the relationship of “identifying” and “verifying” beneficial owners.
3.2 13(1) states that simplified due diligence may be applied where 7.1(d) applies; however, as 7.1(d) relates to cases where the veracity of information are doubted, this reference to 7.1(d) should be removed.
3.3 13(7) (a) and (b) would benefit from adding ‘and’ or ‘or’ at the end of (a) and (b); it is noted these are also omitted from the relevant section in the 3rd EU Directive. There should be an ‘or’ after (a),
but clarification is required as to whether there should be an ‘and’ after ‘b’, which would reflect the previous ML regulations.

3.4 Schedule 2, Section 3(d)(i) does not accurately reflect Regulation 13(7)a. Regulation 13 refers only to life insurance in relation to the €1,000 and €2,500 limits, whilst Schedule 2 refers to insurance policies or savings products of a similar nature, in relation to the same thresholds.

4 We are conscious that whilst the UK diligently embraced the requirements of the 3rd EU Directive within the revised ML Regulations in 2007, some member states within the EU have been much slower to respond. This has created disparity in the approach to money laundering prevention across the EU and the effort being made by different countries. As a company we are pleased with the level of engagement with HMT throughout the consultation and implementation period and felt that our views and opinions were taken into consideration.

Guidance:

5. The JMLSG Guidance Notes are very helpful in providing a consistent interpretation of the Regulations, albeit that the risk based approach allows scope for potential differences in due diligence requirements across product providers. However, the guidance is becoming more prescriptive and the latest copies of part 1 and 2 contain 379 instances of the word ‘must’ and leave little scope for interpretation. There is concern that the proposed addition of a third manual covering sanctions and proliferation financing etc, will further stretch the ML requirements within companies. It appears that guidance notes are now being required to combat all forms of financial crime and it should be explicitly recognised that the AML regime is now far wider and goes far deeper than a few years ago.

Sanctions

6. Aviva has implemented an automated screening solution to ensure any possible match with subjects named on Sanctions lists is effectively identified. However, the limited personal data provided for some subjects create difficulty in assessing potential matches and forming a valued judgment and can result in false matches being referred to HMT. Any steps that can be taken to improve the quality of the data supplied on the Sanctions lists would be welcomed in this respect.

6.1 Regulation 9(3) allows for due diligence on new clients to be completed during the establishment of a business relationship, not necessarily before, where there exists no risk of money laundering or terrorist financing occurring. In addition, Regulation 9(4) recognises that beneficiaries under a life insurance policy need not have their identification verified before payout. These regulations are considered appropriate and consistent with a risk based regime. However, the UK Sanctions legislation requires screening to be completed prior to any products or services being provided and is therefore in conflict with the Regulations in this respect. Whilst it is acknowledged that HMT
adopts a pragmatic, consultative approach in this regard, we are concerned the FSA expect literal application of the letter of the Regulations. Aviva's (and others) business model involves significant levels of introduced business, therefore screening prior to the provision of products or services to a client is not practical, but Aviva considers the significant "best efforts" we have in place adequately manage Sanctions requirements (and PEPs, see point 7). We would welcome acknowledgement from the FSA that they endorse the pragmatic approach industry is taking in screening at the earliest possible stage of conducting business.

Politically Exposed Persons

7. We find the provisions for a risk based approach to screening for Politically Exposed Persons helpful, although Aviva, like a number of other large insurers, have decided to screen all clients, both domestic and as non-domestic. However, in order to screen effectively and efficiently requires significant financial investment in systems and data and the actual number of PEPs identified have been very low. We support the current position of firms being able to implement a risk based approach to PEP's.

Supervision:

8 A large financial institution such as Aviva has a significant level of interaction and engagement with the FSA. Overall, we consider that there is satisfactory communication between us and the FSA on this subject. The use of Final Notices issued by the FSA has become increasingly based on breaches of the Senior Management Systems and Controls Sourcebook (SYSC). The FSA have clearly stated their expectation that such publications become learning documents for regulated firms and that their recommendations are to be considered "best practice". Furthermore the FSA have used thematic reviews as another method of introducing 'best practice', such as their paper on complying with economic sanctions in April 2009. It would be beneficial if the industry were consulted prior to the publication of such documents, as occurs with the ML Regulations and Guidance Notes.

Industry Practice:

9 Section 17 of the Regulations states that reliance can be placed on due diligence performed by other regulated entities, but the relying party remains liable for any failures in such due diligence by the entity being relied upon. The JMLSG Guidance 5.6.13 details assurance measures that should be undertaken of entities to justify reliance being placed on that entity, but some firms are reluctant to rely on other regulated entities due to their ultimate liability for any failings, as detailed in 17.1(b) and to undertake the additional monitoring of other regulated entities required for this purpose.
Customer Experience:

10 The lack of reliance being placed on due diligence undertaken by other regulated entities, e.g. IFAs and retail banks, is causing unnecessary duplication of effort for our customers.

11 The 2007 regulations were welcomed by Aviva and have made the overall regime more proportionate and risk based. We still consider that the regime could be more effective with greater focus and targeting on the key objectives as determined by either SOCA or the UK government. In comparison to other EU countries the UK report a disproportionately higher number of Suspicious Activity Reports, than other member states and whilst there have been improvements in the reporting regime, consent and feedback from SOCA still require enhancement.

Should you require clarification on these issues please contact me to discuss.

Yours sincerely,

John Flynn
Head of Group Financial Crime
HM Treasury

Review of the ML Regulations 2007

A Call for Evidence (Part A)

This response has been provided by Baker Tilly, a mid-tier accountancy firm.

Scope and the Risk-based approach

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

The risk basis appears to us to be in two parts: the initial assessment of risk and the response (CDD) to that risk assessment. In our view, the regulations address the first part better than the second. We will elaborate on this theme in some of our answers below.

CDD requirements

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

The question assumes a clear link between CDD and the threat from ML that may not wholly exist. Major parts of the regulated sector have been subject to CDD in some form or other since 1994, yet no clear evidence has been offered to firms to support the requirement for an onerous paper trail in the prevention and detection of money laundering. In our own experience, the reports we have made to SOCA have had very little to do with our CDD processes and almost everything to do with our knowledge of the client gained through offering our professional services.

However, we do accept the need to check customers for presence on HM Treasury sanctions lists. Most firms in our sector subscribe to one or other of the commercially-available databases that exist to check not only UK sanctions lists but those of other territories, such as the US, and also facilitate the identification of a PEP or other negative associations that would influence the risk assessment. This part of CDD, therefore, enables firms in the regulated sector to take not only a commercial view of their clients but also one that is informed by the assessment of the specific ML and TF risks.

Simplified due diligence

The cases where SDD is permitted are appropriate but do not, in our view, go far enough. We feel it would be sensible to permit the application of SDD to the regulated sector itself such that, say, a law firm engaging to offer legal advice to an accountancy firm would be able to apply SDD to the accountancy firm, as it is composed of members (or affiliates) of a professional body that supervises it for ML purposes.
Reliance

Reliance on relevant persons is, generally, not practicable in our sector. The due diligence we should have to carry out on any firm on which we sought to rely would negate any benefit to us. Whilst the MLR do allow us to rely on EU and FATF members having equivalence status, we know that some of the countries listed (such as France, Ireland, Mexico and Switzerland) have regimes that fall well below what is expected in the UK.

In addition, every firm adopts policies and procedures that are risk-sensitive according to its own products, services and clients and the extent and quality of CDD documents that different institutions obtain will vary accordingly; add to this the fact that some firms still rely on a pre-2004 (or even pre-1994) client relationship, an exemption that cannot be transferred to another party. When seeking to rely on certified copies provided by other firms in the regulated sector, therefore, we not infrequently have to seek additional evidence to meet our own CDD requirements.

In most circumstances it is more straightforward for us to carry out the entire CDD process ourselves, as each “relevant person remains liable for any failure to apply such measures” (article 17 MLR 2007). The reliance provision is, therefore, of no particular help.

Enhanced due diligence

Curiously, neither the Regulations nor the guidance give much help as to what this means (or why it is necessary). MLROs are left to determine exactly what constitutes EDD in their firm.

In our view, the EDD measures to manage PEPs are, in most cases, neither necessary nor appropriate in our sector. In countries where corruption and bribery are endemic it is not just those with political power who are likely to be targeted. We have recently made a report to SOCA where bribery in India - not necessary a territory where the ML might be thought to be high – is so “normal” that a queried item in the accounts of a company, the subject of a due diligence assignment, was simply explained as bribery in an email. The sender, the director of a small company, was not a PEP and, so far as we could ascertain, neither were the recipients of the bribes.

In any event, even if EDD were considered to be necessary for a PEP, the measures prescribed by the regulations are sometimes (a) difficult to apply and (b) hard to justify in our sector. Why is knowing the “source of funds” important for the son of a Middle Eastern royal who is studying in London and has asked for help with his taxation affairs? Does having a copy of his driving licence as well as his passport address a ML risk?

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

In our view, they have very little effect; as stated above, we see no clear connection between the two, other than in the checking of sanctions lists. It is, rather, the reporting regime that has been effective in the fight against money laundering. However, we are at a loss to estimate the extent of this effectiveness.
The firm has reported numerous cases of fraud, theft, tax evasion and other criminal proceeds as a result of professional engagements the firm has carried out. These reports should have benefited a number of Government agencies including the police, HMRC, DWP and DBIS. It would be useful to know how the intelligence we provide to SOCA is used to uphold the Government’s agenda of deterring, detecting and disrupting crime. We should like to invite SOCA to update us on cases that have resulted in asset recovery, as this would enable us to evaluate our efforts in following the reporting regime. The (anonymised) examples could also be useful when training staff.

A perverse result that might arise in relation to CDD is that procedures could be modified when “the going gets tough”. So although CDD in the UK business environment is exceptionally straightforward, with access to Companies House data and a range of other media to add the verification process, as soon as a corporate structure involves overseas entities that are more difficult to verify, the tendency could be to stop short of actually verifying beneficial ownership. Regulated firms could justify this approach by saying that they had applied a risk-based approach. If CDD is considered to be an essential part of the regime (with which we take some issue, as expressed elsewhere in this response) this result is unlikely to be viewed as effective in the fight against ML.

Record Keeping and Policies and Procedures

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

In general, firms in the regulated sector are subject to record-keeping requirements imposed by their regulators, such as FSA, ICAEW, Law Society etc. The effect of the MLR 2007 and predecessor regulations was, therefore, negligible to most firms other than in specifying some further records that now had to be kept.

As we have made clear above, our position is that much of the CDD we carry out may not add much to the fight against ML, so it is difficult to view the requirement to obtain and retain a paper trail of copy passports etc. as a support in anti-money laundering efforts.

However, the requirement to make SARs must be seen as a positive move in anti-ML. To that extent, the requirement on firms to have policies and procedures for reporting do support their AML efforts.

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?

Out of the range of Supervisors that exists, the FSA seems to be that most disposed to impose sanctions for AML/TF non-compliance. The Regulations confer upon FSA
(together with HMRC and a few other supervisors) powers of compulsion that appear not to be explicit for supervisors such as those for the accountancy and law sectors, who derive their powers of disciplinary action from their bye-laws (or similar).

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?

On the whole, the Regulations appear not to provide for anything additional in relation to firms such as ours already subject to the scrutiny of a number of regulators. Our ML supervisor is ICAEW and we are not aware that it has imposed any additional requirements as a result of the regulations, because it already requires an annual “fit and proper” declaration from each member and we have, for years, extrapolated that to extend to all partners and staff. We imagine that the same is true for other accountancy firms.

In the FSA-regulated sector the same applies, in that fit and proper tests are a prerequisite of authorisation. It is likely, therefore, that only the estate agents, high value dealers and casinos, not being subject to other regulatory scrutiny, have been brought within this particular fold solely because of the Regulations.

Compatibility

7. Are the requirements of the MLR 2007 compatible with and complementary to the requirements of a) other aspects of the UK’s AML regime/legislation and b) international standards and practices?

**UK regime**

The emphasis of Part 7 Money laundering of POCA 2002 is, for regulated firms on the reporting requirements. The focus of the various supervisors and other agencies with an interest in ML is the reporting regime. Therefore there is a possible, or at least perceived, disconnect between these and the MLR 2007, whose main thrust seems to be primarily the CDD - and only mentions briefly the reporting regime.

**International standards**

The MLR 2007 were enforced as a direct result of the Third EU Money Laundering Directive, which attempted to harmonise the ML regime across the EU member states. There is, arguably, a perception in the UK that the UK regime is superior in its application of the Directive when compared with the regimes in other member states. We do not have the experience or knowledge of other regimes to be able to evaluate this.

Communication and Engagement

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

This firm’s only direct engagement with HMT is its subscription to AML notifications, which provide notices on financial sanctions and measures in relation to
TF and ML. These notices are of limited value given that we also purchase a licence for commercially available software with which we screen our potential and existing clients. We have no other direct engagement with HMT.

However, HMT does engage directly with our professional body, ICAEW, through the CCAB, and we understand a certain amount of two-way communication does take place. Our sectoral guidance is issued by the CCAB and is approved by HMT.

Role and Use of Guidance

9. To what extent does Guidance promote both an effective and proportionate approach to AML?

In terms of effectiveness, no guidance can be comprehensive enough to cater for the every eventuality we will face and indeed the guidance we consult most frequently, that issued by CCAB and JMLSG, deals in the main with the more common situations, offering little help in interpreting the requirements when faced with opaque vehicles such as Liechtenstein foundations, complex overseas corporate structures and companies established in jurisdictions such as the BVI or Delaware. Here the MLRO is left to interpret the requirements in a way that will enable his firm to accept or decline the business as appropriate.

The guidance from CCAB is, however, more useful to us as it takes into consideration the appointments accountancy firms are likely to deal with, such as the impracticality of obtaining verification of identity documents in hostile insolvency appointments. Since most of the other guidance is very banking-focused and FSA-centric, the CCAB guidance is a helpful, practical interpretation of the MLR 2007 for accountancy firms.

The difficulty facing firms in the regulated sector is to define what a risk-based regime involves in practice. Sectoral guidance, such as that issued by JMLSG or professional bodies such as CCAB, does little to clarify. Two years on, firms are still trying to grapple with what this means.

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

We believe that the CCAB took into consideration the JMLSG guidance when formulating its own guidance, in an effort not to impose divergent standards, particularly for member firms of CCAB bodies with exposure to FSA regulation who might have found themselves having to adhere to differing sets of procedures.

We also understand that, prior to the 2003 Regulations coming into effect, there were talks between CCAB and JMLSG with a view to making JMLSG’s guidance available to CCAB member firms. That was not considered by JMLSG to be a satisfactory solution, so the CCAB developed its own guidance.

Our main cross-sectoral experience results from asking other firms in the regulated sector, notably banks, to assist us in the CDD process for mutual clients. As the
verification documents advanced do not always meet our requirements, we must conclude either that there is inconsistency in guidance or in its application.

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

The guidance assists only partially. On the one hand, the CCAB guidance has helped us to formulate a series of questions that will enable partners and staff in the firm to assess the ML and TF risk in any potential assignment. The guidance, in other words, sets us on the path that will lead to risk-based CDD.

On the other hand, as expressed above, the actual guidance on how to carry out CDD is in places rather “thin” and the MLRO is left to walk down the CDD path with some uncertainty, particularly where EDD applies.

12. In what ways does Guidance assist and support Regulated Firms’ AML policies and procedures?

The guidance is designed rather to inform than to support a firm’s AML policies and procedures, as each firm has bespoke policies and procedures that are applicable to the sensitivities of the firm and its business. Although the guidance offers a risk-based interpretation of the regulations, rather than prescriptive instructions, some firms preferred the more prescriptive era. At least they could feel that the playing field was level, whereas now there is always the worry that one is asking either too much or too little when compared with other firms. No firm would wish to secure competitive advantage through (perceived) non-compliance with the regulations.

Communication and Engagement

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

The CCAB guidance is readily available in printed from and online. We were not aware of an invitation to assist in its formulation and imagine that the team responsible for the 2004 guidance was probably involved in updating it. We would welcome an opportunity to assist in future.

Supervisory Structure

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

Our only experience of supervision is that of ICAEW, which is fully supportive of our procedures and their application.
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?

Again, our only experience of supervision is that of ICAEW, which is fully supportive of our procedures and their application.

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

We do not feel able to answer this question.

Monitoring Compliance and Enforcement

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

We do not feel able to answer this question.

18. How effective and proportionate is the enforcement regime?

We are not aware of any enforcement action by ICAEW in relation to ML. The FSA appears to operate an effective enforcement regime.

Registration

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

We do not feel able to answer this question.

Risk-based Approach

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

There are barriers. Although the MLRO may be an expert in his field, client-facing engagement teams have to comply with a multiplicity of regulations and procedures of which AML is merely one facet. Therefore MLROs will tend to be prescriptive in order to avoid client-facing staff having to make judgements about how to carry out CDD.

The effect is that the regime is risk-based only insofar as the ML and TF risks are considered in the context of a new engagement. There is very little scope to apply risk-sensitive measures to the actual verification process. It is possible that a firm’s CDD might be less than robust were staff allowed discretion in whether or not to carry out verification checks.
21. During the process of CDD, how are risks (in terms of likelihood and impact) taken into account to decide the type of due diligence that will be undertaken?

As above (see our answer at question 11), in line with the CCAB guidance we have formulated a risk questionnaire that leads to a ML/TF risk assessment. The CDD that is then required follows what guidance there is, incorporating any prescriptions of the ML Regulations 2007 (e.g. that Enhanced Due Diligence be carried out for a PEP).

Relationship with Business as Usual

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

They are a barrier, but we have learned to live with them. We sometimes have to decline business where the cost of the CDD will be so high that we cannot charge a commercial fee. The Regulations cause huge additional cost which sometimes cannot be recouped from the client. For example, in an insolvency where the corporate structure is opaque and takes a lot of unravelling, we have been known to incur work in progress costs of £2,000 or more on CDD. The Insolvency Practitioner has a duty as appointment holder to maximise the return to creditors. He may find it difficult to reconcile his obligations under insolvency law with those under the ML regulations.

A specific carve-out for certain insolvency appointments would be much welcomed within the accountancy profession and we recommend further involvement of the insolvency licensing bodies in this area.

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

We do not feel able to answer this question.

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

Reporting via SAR Online has undoubtedly made the reporting regime a great deal simpler. It does have drawbacks, notably the lack of functionality to attach supporting documents and the general “clunkiness” of the site. It has been improved, with the site “falling over” less frequently than before, but is still slow to use and, being so bank-orientated, unintuitive for accountancy firms.

As above in our answer to question 4 above, we do not feel the MLR 2007 imposed any additional requirements; compliance is not difficult.

Communication and Engagement

25. What forms of communication and engagement take place with stakeholders, from government agencies through to customers?
Arguably, too many. It is difficult for the MLRO to feel he is abreast of all developments when so many different agencies and regulators are involved; much is learned through attendance at peer group meetings, conferences, seminars and the like. There should, in an ideal world, be one primary source of information for each firm in the regulated sector, be it HM Treasury, the firm’s supervisor or some other body.

Proportionate Experience on the Ground

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

We believe that most UK customers see the requirements of the Regulations as a necessary evil, in that they are obliged to identify themselves at every contact with a firm in the regulated sector, but accept that that is the world we live in. We are aided in this by being able to access, in an unintrusive way, high quality information from Companies House and, subject to Data Protection requirements, through our subscriptions to electronic systems.

To clients based outside the UK, or those in the UK who fail the electronic checks, our procedures seem intrusive and onerous and we have to be very firm in obtaining the information and documentation we seek. Therefore we think that many of our customers would assess the Regulations as disproportionate.

Information and Engagement

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

This question appears to be directed more at banks who will deal with, primarily, accounts for UK individuals and UK limited companies. Banks also have the benefit of an application form where such information can be supplied and where they may seek consent for electronic checks to be carried out. We do not produce any such material on a standalone basis.

Effectiveness, Proportionality and Engagement

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 ML?

We believe we have made our views plain above: the CDD regime is costly, time-consuming and sometimes unnecessarily intrusive yet appears, at least in our sector, to support in only a very limited way the Government’s agenda of deterring, detecting and disrupting crime. Arguably, were the banks, being the effective gatekeepers to the financial world, required to comply with the requirements wholeheartedly, it should not be necessary for the other regulated entities to duplicate those checks. Instead, we
are all scurrying around pursuing a paper trial whose point we find it difficult to appreciate.

Conversely, bringing accountants, lawyers and other non-FSA-regulated entities into the regulated sector for the purposes of making SARs has to be seen as a good move. As above, however, we should like to know how our reports have helped.

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 ML in the UK?

We believe our answer to Question 28 addresses this: we think CDD should, properly, be carried out by the banks but we need continued engagement in the reporting regime.

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

In reality we doubt that this is so: not all firms in the regulated sector are aware of opportunities to become involved. In particular we are unaware of the end user, i.e. the customer, having his views sought. This means not only individuals but corporate entities, unincorporated businesses, trusts, charities etc.
Review of the Money Laundering Regulations 2007 - A call for evidence

Response of the Bar Standards Board

Introduction

1. The Bar Standards Board (BSB) welcomes the opportunity to respond to the call for evidence on the review of the Money Laundering Regulations 2007 (MLR). The BSB is the independent regulator of barristers in England & Wales.

2. Given the nature of the work of barristers and the ruling in Bowman v Fels [2005] EWCA Civ.226, the MLRs bite on only a relatively small number of areas of practice. Since barristers in self-employed practice (the principal category of practising barristers in England and Wales) are not permitted to undertake the management or conduct of their clients' affairs or handle client money (see paragraphs 401(b)(i) and 307(f) of the Bar's Code of Conduct) they will not fall within the definition of 'independent legal professional' under the Regulations. It follows therefore that it is only barristers in self-employed practice who 'assist in the planning and execution' of the types of transaction listed in Regulation 3(9)(a) and (e) who will be caught, namely, those barristers who are asked to advise (at the planning or execution stage) in transactions which involve either:

   i. The buying or selling of real property/business entities
   ii. The creation, operation or management of trusts, companies or similar structures.

3. In practice this means that only a relatively small number of barristers, primarily members of the Chancery or Commercial Bar involved in non-contentious advisory work, will fall within the ambit of the Regulations.

4. Given the limited reach of the Regulations to practise at the Bar, the Bar Standards Board, which has responsibility for monitoring Chambers, has introduced a proportionate approach to such monitoring which reflects the low risk nature of the Bar in money laundering terms.

5. In the light of the above background, not all of the questions raised in the call for evidence are relevant to the Bar. This response therefore only focuses on those
where the Bar Standards Board has any views or is in a position to comment. The responses are also limited to the BSB’s perspectives on the questions rather than a more general view across all sectors. The BSB is not in a position to comment on how the Regulations and the money laundering regime have impacted outside of the Bar.

6. Dealing with each question in turn:

Q1 – 4

7. No comments

Q5

8. The Regulations are adequate to provide the BSB with the monitoring powers it requires.

Q6 and 7

9. No comments

Q8

10. Engagement with HMT is sufficient for the BSB’s purposes.

Q9

11. The guidance issued by the Bar Council, complemented by targeted guidance issued by the Specialist Bar Associations, encourages and promotes compliance with the Regulations.

Q10

12. No comments

Q11
13. Bar Council guidance includes advice on how to comply with the CDD requirements.

Q12

14. No comments

Q13

15. Bar Council guidance appears on the Bar Council and BSB websites and was sent to all Chambers, Circuits and Specialist Bar Associations.

Q14

16. Insofar as there is risk at the Bar, in relation to offences of the Regulations, the combination of BSB supervision arrangements and Bar Council guidance supports an effective anti-money laundering regime and compliance with the Regulations.

Q15

17. There are no 'firms' within the regulatory remit of the BSB. Chambers however are provided with the guidance on the Regulations and have been advised of the supervisory arrangements that the BSB has adopted.

Q16

18. The question's purpose is not entirely clear. The BSB adopts the same approach to compliance monitoring for all Chambers. Consistency of approach is therefore achieved. Given the particular nature of work at the Bar, we have had no contact, or need for contact, with any other supervisor in relation to any specific money laundering issue. We do however speak with the Law Society etc on a more general basis as required.
19. Supervision is proportionate and risk based. The Bar is low risk in terms of exposure to matters that come within the remit of the Money Laundering Regulations. The monitoring regime has therefore been designed accordingly with a view to identifying those Chambers where risk of non-compliance is greatest. These Chambers will then be targeted for follow up action or supervision as required.

Q18

20. The BSB has had no exposure to the enforcement regime and therefore has no comments.

Q19 – 27

21. No comments

Q28

22. In the BSB’s experience, and in the context of the Bar, the Regulations, guidance and supervisory framework provide an adequate means of fighting against money laundering. We have no means of knowing whether the same can be said for other sectors.

Q29

23. The BSB believes that the flexibility provided by the Regulations for each sector to develop their own supervisory and guidance arrangements ensures that a proportionate approach can be taken to the risk of money laundering. Again, this view is limited to the context of the Bar, we are not in a position to comment more widely.

Q30

24. No comments

Statistical information requested
25. The BSB regulates all barristers. There are approximately 12,500 self-employed barristers and 3,000 employed barristers, 450 sets of Chambers and 370 sole practitioners. Employed barristers tend to be monitored for money laundering purposes by other supervisors. For example, an employed barrister working in a solicitor's office would be supervised by the SRA and would rely on the guidance of the Law Society.

26. 15 sets of Chambers were visited this year in relation to general compliance monitoring.

27. No disciplinary sanctions in respect of money laundering have been made.

Bar Standards Board
December 2009
Whilst not holding a casino licence in the UK, Betfair does so in Malta, forming part of the regulated sector within that jurisdiction and is subject to regulations flowing from the EU Money Laundering Directive. Although other products which are licenced in the UK are not within the regulated sector in respect of the Money Laundering Regulations 2007, as will be apparent from this document it can be difficult to differentiate customers from products (regulated or non-regulated) and therefore we have taken a close interest in the issues that you are currently addressing.

As pointed out in the document 'A call for evidence' it is not necessary to respond to all questions and with this in mind Betfair has focused on questions about the Regulations to provide a response based on our experience and the principle that a regime should be devised specific to the online gaming sector. Historically, the anti-money laundering regulations have been designed with the main aim of addressing the financial services sector with various designated non financial businesses and professions (DNFBPs) being added over time but still focusing on terrestrial businesses (services). Betfair is strongly of the opinion that while the current Regulations provide a firm basis they do not adequately reflect the realities of the international online gambling market i.e. betting and gaming.

QUESTIONS ABOUT THE REGULATIONS

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

In respect of the 'regulated' part of gaming (i.e. land based casinos/internet casinos) there is little that is risk based.

Firstly there is a threshold of €2,000 at which customer due diligence must be conducted; this is also on a cumulative basis and therefore does not allow for other risk or mitigating circumstances to be considered. Secondly internet based products, which are non face to face, by strict definition of the Money Laundering Regulations require enhanced due diligence. Again, there may be other risk based mitigating factors that reduce the need to automatically refer to enhanced due diligence.
Online gambling accounts may be provided in various currencies. Purely by having a threshold of this kind the actual value can fluctuate significantly over time and therefore makes no economic sense. For example

01/09/2007 €2000 = GBP 1,360

01/09/2009 €2000 = GBP 1,770

Equally working on what is effectively a non risk-based threshold for an internet based business clearly does not take into account that internet business is different from terrestrial business. €2,000 (or equivalent) will hold different 'value' across the world; this amount would hold significantly more 'value' in Lithuania, for example, compared to the UK. Additionally, other factors should be taken into account such as the risk the country of customer residence poses (e.g. Equivalent Country Status or Transparency International Rating), the payment methods used and ability to impose 'closed loop' rules.

Also worth noting is the fact that funds deposited with an internet based gambling business are generally not exclusively used for casino products. In most cases they will also be used for products not within jurisdiction of the Money Laundering Regulations, from a central wallet. How the funds are managed and moved to the casino product should be taken into consideration.

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?

Enhanced Due Diligence - Regulation 14(2) states

(2) Where the customer has not been physically present for identification purposes, a relevant person must take specific and adequate measures to compensate for the higher risk, for example, by applying one or more of the following measures—

(a) ensuring that the customer's identity is established by additional documents, data or information;
(b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or financial institution which is subject to the money laundering directive;
(c) ensuring that the first payment is carried out through an account opened in the customer's name with a credit institution.

For the reasons stated under Question 1 above, Regulation 14 is not proportionate in relation to a purely internet environment. The starting point of enhanced due diligence is neither risk based nor a practical solution; it does not take into account any of the points articulated above in that there are other risk based factors that may mitigate the risk and need for enhanced due diligence; equally those same factors may advance the need to undertake enhanced due diligence. Such factors may include customer, geographical, product, financial or activity risks.
3. To what extent are Customer Due Diligence (CDD) requirements effective in the fight against money laundering?

Again as stated above, the CDD requirements as set out in the Money Laundering Regulations are based purely on the terrestrial environment and do not take account of the expanding internet environment. To be required to complete due diligence purely on the basis of a certain threshold is reached is neither practical, effective nor a deterrent in this environment.

UK privacy legislation allows for ‘independent third party’ electronic due diligence to be undertaken virtually instantaneously. However, should further verification be required it is rarely possible to discharge this effectively whilst the customer is in the internet casino i.e. the requirement of enhanced due diligence for non face to face business. Obtaining additional customer information can be a more prolonged process interrupting the customer experience, creating frustration and having a detrimental commercial impact on the business. Equally, the internet environment attracts customers globally. Due to privacy legislation outside the UK, the ability to meet due diligence requirements through ‘independent third party’ checks differ greatly and fails to be an effective tool at the time the customer is in the internet casino.

The only option in this instance is to end that customer’s internet access to the casino for that ‘day’. Theoretically the same customer can return to the internet casino the following day and start again until the threshold is reached.

Taking the benefits of customer due diligence under the present regime further in respect of beneficial ownership, the resources required to ensure that this effective are disproportionate. Often information held by other institutions (invariably financial institutions) that would reduce this burden is not shared with gambling operators under any circumstances. This highlights the fact the regulated businesses are working in isolation. There is no coordinated approach which again highlights an inefficient and ineffective regime.

Reliance does not work outside the domain of financial institutions if it works at all. Regulation 17 provides for reliance on a restricted group, mainly focusing on financial institutions and ignores the comprehensive and diligently acquired information, properly obtained by other regulated sectors. Financial institutions will not consider properly sharing information within the context of Regulation 17 if this is purely ‘one way traffic’.

The 3rd European Directive does not apply the same restriction of Regulation 17.

If the ‘lack of trust’ barrier that currently exists between regulated businesses be overcome the Money Laundering Regulations need to be changed to make reliance or the exchange of due diligence information a ‘two way’ process of mutual exchange. This would provide a cornerstone in making the Money Laundering Regulations effective in respect of customer due diligence reducing the risk of the money launderer or a terrorist financier, exploiting sectors which are operating in silos.
4. To what extent do the record keeping and policy and procedural requirements upon Regulated Firms support their anti-money laundering efforts?

Betfair does not have any issues with the 5 year time limit being the minimum requirement for keeping customer and transactional records. However, it should be noted that this is not a consistent time period globally. Therefore it is necessary to work to the most demanding requirement (as is consistent with our approach), in Betfair’s case Australia, a jurisdiction in which Betfair is also licenced, where the requirement is 7 years.

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

Betfair does not have any issues regarding this topic.

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?

Betfair does not have any issues regarding this topic.

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

Generally the Money Laundering Regulations are compatible with and complimentary to UK primary money laundering and terrorist financing legislation. At Betfair there have been no issues with this within the UK.

Internationally some issues are raised; primarily the requirement to report to the national Financial Intelligence Unit suspicion of money laundering concerning non UK registered accounts. Accepting that customer funds enter the UK financial system Betfair is happy to report to the Serious & Organised Crime Agency (SOCA) suspicion concerning non UK registered customers, but there is little evidence that any such reports are put to useful purpose. Whilst SOCA provides reassurance that such reports are valid and important, there are numerous jurisdictional issues that are not compatible with the internet environment.

For example, Betfair may identify the passing of funds via a peer to peer product between a customer from country A to a customer from country B (both outside the UK). Following further investigation Betfair may have suspicion that such passing of funds may constitute money laundering and submit a SAR to SOCA. There is concern that jurisdictional issues prevent proactive and meaningful investigation of such a report.
8. How well does HMT engage with you in developing the Regulations and are the requirements of the Regulations clearly communicated?

This is the first time the internet based section of the gaming industry or wider ‘remote gaming’ has had an input to HMT and Betfair welcomes the opportunity provided.

Whether or not the UK Money Laundering Regulations include just internet casinos as a regulated business or widen it to include ‘remote all gambling’ i.e. to include betting the unique requirements of internet based products needs to be addressed.

HMT need to recognise the difference between terrestrial businesses and internet businesses and consult with those who are engaged in the latter.
18 December 2009

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

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

Dear Sirs,

Review of the Money Laundering Regulations 2007

The BBA is the leading association for the UK banking and financial services sector, speaking for 223 banking members from 60 countries on the full range of UK or international banking issues and engaging with 37 associated professional firms. Collectively providing the full range of services, our member banks make up the world’s largest international banking centre, operating some 150 million accounts and contributing £50 billion annually to the UK economy.

We are pleased to be able to provide you with our members’ views on this review of the Money Laundering Regulations 2007. Clearly the banking sector is the most actively affected financial sector in relation to money laundering issues and our members are by far the largest contributors of reports in submitting around 85% of the total number of suspicious activity reports ("SARs"). We hope therefore that our response will be given due consideration in the light of the profile of our members in this area.

We have some general points that we would like to highlight and these are summarized below. Our responses to the questions raised in your review are in the attached annex.

General comments:

1. Financial crime requirements on banks
2. UK authorities’ approach to implementation
3. Dialogue with UK authorities

1. Financial crime requirements on banks

We appreciate that HMG has given a large amount of consideration to undertaking this review of the Money Laundering Regulations 2007 and much thought has been focused on the detail of the anti-money laundering ("AML") regime. Our member banks note that there are huge costs in relation to complying with AML requirements and that because the scope
of financial crime work has broadened considerably in recent years, they generally look to manage various financial crime risks within one framework and with integrated monitoring systems. For example, a typical financial crime team in a bank is expected to manage the risk not only from physical attacks, fraud and money laundering, but terrorist financing, tax evasion, sanctions, proliferation financing, export controls, bribery and corruption, corrupt PEPs, market abuse, cybercrime, data security, mass marketing scams, boiler rooms, animal rights extremism, child pornography, child maintenance, and the provision of safe custody services.

This means that it is very difficult to disaggregate the costs attached purely to complying with AML requirements. The resources of banks in terms of staffing and other costs are wrapped up in the totality of having to comply with all of their financial crime legislative and regulatory obligations. We believe therefore that there is a very real problem that the absence of an objective analysis of the true extent of financial crime and money laundering means that there is no framework within which the appropriateness of legislative and enforcement measures can be evaluated. We do not believe that the steady year on year increase in the number of SARs submitted to the authorities is in itself an indicator of any rising level of actual money laundering. Furthermore we believe that the estimates that are occasionally quoted on the scale and extent of financial crime area little more than informed guesses eg the UK Government’s estimate of £25 billion per annum for monies laundered.

2. **UK authorities approach to implementation**

BBA members have welcomed the adoption of a risk based approach in terms of proportionality and which gives banks some flexibility in targeting their systems and controls where required. It must be recognized that this risk based approach needs a fundamental structure such as the ML Regulations as this enables financial institutions to operationalise their approach, eg by putting in their own policy and standards. As a result of the risk based approach, processes and procedures will vary between institutions and also will vary within a single institution depending on the different risk assessment of different business units.

It is therefore important for HMT and the FSA to recognize that such operational standards are unique to each and every bank. This can cause problems where there are expectations from regulators and supervisors that all firms will adopt the same standards. In terms of the risk based approach, it is important too to recognize that managing this approach can, in practice, be highly complex especially for large internationally active banks.

The UK’s strict implementation of the EU Directives, the all crimes reporting requirements and criminal sanctions for breaches (especially in relation to POCA and the consent regime – see question 7 below) has a detrimental impact on the day to day bank operations in comparison with international counterparts. The resources needed in larger retail banks to manage consent are significant and must not be underestimated.

There is much evidence to indicate that Member States have implemented the EU Directive in different ways, and some have ‘gold plated’ the requirements. Particular difficulties have arisen in relation to information sharing and data protection. This makes it difficult for banks operating in different jurisdictions, and BBA members would find it particularly helpful if HMT could lobby for more harmonization when the European Commission reviews progress on the Directive.

3. **Dialogue with UK authorities**

The BBA recognizes that the purpose and value of the UK AML regime is to provide law enforcement with intelligence about suspected criminal activity. This necessarily involves a degree of circumspection and confidentiality on the part of law enforcement. We recognize
that the provision of information about criminal/terrorist methodologies is particularly sensitive and has the potential to jeopardise existing investigations. However, the UK regime only operates because banks adopt a pragmatic approach in the face of possible criminal/regulatory sanction and we have to say that we feel that the lack of regular and apposite feedback from the authorities supports our view that the burdens imposed by the regime outweigh the benefits.

Of particular concern is the lack of resolution around the POCA consent/fungibility issue—see our comments under Question 7 below—where there are serious and significant deficiencies and issues. It is very disappointing that the authorities have resolutely refused to acknowledge the extent of the problems that banks face on a daily basis in this area.

In conclusion, we hope that our comments are helpful and will inform HM Treasury’s Review. We would, of course, be happy to provide further comment or clarification of any particular point should this be required.

Yours sincerely,

Catriona Shaw
Director Financial Crime
1. **To what extent is the scope of the Regulations and their application to business activity appropriately risk-based?**

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

We have commented in answer to questions 2 and 20 below on some aspects of the requirements on Politically Exposed Persons (PEPs). Banks manage the identification of and their relationship with PEPs in different ways, thus suggesting that the requirements are not sufficiently clear.

We note also that the FSA has recently been keen for industry to provide guidance regarding the provision of safe custody services (though this is now being left to the independents to craft), and the differing interpretations of what might actually constitute such a service. It may therefore be worth enhancing the definition in the Regulations.

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

We believe that the scope is broadly right. We understand that some professional bodies believe that they should not be included within the scope but it is our view that at present the scope is at the right level.

One area of information on frauds and laundering which is not subject to the reporting regime is the credit reference and electronic identification providers which gather information by way of business but do not have to provide the aggregated intelligence to the authorities. If the credit reference agencies were brought within the regulated sector, the quid pro quo might be controlled access is given to Government held information in order to ease the identification burden on firms, eg access to tax information would assist with risk assessment of clients and would provide a very secure method of verifying the client.

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

We note that the term 'anonymous' is not a defined term and we find this a little untidy. If it means that banks cannot open an account for a customer on whom it has not performed CDD, then this is implicit in Regulation 7 anyway. If it means that the customer name must be explicit in the account title, the underlying principle is arguably compromised by almost all non personal accounts, since the people behind the account are not transparent in the title (which is one of the limitations of FATF Special Recommendation VII). If an account is titled ‘J12345’ for example, is that an anonymous account if all necessary due diligence has been
carried out? If your customer who runs a chemist shop which has a business account 'J12345', would it be a breach of the Regulation to entitle the account in that way? In practice, most banks would probably call the account D Lewis T/A J12345. We believe that this is not a major issue, but slightly untidy and lacking in clarity as to what exactly is intended.

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

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

Some of our members believe that non face to face diligence is qualitatively different to other aspects of EDD and complicates the approach by being mixed in with PEPs. There is much routine lowish risk business like credit cards done in this way, as are many situations that can still be dealt with under the JMLSG 'source of funds' concession. EDD for non face to face is usually satisfied by what is generally referred to as the 'anti impersonation check'. The incongruity could be addressed by shifting the requirement to 5(a) – basically the need for suitable precautions in non face to face cases to be adopted when the need arises.

There is a wider point that the whole rationale of EDD is rather muddled: what it should mean is that where situations are potentially high risk – such as PEPs and correspondent banks – some sort of assessment needs to be done to determine whether in the bank’s view, it is actually high risk, and in those cases an obligation should arise to conduct EDD, eg a PEP accessing a low risk product such as execution only retail stockbroking, where no third party payments are allowed still has to be subject to EDD and senior management sign-off. Banks should be able to use their judgement so that the low risk nature of the product does not warrant undertaking EDD – not all PEP relationships are necessarily high risk. This would be particularly relevant if the definition of PEPs were broadened to include domestic PEPs. It is also very relevant to ongoing monitoring.

Whether the definition of Politically Exposed Person (PEP) and the EDD measures required to manage PEP’s risks is appropriate, and compatible with your risk-based procedures. What would be the advantages and disadvantages of extending the risk-based approach to domestic PEPs?

The focus on PEPs as a distinct category of higher risk customer cascades down from government initiatives and the 3rd ML Directive. While it is accepted that corrupt PEPs can cause significant damage to the countries they abuse, in some respects they simply represent another category of high risk customer. Having a PEP specific regulation means a significant amount of time and cost can be incurred on due diligence on legitimate customers.

The scope and definition of PEPs is appropriate. Extending the scope to domestic PEPs would place the UK out of line with European counterparts. We believe that firms should be allowed to adopt a risk based approach in managing domestic PEPs as currently defined. This approach supports the fact that the vast majority relationships held by domestic PEPs are legitimate. It is also worth noting that there is still a need for subjectivity when applying...
the definition of PEP from the Regulations eg in terms of middle/junior ranking officials, so that a degree of judgement needs to be exercised when determining whether an individual should be badged and managed as a PEP. The degree of risk, taking into account the products and services provided would then drive the level of due diligence and ongoing monitoring performed.

It would be helpful if the regulations were more specific and allowed a risk based approach to be taken to exclude the lowest risk products/services.

Our members believe that consideration needs to be given to institutions with multiple presences in different jurisdictions outside of the UK when considering domestic PEPs. A domestic PEP for such institutions will invariably be interpreted in a different context. For the sake of consistency, some banks take the approach of including all PEPs but they vary the level of due diligence undertaken taking into account the nature of the relationship and risks of the jurisdiction from where the PEP originates.

A further issue to consider is the number of practical difficulties that arise if a bank does rigidly classify domestic and foreign PEPs. For example, a Russian oligarch who is now settled and has taken UK residency/citizenship could be classified as domestic and therefore not subject to PEP due diligence requirements. It is prudent to consider the country of association of the PEP in such circumstances, i.e. taking into account where they have undertaken political office etc or other position such as chairman of a state owned entity.

Domestic PEPs are at present outside the scope but many banks choose to categorise them as higher risk. While there are mixed views on the advantages and disadvantages of extending the scope to include domestic PEPs, the overwhelming majority of banks would welcome clarity on how they should be treated. If the PEP definition were to be extended to include domestic PEPs, it is important that firms are allowed to adopt a risk based approach to risk classification.

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

We are interested in your view and evidence about:

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

Where firms are able to introduce risk based CDD requirements, these do assist with the deterrence and detection of ML activities and allow a proportionate approach to be taken.

CDD requirements also assist when tackling fraud, especially at account opening.

In terms of proportionality of CDD, it is relevant to highlight the need to overlay Simplified Due Diligence information requirements with those necessary as a minimum to counter the risk of dealing with a sanctions target, eg by collecting nationality information so that it may not always be possible to perform what might be considered to be pure simplified due diligence form an AML perspective.

From a technical perspective, Simplified Due Diligence can be performed when the
relationship is with a Credit/Financial Institution – Regulation 13 (2) but enhanced due diligence needs to be performed when such a relationship is one of 'correspondent banking' – Regulation 14 (3). Should not Regulation 13(2) therefore cross refer to 14(3)?

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

As with much criminal legislation, it will catch or deter the unsophisticated but probably not deter or capture the professional launderer. The use of nominees is an obvious way around the whole regime, and without being able to cross refer to taxation information, then this will often go undetected. See comment on Credit Reference Agencies (Q1).

With each new typology discovered, the actual need to implement new requirements should be strongly and objectively considered, eg while VAT Carousel fraud is rife, the banks do not hold the answer to stopping this criminal activity – it lies with harmonising VAT levels across the EU and recognising payments between countries. Trade Finance for banks revolves around documentation but recent pushes through FATF and others has sought to make banks responsible for the underlying goods or performances. It used to be the case that countries had customs officers at each port inspecting cargoes. Cost/benefit analysis should be undertaken for any new, or indeed old controls in place.

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

Beneficial ownership and the extent to which it is established is an important concept and one where focus is still required in order to establish a level playing field.

It remains the case that there is no foolproof way of checking beneficial owners (issue of nominees etc), and banks can really only check who, prima facie, they are. Operationally, it is not straightforward to keep track of changes to ownership. As far as reliance is concerned, as it is defined in Regulation 17 it has a role up to a point for intra-Group customer sharing, but very little in the retail/commercial banking environment when it comes to external firms. Certainly there are many hybrid situations where copy records are passed over for a receiving business to include within its overall CDD, but the conditions attached to Regulation 17 are operationally unrealistic for the most part in the banking environment.

With the responsibility/obligations remaining with the entity using reliance, there is little value or comfort in availing of the reliance concession.

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

We are interested in your view and evidence about:

Whether the 5-year time limit and reliance provisions concerning record keeping are appropriate.
Operationally, the requirement to retain CDD records for only 5 years from the end of the customer relationship has always been onerous, since strictly speaking it means segregating lapsed from current records, and being certain there no other business areas might need recourse to them.

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

Yes, we believe that branches and subsidiaries in non-EEA states should be covered. Many of our members operate on a cross-border and global basis, and including branches and subsidiaries means that they can be satisfied that a consistent Group wide approach is being taken.

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

We are interested in your view and evidence about:

Whether the duties of Supervisors in relation to compliance monitoring are clear and proportionate; if more or fewer duties are required and if so in what areas.

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

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

A criminal conviction for a regulatory failing appears to be unfair. If the regulatory failing was shown to be part of an otherwise criminal enterprise then criminal sanction would be available through POCA.

The demarcation between a regulator's investigation for breaches of regulations/systems and controls, and law enforcement for breaches of criminal laws should be recreated and emphasised. There has been a blurring of edges in recent years.

It is not always clear where the duties of Supervisors end and the responsibilities of Law Enforcement take over, eg how far can Supervisors enquire on individual customer relationships or ongoing investigations which have not involved the supervisor directly? It would be helpful if the Regulations clarified the position of passing of individual customer information to supervisory bodies.

The ability of a supervisor to use the full range of their powers will be determined by the level
of resourcing they enjoy.

The level of SARs generated would suggest that the civil penalties and criminal offences support the operation of the regime, but it is hard to assess whether they are effective and proportionate – this is probably a judgement that law enforcement must make. It would be nice to think that the majority of people would “do the right thing” without the threat of censure.

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 registration process can be very complex and time consuming for large Groups due to the differing Supervisors. Many Groups have areas with segregated duties, so it can be extremely difficult to have an overview of all registrations from a central point. It would be good to have a function that had oversight of this to support firms.

We are not sure there is any practical evidence that the ML Regulations provide any effective system of fit and proper testing where regulated (ie FSA supervised) entities are concerned. Fit and proper testing of individuals is driven by the approved persons process.

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

We are interested in your view and evidence about:

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

The Consent provisions under POCA 2002 and TACT have numerous well known deficiencies and issues. These include the following:

- it is impossible to apply using the strict observation of the law as written, and this means that bank staff are open to the unacceptable personal risk of criminal charges and a possible prison sentence.
- our members find the consent provisions unrealistic and unworkable
- it is operationally impossible to implement the law through financial systems
- it is largely ineffective – there is little return in proportion to the volume of consents being sought by industry
- it is open to misuse by the Police who can attempt to use the system to circumvent time constraints and difficulties in obtaining a Restraining Order
- there are different interpretations in the practical application of the law by different institutions and there is a lack of definitive guidance
- front line staff are vulnerable in Consent situations which potentially places them in personal danger when confronted by suspected criminals unable to access their accounts
- for genuine customers, when decisions are based on a suspicion at the time, obtaining consent can cause unintentional financial problems for these customers. The bank is in a difficult position as 'tipping off' legislation means they cannot explain the actions being taken. 
- The UK is, to our knowledge, the only country to operate such an onerous regime. (Ireland is currently drafting consent into their Regulations, but it is understood that it is intended that it will only apply in very, very limited circumstances.)

There is a real lack of clarity concerning what suspicion actually means. Many take it to mean that something is possible or could be occurring rather than a suspicion that something is occurring - ie a positive and definite state of mind. For instance, a bank counter staff member seeing a large cash transaction being paid in, may report this as a suspicion that it is criminal purely because the payment does not fit the profile. Would a police officer using the same level of suspicion be allowed to effect an arrest based on the same information? Such a case would be thrown out of court because the suspicion would be seen as sufficient. There needs to be more guidance or a statement of intent issued by the government to show what the level of suspicion should be.

The lack of clarity relating to a definition of what "suspicion" actually means, leads reporters to submit SARs on the basis of a suspicion that something MAY be occurring rather than something IS occurring. In many instances this is because the financial institution will have no evidence/line of sight of a predicate offence. Reports are submitted on the basis of erring on the side of caution because of a fear of regulatory sanction for failure to report. Were there a clearer definition of suspicion, overall numbers of suspicious activity reports would diminish. However, were the definition too prescriptive, there is a likelihood that some reports which would be of interest to law enforcement will not be submitted.

The failure of SOCA to provide consent to usual activity on an account or in a relationship mean that following SARs, firms may take a commercial decision to exit the relationship (where they believe it carries too much regulatory risk). We understand that SOCA is now worried that its investigations are hampered by the very closure of those accounts and relationships based upon pure suspicion and an incomplete knowledge of the entire circumstances.

This could be helped with better and quicker dialogue from Law Enforcement to the reporting institution expressing their interest/awareness of the individual/entity being reported. Historically, NCIS used to advise reporting institutions where a SAR "was of interest to law enforcement". The reintroduction of this would help reporters/receivers to ensure best outcome.

How compliance with the Regulations interacts with firms' compliance with asset-freezing legislation?

There is an obvious tension between the risk based approach in the ML Regulations and the absolute requirements of the legislation regarding the sanctions regime. In practice banks have to manage this tension in a pragmatic way. See also our comments under the CDD questions, concerning the need to gather information for sanctions elimination purposes that goes beyond minimum AML Simplified Due Diligence requirements, 'nationality' details being a good example.
The use of strict liability in some (but not all) UK sanctions offences is where no mens rea is present, creates unintended consequences, eg there is no AML requirement to collect details of nationality, however in order to mitigate risks of sanctions breaches then nationality is now collected for all products including those of the lowest risk. The addition of a name on a sanctions list means that all UK businesses (not just those in the regulated sector) need to search sanctions lists constantly, and may be committing offences unknowingly. This does not meet proportionality, necessity and public interest considerations in most cases.

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

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

The UK authorities, in taking an all crimes approach, have sought to bring, what are universally acknowledged to be significantly powerful measures to interfere with a person's privacy and life, into the everyday armoury of investigators of minor offences. While it is correct that all criminals should be pursued, prosecuted and not have the opportunity to live from the proceeds of crime there appears to be an erosion of the understanding of the harmful effects of the act of true money laundering ie as defined in the Criminal Justice Act before POCA. There is a reason why the offence of handling stolen goods attracted 14 years imprisonment when the act of stealing only attracted 7. This is because the handler encourages and enables further crime. The same always used to be thought of in money laundering terms too, however, POCA has now eroded that principle and now involves powers aimed at the more serious enablers of crime, being used against single instances of crime.

Internationally, there are differences which cause issues for global organisations, eg Ireland has a different definition of a PEP and not all jurisdictions use Reliance (Reg 17) in the same way as firms do in the UK.

There is some tension even within the EU about how a risk based approach should work, and the level at which risk thresholds should be set.

We hope that we are correct in believing that HMT will take into account the findings contained in the 'Compendium paper on the Supervisory implementation practices of the 3rd Money Laundering Directive' by the 3 Level 3 Committees dated 15 October, as it concerns the application of CDD and ID&V requirements across the EU member states and highlights commonalities and, more pertinent, differences eg in terms of the type of information and documentation obtained for ID&V, and the differing approaches in relation to the treatment of equivalent countries and the reliance that may be placed on third parties for undertaking CDD across the 27 member states.

Also of relevance to the HMT in this regard is the EU Commission Report on Compliance with the AML Directive by Cross Border Banking Groups at Group level, one of the key conclusions being that there are uncertainties over the interaction of AML rules with national data protection (DP) and bank secrecy (BS) rules and their impact on bank AML policies at Group level, especially regarding information flows within the group. In this context, the
Commission services are undertaking further work with the EU DP authorities with a view to achieving more clarity at EU level on the interrelation between AML and DP/BS rules.

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

We are interested in your view and evidence about:

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

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

In principle, there are mechanisms to enable stakeholders to consider and input into potential alterations in the Regulations. HMT staff have willingly attended BBA meetings and seminars etc and engaged openly.

Disappointingly, however, there are significant numbers of recent changes to legislation where industry has not been consulted at all. Recent examples include the introduction of the Schedule 7 to the Counter Terrorism Act 2008, the Terrorism Order 2009 (1747) and the PoCA Amendment (SI 975/2009).

We consider it deplorable that HMG does not commit to consulting industry whenever introducing new legislation, regulations or industry guidance. It is simply not acceptable to introduce new requirements without adequate consultation with the private sector.

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

The material provided by HMT and other government authorities is, almost always, of limited practical value and is always heavily caveated so that it is barely usable. Most information of practical value used by banks comes from agencies other than HMT such as Transparency International. There is, for example, no objective list of equivalent markets or high risk countries, no definitive source of reference on high risk jurisdictions which bar their nationals from opening bank accounts abroad. This leads firms to be expected to understand the laws of all nations, which is impractical.

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

We are interested in your view and evidence about:
Whether the definitions of persons and activities subject to the Regulations given in Guidance are clear, meaningful and correct from a risk basis in the context of your sector; and whether the 'acting in the course of business' requirement for your sector is appropriately explained.

Whether it is beneficial that Guidance is legally enforceable in the UK, and that compliance with its provisions can be used as a defence against prosecution for non-compliance with the Regulations.

Obviously, the BBA and members support the guidance of the JMLSG, and the approval of it by HMT.

It is beneficial that compliance with its provisions can be used as a defence. However with the Risk Based Approach we feel that it is important that firms have the opportunity to vary from the specifics, as long as they have acknowledged that this is the case and have documented their rationale for doing so.

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

We believe that the guidance is consistent across all sectors.

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

We are interested in your view and evidence about:

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

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

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

The introduction of SDD has been confusing for some businesses due to the move in guidance under SDD of the previous ML Exemptions.

The Guidance on Equivalence could be improved but probably only if additional information from HMG was forthcoming.

Reliance becomes difficult to implement in practice when there are varied approaches taken across the EU.

Guidance on beneficial ownership and the risk based approach conflicts with requirements.
under the Sanctions regime as mentioned.

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

We are interested in your views and evidence about:

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

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

Whether Guidance encourages requirements over and above best practice to comply with the requirements of the regulation.

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

Please see our comments in answer to Q7 above.

The guidance is critical to the development of Policies and Procedures. Firms use it to ensure that they are applying industry best practice.

Sector specific guidance is very helpful as tailored guidance is much easier to interpret into Policy and Procedures.

Guidance does assist firms in complying with the Regulations. It also encourages firms to consider extra measures where higher risks are flagged for consideration, and the Guidance does make it easier for firms to understand the regime as a whole.

Additionally, because it is Guidance and not prescriptive, it reflects industry best practice but can be tailored to meeting individual firm’s business model and risk appetite allowing a degree of flexibility in interpretation.

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

We are interested in your views and evidence about:

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

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

Guidance is easily accessible and firms feel that they have adequate opportunity to engage
14. **To what extent does the supervisor framework support an effective, risk-based anti-money laundering regime and compliance with the Regulations?**

In theory, the benefits should be that Supervisors understand better the nature of the business and be able to assess better the risk based approach. However, in practice Supervisors often are unable to understand the practical application of the risk based approach. We believe that Supervisors need to pay closer attention to the risk based approach detailed within the JMLSG guidance and should seek to avoid applying an inconsistent approach.

We do not consider that Supervisors are particularly mindful of costs and benefits or offer ideas to minimise costs or benefits. There have been many examples of banks' interaction with the FSA that they do not have a sufficiently well developed appreciation of the costs involved particularly in the development of automated systems in terms of account opening, transaction monitoring and sanctions screening. We believe it would be helpful for the FSA to have a better idea of the costs of solutions available and their applicability to firms' risk based approach.

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 recognise the valuable work of the FSA, in issuing publications, publishing cases, issuing threat assessments, thematic reviews, and speaking at conferences to highlight its areas of concerns and so assist firms to assess and deal with their own vulnerabilities. However we believe that more could usefully be done in this area.

For example, several firms reported that they have found the FSA to be too reactive, having simply set out expectations in its handbook. More information could usefully be provided by regular updates on areas of concern, including interim results and feedback when conducting themed reviews. It would be helpful if the FSA engaged with industry prior to publishing themed reviews to ensure that any substantial points raised are correctly positioned. The FSA does not actively seek feedback directly from firms they regulate. Firms feel that the regulated sector has a better understanding of the duties and responsibilities and how these are complied with in a practical and operational sense than the FSA does.

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

BBA members believe that the FSA has radically dropped its focus on AML work partly due to recent market conditions and a need to shift priorities to other areas such as prudential management. There has also been a steady erosion of knowledge and capability among
FSA staff. Industry does occasionally feel it a burden to be required continually to educate new supervisors but perhaps further comment is best left to Supervisors.

The recently issued FSA industry review of firms' compliance with the UK sanctions regime, included a summary of good and bad practices which they encountered during the review. It is worth noting that some of the "good" practices highlighted by the FSA exceed legal and regulatory requirements. This represents a real risk of regulatory creep and regulatory expectation.

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

Please see our comments in response to Q14 above.

Firms note the significant amount of time devoted to answering FSA enquiries (the purpose of which are not always clear), and in preparing for visits and in sending any follow up material. Preparing the annual MLRO report (as required by the FSA) is also significantly time consuming. It is not always clear whether the FSA appreciates the large resource that firms must commit in these areas.

18. How effective and proportionate is the enforcement regime?

The enforcement powers in the UK are reasonably proportionate, but the US enforcement angle also needs to be considered as this is what creates real unease. Firms generally do not believe that additional powers are required, although clarity on what information the FSA is and is not legally empowered to request would be beneficial.

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

Some of our members have raised concerns about the HMRC annual review and reissue of MSB certification process. Experience is showing that the registration process can be slow, sometimes inaccurate and often results in late registrations. This has an impact on banks’ ability to complete timely ongoing risk based due diligence for their clients.

In response to the introduction of the Money Laundering Regulations 2007 (specifically the areas of greater regulatory expectation and the introduction of risk based approach to customer due diligence) some banks upgraded their Currency Services systems, so that any transaction with a Money Service Business (MSB) counterparty would be blocked if there was no record of current MSB registration. Due to the number of late MSB registrations (often 4-8 weeks late) banks have to make enquiries, and find out where the updated certificates might be. Invariably, the delay is with HMRC.
Our members have suggested a simple letter to be provided by HMRC could be a useful solution. A letter to the effect of the following could be easily implemented:

"Renewal of MSB certification is in process, but as a consequence of xx, it is now anticipated that the new updated MSB certificates will not be completed before xx date. HMRC understands that you will continue to trade on the basis of the existing certificate until the new one is issued. This correspondence is valid for a period of xx weeks from certification expiry dates. Those applications where renewals are not made, then the MSB will be advised separately and independently of this correspondence."

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

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

Barriers exist when there are conflicting requirements. For example, firms may wish to take a risk based approach to how much KYC needs to be collected and on who to verify detailed identification requirements. However, under the Sanctions requirements there is no risk based approach which means that firms are often collecting information to conduct sweeps to manage the risk in this area. Under the ML Regulations, firms would probably collect KYC on fewer individuals. Some business may be fully aligned to CDD requirements under the ML Regulations but this may well not apply under the sanctions and terrorism regime.

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

Firms do believe that they have the skills and data to conduct effective risk assessments on their business, services and customers. More information from the authorities would be particularly welcome in areas of high risk jurisdictions.

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

Firms do assess the impacts on customers. However, firms find that in applying the ML Regulations and complying with the guidance, there are instances where they feel that the risk is low and without the guidance, business decisions would be made to alter procedures in some regards. An example would be the impacts on long standing existing customers with respect to aspects of ongoing CDD.

What difficulties do Regulated Firms encounter with specific provisions such as equivalence and identification of Politically Exposed Persons (PEPs)
It should be noted that the management of PEPs is expensive for firms, as it requires specialist screening tools and software to be deployed. There are further costs involved in ongoing reviewing and monitoring.

The identification of PEPs causes a number of issues in terms of the practical application of methods to identify PEPs. The definitions around PEP identification assume that each jurisdiction is relatively transparent in terms of public knowledge of those holding a position which would put them in the position of being a PEP. In jurisdictions where there is not a liberal democratic model, e.g., a communist state of a theocracy, i.e., Iran, there may be a high number of senior officials who hold roles which would make them PEPs, but there is no easy way of confirming the position. The third party database providers draw their information from publicly available sources and the number of PEPs in such countries is significantly lower than might be expected. The position might be helped by an international list of PEPs being developed. A UK requirement upon public authorities to publish the names of their own PEPs, in a members interests type of format would assist greatly, especially if it could be championed through the FATF and the EU. This would also provide a way of identifying known associates and close family members where again, third party providers may only have limited information if family members are not in the public eye. We recommend that such lists be developed, that banks would be able to use them as an additional information source rather than any lists becoming a mandatory tool.

SOCA has advised that it was considering, in conjunction with DFID, producing a list of restrictions on foreign PEPs holding assets outside their home countries. However, they anticipated that it was a long term aspiration rather than a short term delivery. This is something which would be of tangible benefit to industry were it delivered in the short term.

Furthermore, HMT has recently said at an IMLPO meeting on 3 December 2009, that it is working on a list of high risk jurisdictions with FATF and had identified 80 countries of concern, and has narrowed that list down to 25 countries of significant concern. A decision is still outstanding with FATF as to whether this list of countries will be published. This list would be of significant use to reporting institutions.

We have noted that there appears to be a gulf of understanding between the authorities and the private sector as to the threat posed by a small number of corrupt PEPs. For most institutions, PEPs are only a very small part of its overall high risk client segment. Furthermore, we believe that the authorities do not adequately appreciate the banks’ approach to managing PEP relationships. We would not wish to see additional onerous requirements in relation to PEPs as we do not consider that the risks around the small number of corrupt PEPs would warrant this.

We have been disappointed that the authorities have made a number of pejorative public remarks around banks’ reporting of SARs on PEPs, such as “the quality of SARs reporting on PEPs needs to improve” and “the quantity of SARs reporting on PEPs needs to be increased”. We have repeatedly requested evidence to corroborate these statements but they remain unsubstantiated.

We note from SOCA’s SARs Annual Report 2009 that “268 PEPs intelligence packages on specific subjects were produced and disseminated to partners this year. 632 SARs were reviewed to produce these...” This appears to contradict the feedback from elsewhere mentioned above, that not enough SARs are raised on PEPs generally (23 per PEP...). If there are 268 PEPs of concern, it would be useful to know why SOCA has not used its
information sharing powers to let the banks know who they are. We would also be interested to know what types of institution fall into the definition of "partner" and should banks, who sent in 75% of the total SARs submitted between October 2008 and September 2009 be included in the club.

In conclusion on this point, BBA members would welcome further dialogue with the authorities on the subject of PEPs. In particular, BBA members would welcome feedback from the authorities on higher risk jurisdictions which might affect firms' management of PEPs from these jurisdictions.

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

In high volume businesses, such as Retail banking, it is not possible to have procedures which require case by case risk based practices. This would not be feasible operationally. In these areas, firms try to support front-line staff by making decisions centrally, supported as far as possible by systems solutions.

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

We are interested in your views and evidence about:
Whether regulations about Simplified Due Diligence (SDD) / Enhanced Due Diligence (EDD) are utilised appropriately:
Do particular aspects of the Money Laundering Regulations and/or the written guidance influence the degree to which firms use the option for SDD / EDD? If so, what aspects and how?
Do commercial considerations, establish industry practices or legislation other than the Money Laundering Regulations affect the way that Regulated Firms implement SDD / EDD? If so, what are the issues?

Firms indicate that they do use SDD and also apply EDD and adopt the approach set out in the JMLSG guidance. Overseas legislation also impacts on SDD and reliance as not all jurisdictions adopt these approaches.

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

Not all jurisdictions adopt the same approach to reliance so this restricts the use of this in the
UK in some instances.

How firms interpret in practice the requirement to ongoing monitoring of businesses in relation to CDD requirements.

Firms conduct ongoing CDD by having trigger events where they will update KYC and collect ID if it is missing. Firms do not however, in practice, request ID documents again for a customer if they have provided it before and the risk profile has not changed. Firms therefore do not take the view that an ID document previously taken at the outset of a relationship will “expire”.

The effectiveness and proportionally of the process of establishing Beneficial Ownership.

In carrying out the requirement to establish Beneficial Ownership, firms take into account likelihood and impact through the risk assessment process, whereby firms assess the risks associated with the customer, jurisdictions, products and services and delivery channels to arrive at risk indicators. These can then be used to determine what classification of risk should be attached to any given client (or population of clients) to which are then applied risk sensitive due diligence and ongoing activity/transaction monitoring standards taking into account the minimum standards outlined in the CDD section of JMLSG industry guidance.

Once again, we would point out that when applying AML risk based CDD, there is also a need to gather and record sufficiently detailed information on customers and their owners and controllers to mitigate the risk of breaching sanctions legislation. This can lead to information requirements over and above that needed for SDD under the AML risk based approach, i.e. around nationality.

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

We are interested in your views and evidence about:

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

CDD procedures for AML are integrated into the overall business take on process which covers off other requirements such as Compliance, Fraud and Data Protection.

How closely Customer Due Diligence (CDD) requirements complement or overlap with existing “business as usual” procedures; whether CDD requirements assist Regulated Firms in undertaking their risk assessments.
There are however areas where CDD is collected purely for AML purposes such as expected activity on individual products/accounts held.

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

Some firms believe that for existing relationships firms do over and above what they would if it were not for the Regulations and supporting industry guidance. In addition, some quality assurance controls would probably be relaxed if it were not for the Regulations and industry guidance being so specific on CDD for Retail business.

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

Automated systems although expensive to develop and maintain, reduce ongoing costs and improve customer service.

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

Firms believe that the Regulations and the JMLSG do assist in protecting firms reputationally as long as good compliance is maintained.

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

We are interested in your views and evidence about:

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

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

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

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

24. How easy or difficult it is to comply with reporting and record keeping obligations?
As previously mentioned, for reporting it is the Consent Regime under POCA and TAct rather than the ML Regulations which causes industry serious problems. Record keeping becomes difficult to manage under large Groups and numerous sales channels and products etc with the reliance often being placed on third parties under contracts and SLAs. Businesses rely on the ML Regulations to justify why computer based records need to be retained. In practice, due to the complex issues attached to the 5 year record keeping timescales and the difficulties in applying this operationally, especially where customers have relationships with varying parts of the Group, records are more often than not kept indefinitely.

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

We are interested in your views and evidence about:
The opportunities that exist for Regulated Firms to feedback their experiences of the Regulations to Supervisors and/or Government Agencies, and what action is taken on their feedback.

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

BBA members are involved in policy and guidance development through a number of BBA panels, seminars and workshops and through industry representation on the JMLSG.

Firms believe that SOCA could and should increase their communication through more dialogue visits and make it easier for firms to speak to their dialogue officer.

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

Please see our general comments in relation to Financial crime requirements on banks. In summary we believe that it is difficult if not impossible to quantify the benefits of the Regulations and equally difficult to measure the effectiveness of the regime as a whole.

Firms believe that much more feedback is required from government authorities, especially SOCA.

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

Customers are more likely to appreciate the requirements at the outset of a relationship as opposed to the requirements for ongoing CDD. In a volume environment such as Retail banking, customers can be asked more than is required as the system is designed to be simplified for both staff and customers, as opposed to having varying sets of procedures to comply with. Having a blanket approach to CDD at the outset can make it easier for
customers when they wish to take further products or services

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

A great deal of flexibility is offered for forms of ID. Firms align to the JMLSG guidance and also have an Exception referral route for staff where customers have difficulty providing ID

For customers in an ongoing business relationship, is the customer asked to provide repeat information and why?

Existing customers will sometimes be asked for their KYC and ID again. Examples are 1) if previous ID taken is not visible on our records 2) where the KYC taken was taken a considerable amount of time and a 'trigger event' has occurred such as taking a new product 3) where core KYC is missing at a trigger event e.g. Nationality 5) where the customer relationship has changed and the customer now qualifies for EDD

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

Many firms provide customers with a leaflet advising them what types of ID is required. DPA information would be provided to the customer at application stage explaining why their information is required

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

We are interested in your views and evidence about:
- The extent to which any or all aspects of the Regime facilitate the deterrence, detection and reporting of suspected money-laundering activities.

The BBA believes that the ML Regs and Guidance do support the fight against Money Laundering but also help protect a firm against money laundering. We feel that the regime overall however is placing a heavy burden on Regulated Firms to 'police' many activities at their own cost. We also feel that the fact that the requirements have to be applied to all individuals, when the majority are law-abiding citizens, results in many people (in particular...
existing customers) being put through unnecessary processes and inconvenience.

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

SOCA and law enforcement are the central players in ensuring the efforts put into the AML/CTF regimes are taken forward to help fight ML/TF. All efforts put in by industry are wasted if SOCA and LEA are not resourced to deal with SARs effectively. There is significant concern within industry that so few SARs are actually assessed by SOCA. Industry is aware that many SARs are simply routinely filed without being assessed if they do not contain any or sufficient triggers to warrant being highlighted for assessment. In view of the very large resource that industry is required to commit to the ML and SARs regime, this is unsatisfactory.

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 ability for firms to concentrate their resources on higher risks and minimise them on lower ones and/or their ability to maximise benefits and minimise costs.
We feel that it is increasingly difficult to comply with the overall regime and increasing pressure with respect to wider obligations on the Regulated Sector (such as Sanctions) and only focus on the higher risks.
• The role that Guidance plays in promoting a risk-based approach.

The Guidance is key to supporting a risk based approach

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

We are interested in your views and evidence about:
• How extensive and regular the communication is across the Regime and between all levels of the Regime and the opportunity is for Stakeholders subject to the Regulations to input into their development.

Larger firms are able to participate quite easily via the BBA but they are often overlooked in decision making about the Regime, the POCA SI being a recent example (SIB75/2009).

• Whether Stakeholders interacting with the Regime (but not subject to the Regulations directly) understand the anti-money laundering requirements; whether these requirements are properly communicated to them and whether they are able to input their views on them.
We feel that other stakeholders view the framework in the context of what they need to get out of it. This puts pressure between banks and Law Enforcement, who often interpret the Regulations differently.

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

Our view is that the FATF is generally doing a better job in trying to raise the standards. We support the more inclusive approach that the FATF has adopted of late.
REVIEW OF THE MONEY LAUNDERING
REGULATIONS 2007

A Call for Evidence: Part A

7 DECEMBER 2009

RESPONSE OF THE
BRITISH CHEQUE & CREDIT ASSOCIATION
Introduction

The British Cheque & Credit Association (BCCA) is a trade association which was formed in 1994. It represents the interests of businesses which offer encashment facilities for third party cheques and/or certain other forms of very short term, unsecured consumer loans repayable within six months or less. This includes what is now generically called "payday lending".

The BCCA has around 850 members, the vast majority of which are small businesses which operate from High Street premises. Three members are public companies listed on AIM and two others are the UK arms of companies listed in the USA. The BCCA also represents several lenders which operate solely via the internet. Whilst most members offer third party cheque encashment facilities, only some offer "payday loans". However, these include all of the BCCA’s corporate and internet based members.

The BCCA is in daily contact with its members and therefore understands fully their commercial needs and concerns.

There are no confidentiality issues contained in this response.

Please note that the BCCA was, until recently, the British Cheque Cashers Association. It has changed its name to the British Cheque & Credit Association to reflect more accurately the sectors that it represents.

CONTACT DETAILS

Rachael Corcoran  
Chief Executive Designate  
BCCA  
PO Box 3414  
Chester  
CH1 9BF

Telephone: 01244 505909  
Email: rachael@bcca.co.uk
RESPONSE OF THE BRITISH CHEQUE & CREDIT ASSOCIATION

The BCCA welcomes the opportunity to respond to this Call for Evidence and it is our policy to co-operate fully with legislators and regulators on all matters.

GENERAL OBSERVATIONS AND COMMENTS

The Money Laundering Regulations 2007 which were implemented into UK law following the Third EU Money Laundering Directive, undoubtedly increased the regulatory burden and cost for business. However, we do understand that the UK’s implementation of the Regulations was entirely driven by the fact that the Directive was one of maximum harmonisation.

Examples of increased regulatory burden include; new requirements such as the need to have written policies and procedures, the fit and proper test and at the outset, for certain Regulated firms (MSB’s) to re-register with their Supervisor. This was particularly onerous on small firms who did not have compliance departments and had to deal with a raft of other legislation as well as ‘doing the business.’

To some extent, the burden of implementation was eased by the fact that Regulated firms were familiar with their Supervisors (HMRC had supervised third party cheque cashers under the Money Laundering Regulations 2003).

We support the current structure which operates in the UK of one Supervisor only for each Regulated firm. For example BCCA members tend to be registered with HMRC as Money Service Businesses (MSB’s) for third party cheque cashing and potentially some of the other activities that fall under this category such as Bureau de Change and money transmission.

In addition, some of our members also offer short term unsecured loans and secured loans such as pawnbroking. Advice from the Policy team at HMRC was that Regulated firms supervised by HMRC would also be supervised by them for their lending activity to avoid dual regulation which would not be desirable. The only problem that this has created for Regulated firms is that it has become apparent on a number of occasions that a lack of engagement between Supervisors (HMRC/ OFT) has resulted in some confusing messages being delivered to Regulated firms. We would suggest that more regular engagement between Supervisors to iron out such problems would be the best way forward.
1. To what extent is the scope of the Regulations and their application to business activity appropriately risk based?

Third party cheque cashing falls within the definition of being a Money Service Business (MSB) which also includes Bureau de Change and Money Transmission services. At the moment, any MSB activity is deemed as posing a high risk of money laundering. Whilst we accept that money transmission services should be regarded as such, we believe that third party cheque cashing is not high risk as the money goes in the opposite direction. We would suggest that in order to minimise changes to business, third party cheque cashing remains within the category of money service business but that the different services within that category should be assessed for risk separately rather than taking a broad brush approach.

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?

For small businesses in particular, some of the Customer Due Diligence requirements under the Regulations are unnecessarily burdensome and the introduction of the Politically Exposed Person (PEP) concept is an example of this. Whilst MLR8 goes some way to advising businesses of how to deal with this concept under the Regulations, it is another requirement that businesses have to take account of, not only when doing business but also in their policies and procedures. There would have to be sound justification for extending the PEP concept to domestic PEP’s. HMT and Supervisors should take a pragmatic approach and assess the likelihood of, for example, third party cheque cashers being used by a PEP or a close relative of a PEP etc.

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

Our members carry out thorough customer due diligence measures to assist them in the commercial decision making process, that is, whether to cash the cheque or provide a loan, as well as from a legal perspective. However, other requirements such as reporting suspicious activity to SOCA via a SAR, is an entirely legal one which places additional regulatory burdens on firms.

One of the main criticisms made by our members is that they invest time and effort in complying with their reporting obligations but they very rarely receive any feedback as to how their contribution might have assisted, for example, a money launderer to be brought to justice. Therefore it is very difficult for anyone other than law enforcement to truly answer this question.

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

The policy and procedural requirements do help Regulated firms to focus on how their business could be used by individuals to launder money and how these individuals can be identified. However Supervisors should take a pragmatic approach to this concept and understand that the extent of these policies and procedures will
vary depending upon the size of the business, the number of employees etc in line with the risk-based approach.

It has been noted that the Regulations fail to state that policies and procedures must be in writing although HMRC has advised that this is what they expect from Regulated firms. The requirement for policies and procedures to be in writing should be stipulated in the legislation.

The current requirements under the Regulations regarding record keeping are, in our experience, confusing for Regulated firms. For example, MLR8 states:

'Evidence of a customer’s identity records must be kept for five years beginning on the date on which the occasional transaction is completed or the business relationship ends. Records of transactions (whether undertaken as occasional transactions or part of a business relationship) must be kept for five years beginning on the date on which the transaction is completed............'

The five year rule and the point at which this time starts should be reviewed by HMT to ensure that this is proportionate and possibly consider a simplification of this.

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

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 support the concept of the fit and proper test contained within the Regulations as it serves to ensure (as far as possible) that rogue individuals are not given the opportunity to engage in, for example, MSB activity. However, this does impose a regulatory burden. For example, when new individuals join a business/ change office. In addition there is the current charge of £50 per person to HMRC for taking the test which is in addition to the registration fees.

However, the fit and proper test does not extend to all Regulated firms such as Category A Consumer Credit lenders and whilst some lenders might have already been subject to the fit and proper test by virtue of being an MSB, some will not. We do not wish to suggest that the regulatory burden should be extended any further but feel that HMT should consider the impact that this requirement/ fees has on those Regulated firms that have to comply with this.

The registration process again imposes additional regulatory and cost burdens on business. An example of a regulatory burden is the fact that Regulated firms have to advise the Supervisor of certain changes to the information held.

The regulatory burden is particularly felt when Supervisors take the decision to register Regulated firms when they were not compelled to do so by the Regulations. An example of this is the OFT's decision to register all Category A Consumer Credit lenders who are not already supervised by another body such as the FSA or HMRC. This is despite the fact that all such lenders have to be licensed by them under the Consumer Credit Act 1974 to offer loans in the first place.
The cost burden is particularly felt when the fees are increased. For MSB’s the charge per premise increased from £95 to £120 per premise and there is no maximum fee cap, for example after ‘x’ amount of premises have been registered.

However the cost to register with the OFT for AML ranges from a minimum of £115 per premise, with an upper limit of £2,300 (capped at 20 premises) and Regulated firms are expected to pay this in addition to the licence fees which are between £480 to £970 depending on the business structure.

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?

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

We have been very pleased with the level of engagement that has been offered to us through, for example, HMRC, OFT and HMT. The BCCA worked closely with the Policy team at HMRC during the implementation of the Regulations and has done so ever since, particularly where there has been uncertainty regarding interpretation. HMRC has acted as the go-between the Association and HMT and this has, in our opinion worked well.

We have also been encouraged to see HMRC taking an open approach to suggestions for improvement and an example of this is the recent review of MLR8.

One of the key reasons why engagement with HMRC is so successful is in part due to the MSB Forums that run four times a year. The Forum is useful for understanding the Supervisor’s interpretation/ view on certain issues and what action is being taken to root out ghost businesses and those that have, for example, failed to return the fit and proper test.

There is a constant stream of information being fed to Forum members from HMRC which we, at the BCCA (where appropriate), advise our members of. For example, HMT presented to Forum members at a specially convened meeting, the implications for MSB’s on the Counter Terrorism Act 2008.

We suggest that all Supervisors carry out this type of engagement.

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

MLR8 is an effective guidance tool for Regulated firms. It has sector specific information, drafted by industry representatives, including risk indicators at the Appendices at the back.

The fact that MLR8 is HMT approved is useful to Regulated firms because they know that in places where the Regulations fall short, complying with the guidance is as good as complying with the law. However, in line with the concept of a principles based, risk sensitive approach to regulation, it would not be reasonable to make MLR8 guidance legally enforceable or treated as such.
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?

There is a significant difference between the guidance produced by HMRC and that by OFT. The latter guidance tends to be a read out of the legislation and nothing more although there is a spattering of examples of possible risk indicators. Although it has the advantage of being shorter than MLR8 it does not necessarily have the same value – for example OFT guidance is not HMT approved!

We have not been able to identify any real divergence of interpretation mainly because of the reasons given in the paragraph above. However, the most important issue here is that Supervisors advise and enforce their guidance in a consistent manner and where there are possible areas for a conflict of interpretation that the Supervisors engage with each other to agree on a particular interpretation.

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

Guidance can be useful for Regulated firms to understand what is expected of them under the Regulations. MLR8's explanation for PEP's and when it is appropriate to consider consulting a 'list' is useful.

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

See previous comments above.

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

The main access point for Guidance from Supervisors is via the internet although it seems that there is an appreciation that not all firms have immediate access to the internet and hard copies can be provided. HMRC took the view of industry on board and designed an abbreviated version of MLR8 for small businesses on their obligations as the 79 pages of MLR8 can prove overwhelming. However, arguably the abbreviated version did not say enough and a more considered advisory guide would be useful.

As previously mentioned, MLR8 was developed in conjunction with industry and the recent review of this has been dealt with in a similar way. At the last MSB Forum, Regulated firms were asked to comment on the draft document and offers were made for suggested improvements.

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

As mentioned above, dual regulation or anything more than this, for example, supervisors being responsible for their area of 'expertise' should be avoided at all costs. This will increase regulatory burdens and there is likely to be a financial implication for Regulated firms too. HMT should keep the status quo.

It is not the role of a trade association to act as a Supervisor and an enforcer of the Regulations. Businesses join trade associations on a voluntary basis and
the purpose, (in most cases), is to represent their interests and give them the necessary support and assistance to do business. Trade associations are likely to lose the trust of their members if they were expected to enforce Regulations against them. Whilst BCCA members operate under a Code of Practice which they must abide by, this an entirely different concept. The greatest sanction for non-compliance with the BCCA Code of Practice is expulsion from the Association.

We would always advocate a proportionate response from Supervisors where areas of non-compliance are identified. Supervisors should enforce on a risk based approach asking 'how detrimental is the breach?' Often members observe that assurance officers do not take a common approach to enforcement, some taking a more pragmatic and open minded view than others. Consistency of advice is often an issue that crops up with members complaining that they often receive different advice on the same issue.

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?

See previous comments, particularly Question 8.

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

It is essential that Supervisors send out a consistent message to assurance officers who have direct contact with businesses about the expectation of Regulated firms.

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

See previous comments, particularly Question 14.

18. How effective and proportionate is the enforcement regime?

The Supervisors are in a better position than Regulated firms to determine how effective the enforcement regime is. If the penalty imposed stops the breach from re-occurring then arguably enforcement action is successful. I would again re-iterate the point that the appropriate penalty should always be administered to Regulated firms taking into account the nature of the breach and even the size of the firm. In most instances we can see no reason why an ‘advice first’ approach is not the most proportionate way to enforce with greater sanctions such as warning letters and court action only being taken in the more serious cases. From the information we have received from HMRC it would seem that they operate on this basis and we would encourage this to continue.

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

See previous comments, particularly at Question 6.

20. Are there barriers to implementing risk-based policies in practice? If so, what are they?
Ironically, some of the main barriers for business in adopting a full risk based approach to anti-money laundering is the legislation itself. For example, Regulation 21 (Training) allows businesses to decide for themselves how often they train staff and what is 'regular.' However, Regulation 19 (Record Keeping) and Regulation 21 (Policies and procedures) are very prescriptive about what is expected of Regulated firms. The current system is very much a half way house at the moment between a risk-based approach and prescriptive legislation. Arguably it should be all or nothing.

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?

Some of the businesses that the BCCA represents are online payday lenders and they have to carry out Enhanced Due Diligence of their customers. Without the Regulations being in force, it is likely that such firms would carry out this sort of identification and verification activity anyway in order to establish the person they are dealing with. Often the Regulations support the commercial actions of the business.

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

Without question, some requirements of the Regulations place additional burdens on business. As alluded to in our response to Question 3, SOCA reporting is an example of where Regulated firms business can be disrupted. Whilst we accept that this requirement is in POCA rather than the Money Laundering Regulations, it is an aspect of the whole money laundering compliance routine that a firm has to follow.

Ongoing monitoring requirements can be burdensome as the Regulated firm has to create some form of system, electronic or otherwise to carry out this obligation. Whilst firms like to look at the history of their customer as it might affect their decision to do business, businesses would find it easier if they could do this on their own terms.

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

See previous comments at Question 6.

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

See previous comments.

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

See previous comments.

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

Our member’s customers tend to be regular customers who are very accustomed to providing information to satisfy the customer due diligence requirements and they are very accepting of this. However, there can be a proportion of customers who are excluded from receiving the services of Regulated firms by virtue of the fact that they
cannot supply suitable identification or the information the customer provides is uncommon to the firm and the firm is not prepared to take the risk. Commercial decisions always have a bearing to some extent or other.

Customers often find it frustrating that they have to provide 'new' identification when the one they originally supplied expires such as a photocard driving licence or passport so our members have to explain to their customers the basis for this.

There is frustration expressed by our members in that some EU countries have yet to fully implement the Regulations and it does not appear that any sanctions have been imposed.

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

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

See previous comments.

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

See previous comments.

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

It would be useful if the OFT adopted a similar approach to HMRC in terms of engagement with stakeholders such as forums.

END
REVIEW OF THE MONEY LAUNDERING REGULATIONS 2007

The Building Societies Association (BSA) welcomes the opportunity to respond to HM Treasury's Review of the Money Laundering Regulations 2007 - Call for Evidence Part A. Building societies are at the forefront of developing systems and processes to implement the regulations and recognise their value in preventing crime, protecting their members' security and ensuring that the building society sector and UK financial services as a whole is known to be a safe place for individuals to invest their money.

The BSA represents mutual lenders and deposit takers in the UK including all 52 UK building societies. Building societies have total assets of over £370 billion and, together with their subsidiaries, hold residential mortgages of over £245 billion, more than 20% of the total outstanding in the UK. Societies hold nearly £240 billion of retail deposits, accounting for more than 20% of all such deposits in the UK. Building societies also account for about 36% of all cash ISA balances. Building societies employ approximately 50,000 full and part-time staff and operate through approximately 2,000 branches.

The responses below are collated from responses from building society MLROs and senior financial crime prevention managers who have the knowledge and experience of applying the 2007 regulations to real business situations. The BSA would like to thank all those building societies who have provided comments for this response and / or provided direct feedback to HM Treasury’s Financial Crime Team.

KEY ISSUES FOR BSA MEMBERS

The cost-effectiveness of the UK AML regime

Latest official data suggests that the cost of building societies' and others' compliance with the UK AML regime in terms of IT expenditure, training and headcount etc. is significantly higher than the monies recovered by successful anti-money laundering prosecutions. On results alone, the regime does not appear cost effective - though building societies do recognise that the regime also has intangible benefits such as a deterrent effect on criminals and the maintenance of public trust.

One potential solution would be to revisit the current requirement to report all suspicious activities regardless of the value and replace this with a higher financial reporting threshold. This would also have the advantage of reducing the high volume of low level reports that law enforcement agencies have to deal with and improving the response times on those that are most important.

Politically exposed Persons (PEPS)

The cost and effort in complying with the requirements in respect of PEPS is highly disproportionate to the risks – PEPS are rarely encountered within the building society...
business model. Lack of a concise definition of a PEP, absence of a definitive central PEP register for the UK and inconsistency of treatment between domestic and non-UK PEPs is contributing to this disproportionate cost.

Record Keeping

Typically, building societies keep records of customer ID for longer than the minimum period of 5 years after the closure of an account – they are frequently approached by law enforcement for requests for ID-related information covering cases beyond the 5 year limit. Would it therefore be appropriate to ask law enforcement agencies to provide a case for whether this limit should be extended as longer retention cannot be justified on commercial grounds?

Respondents have raised an anomaly where societies use the Introducer Verification Certificate (IVC) process (reliance on others). Currently, they are exposed as they cannot delegate their responsibilities re. relying on others – societies are required to keep records of a customer’s identity for the life of the account plus a further five years, whereas the firm that they have relied on may only be required to keep the records for five years.

QUESTIONS IN PART A

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

The opinion of building society respondents is that the definitions of persons and activities are generally clear, meaningful and correct. The scope of the regulations is acceptable and the activities covered are appropriate and sufficient for their purposes. A lot of the regulation is geared towards more complex financial instruments than most societies deal with but this is not an issue.

One building society has raised a specific point about the scope of the regulations as applied to pre-paid debit cards:

“One of the newer areas of business where I think the regulations could be more prescriptive is Prepaid Debit Cards. We are one of the main issuers in Europe but find that we are put under great pressure to up limits etc because XYZ company do. We believe that our limits are sensible based upon target audience and card capabilities; other companies will, presumably, believe that their limits are sensible too. My concern is that limits will rise and rise uncontrolled as Sales teams try to impress their target audience with higher limits. I think this could lead to a risk that the cards become attractive to criminals. The reloadable cards were originally designed for those who had no access to conventional bank accounts and had low limits to reflect the needs of that type of person. Some of these cards now have limits of £10k+ and it should be borne in mind that there is no interest paid and transactions often incur fees.”

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

The list of activities permitting Simplified Due Diligence (SDD) and Enhanced Due Diligence (EDD) is appropriate for business activities undertaken – though its effectiveness can be limited as societies do not always have the means to validate whether a document is genuine (e.g. a driving licence).

The definition of a Politically Exposed Person (PEP) and the EDD measures required to manage PEP risks is broadly appropriate. However, some building societies raised concerns about the proportionality of the effort involved in managing PEPs:
"I wonder if someone might come up with a more cost effective way of carrying out PEPs / Sanctions checking. We spend £000s every year looking at this and have had a handful of positive matches, only one or two of which have resulted in a SAR. Are there any statistics available to show how effective this process is?"

"We do however feel that there would be an advantage to be gained if the risks surrounding domestic PEPs were revisited. It can sometimes be difficult to distinguish between a domestic & non-domestic PEP. We feel that the risks are broadly similar and it would more effective to treat a PEP in the same manner regardless of their domesticity."

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

- Respondents felt that risk based CDD requirements do assist with the deterrence and detection of ML activities allowing building societies to concentrate on where their risks lie, taking into account the product, the customer & the geographical location of that customer. The CDD requirements do make it difficult for fraudsters to penetrate organisations, if the parameters are correctly set. This doesn’t eliminate the risk, particularly for serious and organised criminals, but it helps to significantly reduce the risk of more opportunistic individuals - false documents can be proven, and product terms & conditions then allow closure of customers' accounts without notice where fraud takes place.

- One building society did express concern that systems & processes designed around the 2003 regulations reduced flexibility to adopt a risk-based approach so create a potential commercial disadvantage:

"As a firm which built a system to prevent customers being taken on without sufficient ID under the 2003 requirement, we have not changed our processes. Once a customer is a member of the building society they are able to open further accounts without additional ID. As all new customers must be UK resident we feel that the geographical risk posed is minimal and our product range (savings & mortgages) does not pose a significant risk. We therefore treat all customers the same, and require 2 pieces of ID for face to face account openings, or 3 for non face to face."

"I believe this approach can create a commercial disadvantage for firms who have not adopted the risk based as genuine customers may favour (as would money launderers / fraudsters?) firms where only one piece of ID verification is used."

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

At present, it is standard practice to retain copies of documents and records for longer than the minimum required, which helps to support Law Enforcement for Production Orders, etc. Building societies are regularly approached by Law enforcement (for a variety of reasons in addition to money laundering investigations) who have traced accounts to them. In the majority of cases copies of ID is requested. One building society therefore raised the question:

"I think that we would need to know how effective the current requirements have been before making comment. Would Law Enforcement benefit from a longer period of retention?"

A number of building societies also have concerns about current record keeping requirements and the Introducer Verification Certificate for business introduced by 3rd parties.
"The five year time limit for keeping records on identification is not compatible with the Introducer Verification Certificate (IVC) process (reliance on others). Under the current Regulations, a regulated firm cannot delegate its responsibility to identify its customer & must retain records for life of the account plus a further five years. If however it relies on identification evidence obtained by another firm/broker and confirmed via an IVC which is allowed under the current Regulations, the ID evidence only has to be retained for five years. This places the relying firm at a disadvantage and may lead them to make the decision that they do not want to take advantage of relying on others."

"We do not use the IVC reliance provision due to record keeping requirements. It is my understanding that the record keeping requirements would lie with ourselves for our customers and that we are required to maintain these for 5 years from the end of the business relationship – this is likely to exceed the requirement on the firm being relied upon. Furthermore, there is a potential for the firm being relied upon to close down without notifying the society."

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

There were no comments on this 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?

There were no comments on this question.

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?

On the whole, respondents regarded the requirements as compatible with building societies’ purpose and interaction. However one building society raised a concern on the compatibility of the current regulations with the Proceeds of Crime Act:

The risk based Regulations do not always interact logically and clearly with the reporting requirements under the Proceeds of Crime Act. It would be more helpful and would result in better quality reports being made if the 'de-minimis' requirements were amended to a more substantial, higher level. Currently firms are required to make a report where they suspect or know that money laundering has taken place and they can sometimes take a defensive attitude to reporting in order to ensure full compliance under the Regulations.

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

Respondents did believe that they have opportunities to engage in consultation processes and do use these opportunities to make our views known. They also have the opportunity to feed their views into HMT via trade bodies.

One building society did comment on lack of engagement on consent issues:

"The only area where we occasionally struggle to get advice is on consent issues but this is not regular and we rely on the SOCA helpdesk."


QUESTIONS ABOUT GUIDANCE

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

Respondents stated that the definitions of persons and activities subject to the Regulations given in the Guidance are clear and allow us to apply a risk-based approach to our UK business when formulating our internal policies. The Guidance is a very useful support to the regulations, which can otherwise be very difficult to follow and interpret.

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?

There were no comments on this question.

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

The activities that permit Simplified Due Diligence and Enhanced Due Diligence are appropriately explained in the Guidance Notes and support the risk based approach.

Due to the building society business profile, PEPs are very infrequently encountered. However, the definition of PEP is very wide in that it also encompasses close family members and known associates. It can be difficult for firms to know where to draw the line when drawing up their policies for dealing with PEPs. It would be helpful for firms if additional clearer definitive guidance could be issued.

The Guidance on beneficial ownership, reliance and equivalence is clear and allows firms to apply a risk based approach in our sector.

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

The sector specific Guidance which is tailored around various sectors & products is helpful to building societies and allows them to define their internal policies and procedures, taking the various risks that they face into account.

This also covers off requirements such as keeping records and training employees & has allowed societies to set differing levels of requirements, across the sector and within different parts of individual societies’ business structure, depending on the business model and risk appetite that is in place.

However, some building societies do feel that the JMLSG guidance is too geared towards banks rather than building societies.

“I believe the (JMLSG) guidance is clear in its presentation, however I feel that it is geared towards banks rather than building societies (smaller societies in particular, where the MLRO carries a number of other responsibilities) and think it would be useful to see more focused guidance.”

“I think the principles are fine but I am worried that there may not be a level playing field. We do work for many banks and one of the services we offer is management of closed loop internet accounts. As an example of risk appetite, we have had CDD extremes from acceptance of a single electronic database hit / single documentary proof by one bank to three hits / documents by another bank who classified the account as a higher risk than a mortgage. The majority are somewhere in the middle.”
13. How is Guidance made accessible and are there opportunities to engage in its formulation?

The Guidance for regulated firms is readily available via the JMLSG website. As mentioned previously, respondents feel that building societies are adequately involved in the consultation process and discussion and feel able to contribute either as an individual firm or via the relevant trade bodies.

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?

One building society was keen to reinforce concerns about the proportionality of effort around PEPS:

"We have invested a lot of money in systems and some appears to be money well spent, but PEPS and Sanctions checks do not give a good return and I wonder if there is a more cost effective way of doing these checks."

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?

Interaction with the regulator for the building society sector, the Financial Services Authority (FSA), is via a close and continuous supervisory regime and the FSA having discussions with the individual building societies on the effectiveness of our policies and procedures. This is evidenced to the FSA by the society’s MLRO, Financial Crime and Board reports.

The FSA also communicates with societies and other firms under its regulation by way of issuing publications & papers and from time to time and also attending industry forums where their views can be made known. Outcomes of their themed AML reviews are also useful when helping societies to re-evaluate our current approach to see if any amendments are required to meet the latest expectations of the FSA.
16. How do Supervisors ensure a consistent approach to compliance monitoring and enforcement is taken across the anti-money laundering regime?

There were no comments on this question.

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

The FSA has made both dedicated AML visits to building societies but has also combined this as part of their ARROW programme. Neither approach has caused any specific issues but does involve effort on societies’ part with preparing for their visit and collecting the data that they require.

18. How effective and proportionate is the enforcement regime?

When the FSA has issued penalties and sanctions for non-compliance, the accompanying Final Notices do set out clearly the rationale for the enforcement action taken together with the financial sanctions imposed.

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

There were no comments on this question.

Questions about Industry Practice

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

Respondents expressed a variety of views on this question:

"There are no barriers in place and our industry is at the forefront of implementing the guidelines"

"We are able to implement a risk based approach within the framework of the Regulations and Guidance."

"I think there is a case for prescriptive parameters in certain situations such as pre-paid debit cards, which I have mentioned previously."

"I believe that a risk based approach to customer due diligence is difficult to implement. As stated, our system required 2 pieces of ID as the majority of our customers and products would fall into the same risk category. To expect front line staff to interpret where simplified or enhanced due diligence should be applied is inappropriate – I believe that there would be potential that simplified due diligence would be applied in all circumstances in order to save sales."

However, one again, there was a consistent focus on the effort required to implement the requirements in respect of PEPS;
There are difficulties with identifying PEPS as no formal list of PEPS exists. New customers to the society must be UK resident so the AML regulations’ definition of PEPS does not apply to our business. However, taking a risk based approach, I believe that domestic PEPS should also be subject to enhanced due diligence – as it is not prescribed in legislation it is difficult to gain commercial backing to raise this standard. Without a list of these individuals available either it is difficult to manage.

"The identification of PEPS has involved considerable effort on our part in formulating our policies on identifying who these customers are and has involved us in considerable expense."

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?

Again, Respondents expressed a variety of views on this question:

"I think that the SDD processes are used to streamline the customer experience rather than as an exception process. Very few of our core business customers are identified using SDD but the vast majority of non reloadable prepaid debit cards are sold using SDD and a small percentage of reloadable cards although, potentially, this could increase as partner companies strive to maximise market share. We try to use electronic verification systems behind the scenes where possible. Only a very small percentage of potential customers have been turned away because of inability to prove their identity. We will only rely on other firms’ CDD process if they are regulated."

We take into account the requirements of the Regulations when dealing with customers that require either SDD or EDD. The use of SDD when processing simple products such as the Child Trust Fund benefits both us as an organisation and our customers in allowing the voucher to be used as ID evidence for both the child and the adult. Also requiring higher risk customers such as those applying remotely or PEPS to go through additional processes at the account stage also make business sense. As a firm we need to know who we are doing business with. We turn a very small number of customers away who are not able to fulfil CDD requirements as we use an electronic ID checking process initially which can be supplemented with an extensive list of acceptable documents. We also have an exceptions process for those customers who cannot reasonably be expected to produce standard documents.

We have an issue with relying on others in that under the Regulations we are required to keep records of a customer’s identity for the life of the account plus a further five years, whereas the firm that we have relied on may only be required to keep the records for five years. This anomaly requires resolving so that firms are not unnecessarily exposed as they cannot delegate their responsibilities.

"We apply the same levels of due diligence for all customers. If a customer were to be identified as a PEP then we would seek approval from the MLRO to proceed with the relationship and to request additional CDD from the individual. We currently use 3rd party transaction monitoring software and would any potential PEP / high risk customers to our "watch list" facility, enabling us to track each transaction or change to personal details. We do not rely on other firms (other than firms within the group) for CDD due to the record keeping requirements."

"We don’t have specific figures to answer this question. However, we are confident that the parameters set for our Electronic ID system are appropriate, with the rules and score levels periodically reviewed to ensure that they remain appropriately set."

22. To what extent do the Regulations support or complement Regulated Firms’ ‘business as usual’?
Respondents believe that the regulations do support "business as usual" and are integrated into account management processes as well as building societies' Induction and Mortgage Accreditation training, as well as job specific financial crime training. Were there no regulations, they would still want to carry out checks for valid business reasons— for example, a society would still need to know who they were lending money to and where the person lived as provision for the event that they failed to maintain an agreement to repay.

"We do not believe that the Regulations require actions over and above what we would want to do. The use of electronic identity checks are a simple cost effective way to confirm a customer's identity and can also incorporate fraud checks if so desired. We believe that the Regulations do uphold the reputation of the UK as a jurisdiction that takes its responsibilities around financial crime prevention seriously."

There are some concerns that some aspects of the regulations, though common sense from a law enforcement perspective, are less acceptable in business terms:

"Maintaining records is also common sense, however the length of time the records should be kept for, I believe, is longer than would be commercially acceptable"

Customer and account monitoring is an expense (around £100k for a firm our size to purchase a product plus ongoing licences of c. £30k pa) which I don't believe would be sanctioned if there were no requirement to do so."

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

There were no comments on this question.

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

The use of technology has enabled respondents to comply with the reporting and record keeping obligations without too much difficulty. However, the new SOCA reporting system (SAR Online) has introduced limitations in that it is more time consuming and has restrictions on the word limit (8,000).

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

Respondents are involved with commenting on policy and guidance through trade bodies.

QUESTIONS ABOUT THE CUSTOMER EXPERIENCE

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

All respondents reported that they received very few complaints from members or the public on being required to produce appropriate ID to open an account. Investment in systems, processes and staff training has helped to reduce the impact on the customer experience.

"We receive minimal complaints regarding our CDD requirements but there are always exceptions. Staff have been trained to explain the importance of the requirements to customers, which, generally, helps to diffuse potential complaint situations"
We have no evidence of complaints from customers relating to any aspect of the AML regulations. We do not request ID verification for new accounts only for new customers. We update customer ID at trigger points during the relationship, for instance changes of address.

"We feel that the majority of customers understand their obligations to prove their identity and to answer questions before doing business with a firm in the wider context of financial crime. As a firm, we make use of electronic ID checking & also have a long list of suitable documents which is also supplemented with an exceptions process."

"Existing customers are only asked to re-verify their identity if they wish to take out a new product with us but they did not pass our retrospective ID checking exercise that we undertook in 2005. These customers (of which there are not many) are able to transact on their existing accounts without supplying additional ID evidence but must have their identity re-identified if they wish to open a new account (this activity is classed as a trigger event)."

"We have very little adverse feedback from customers about the CDD process. Most of ours is done electronically to reduce the impact on the customer."

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

All respondents noted that they provide information explaining the CDD process and the reasons for it to their customers via product literature, account terms and conditions (paper and online). Customer facing staff are trained to handle queries about ID checking and explain the rationale for it.

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?

There is a concern that the de-minimis aspect to the regulations around having to make a report on all crimes regardless of the financial amount involved needs to be revisited. While there is a recognised need for SOCA and other agencies to gather small bits of intelligence to build a bigger picture of criminal activity, it is obvious that the volume of SARs currently reported is too high for many law enforcement agencies to handle with the speed needed to deliver the bigger picture. The reporting effort by building societies and others, and the associated cost, is therefore wasted.

Respondents felt that having a higher financial reporting threshold in place would benefit firms, law enforcement and customers.

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?

Broadly speaking, the Regulations, Guidance and supervisory framework do offer a proportionate response to the risk of money laundering in the UK. Both the Guidance and the Regulations are lined up in respect of promoting a risk based approach which is generally well understood in the financial services industry.

However, there is a continuing concern around the regime overall (not just the role of building societies and other financial services firms) around the resource required in terms of IT expenditure and headcount to comply with the AML Regulations compared to the number of successful investigations.
Measuring the effectiveness of the whole regime by results, there have been relatively few prosecutions for money laundering and very limited asset seizures – which calls into question whether the current regime is cost effective in proportion to its results. But, respondents recognise that there are intangible benefits to the UK regime.

“The figures from SOCA seem to suggest that the amounts recovered under AML legislation is a lot less than the cost of implementing prevention. What cannot be quantified is the positive effect on the community as a whole and the deterrent effect on potential criminals.”

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

Respondents believe that an appropriate, consultative approach has been taken, including incorporation of feedback from the financial services industry, which building societies can take advantage of if required. This provides them with clear and consistent information which allows them to transfer the regulatory requirements into their internal policies and procedures.