

Review of AML/CFT Supervision
Sanctions and Illicit Finance Team
1st Floor Blue
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

By Email: aml@hmtreasury.gsi.gov.uk

Date: 2 June 2016

Dear Sir

RE: Action Plan for anti-money laundering and counter-terrorist finance

The Investment Association is delighted to provide input to your consultation. The answers to the questions raised are set out in the annex.

Yours faithfully

Adrian Hood
Regulatory and Financial Crime Expert

The Investment Association

Camomile Court, 23 Camomile Street,
London, EC3A 7LL

T +44 20 7831 0898

E enquiries@theia.org

W theinvestmentassociation.org

Twitter @InvAssoc



ANNEX I

CONSULTATION RESPONSE

ABOUT THE INVESTMENT ASSOCIATION

The Investment Association is the trade body that represents UK investment managers, whose 200 members collectively manage over £5.5 trillion on behalf of clients.

Our purpose is to ensure investment managers are in the best possible position to:

- Build people's resilience to financial adversity
- Help people achieve their financial aspirations
- Enable people to maintain a decent standard of living as they grow older
- Contribute to economic growth through the efficient allocation of capital

The money our members manage is in a wide variety of investment vehicles including authorised investment funds, pension funds and stocks & shares ISAs.

The UK is the second largest investment management centre in the world and manages 37% of European assets.

More information can be viewed on our [website](#).

IDENTIFICATION OF RISKS

1. Should the government address the issue of non-comparable risk assessment methodologies and if so, how? Should it work with supervisors to develop a single methodology, with appropriate sector-specific modifications?

A single money laundering risk threat assessment should be built, with the risks fed in from law enforcement and the different industry segments. One of the greatest challenges in managing money laundering compliance is that firms have to comply with the regulations and at the same prevent money laundering from happening and these are not always the same things; an intelligence-led risk assessment would be a great way of bringing these closer together. Additionally, a single risk assessment would bring together experiences from different industries.

If the Government is determined to tackle money laundering then this risk assessment should cover all financial crime as far too often fraud and bribery generated through the products and services of one company are laundered through another. The threat

assessment could be managed by a single team in the Home Office or NCA and kept up to date with input from the industry financial crime panels, such as JMLIT. If law enforcement, the supervisors and the industry bought-in to one version of the risks for the UK financial services sector there would be much more common ground, in terms of effective control processes, and acceptance of monitoring to test that they are in place.



2. How should the government best support supervisors – and supervisors support each other – to link their risk-assessments to monitoring activities and to properly articulate how they do so?

As stated in our answer to Q1

3. Should the government monitor the identification and assessment of risks by the supervisors on an ongoing basis? Should the supervisors monitor each other's identification and assessment of risks? How might this work?

As stated in our answer to Q1

4. Should smaller supervisors be encouraged to pool AML/CFT resources into a joint risk function and would this lead to efficiencies? If so, how should they be encouraged?

As stated in our answer to Q1

5. How should the ability of the supervisors and law enforcement agencies to share information on risks be improved?

As stated in our answer to Q1

SUPERVISORS ACCOUNTABILITY

6. To promote discussions between the supervisors, should attendance at the AMLSF and submission of an annual return to the Treasury be made compulsory for supervisors? How could the government ensure that this happened?

Submission of an annual return makes sense. But it should be accompanied with periodic testing from the National Audit Office that the overarching risk assessment has been embedded in the supervisory monitoring programme.

7. Could the Money Laundering Advisory Committee (MLAC) have a greater role in driving improvements in the supervisory regime?

Leveraging expertise to tackle these things are always a good idea, but it is very important to avoid a situation where the supervisors and the industry are only giving the option of being turkeys voting for Christmas. This should be about targeting resources towards the real risks.

8. Should the government instigate a formal mechanism for assessing the effectiveness of all the supervisors AML/CFT activities, with the power to compel

action to address shortcomings? If so, should this be carried out by the Treasury directly, through another body such as the National Audit Office, or through creating a new body, perhaps along the same lines as the Legal Services Board which oversees legal services supervisors or the Financial Reporting Council which promotes high quality corporate governance and reporting? Are there other ways of ensuring effectiveness that should be considered?

National Audit Office as per above.

9. Would an overarching body be able to add value by maintaining a more strategic view of the entire AML/CFT landscape and identifying cross-cutting issues which individual supervisors might struggle to identify? Should such a body have the authority to guide and compel the activities of the supervisors, up to and including the power to revoke approval for bodies to be supervisors?

Yes and Yes, but only if it is tied into an intelligence-led assessment of the risks, otherwise there is a real likelihood that it will just become an extra layer of bureaucracy.

PENALTIES AND ENFORCEMENT

10. Should the government seek to harmonise approaches to penalties and powers? For example, should supervisors have access to a certain minimum range of penalties and powers and what should these be? Should there be a common approach for deciding on penalties and calculating fines based on variables such as turnover that are scalable to the size of the business?

Yes. Penalties should be commensurate with the number and size of transactions that have been committed with acceptable controls in place. Again this needs to be tied in to the universal risk assessment to determine what an acceptable control is.

11. Should the government seek to establish a single standard for supervisors disciplinary and appeals functions?

Yes.

12. Does the inability of some supervisors to directly compel attendance of relevant persons to answer questions or to enter premises reduce their ability to effectively supervise, or is liaison with law enforcement agencies an appropriate mechanism? If so, how could the government address this?

The power to investigate should come with the charter to supervise.

ENSURING HIGH STANDARDS IN SUPERVISED POPULATIONS

13. Should all supervisors have powers to compel supervised businesses to submit comprehensive and up-to-date information to aid risk assessment?

Annual returns should be sufficient. However, all the supervised businesses already have to submit suspicious activity reports. Better analysis of these should be used to drive quantitative validation of the universal risk assessment.



14. Is there a need for supervisors themselves to undergo training and/or continuous professional development? Is so, what form might this take and should it be government-recognised?

Education, professionalism, specialism and continued development are a point of real weakness amongst supervisors and the supervised businesses. A myriad of different qualifications exist, and no sector has taken the decision to put their weight behind a single one. There is a massive variety of required qualifications during recruitment, and the controlled function approval process, and they are almost always exchangeable for practical experience. It is still the case the senior operational get moved into financial crime roles without financial crime experience. It should be of no surprise then that there is a massive range in quality of financial crime specialists, and that able and enthusiastic people can find it difficult to build a flourishing career amid such uncertainty. A great example of this the Financial Investigators qualification that was rolled out across public sector investigators but which barred the private sector. Imagine what the situation would be like professional qualifications for accountants or lawyers we're managed in this way. A government recognised qualification, with government certified providers could change this overnight. Equally, increased government funding of financial crime research at universities would make a huge difference.

15. Is there a need for relevant persons in the supervised populations across all sectors to undergo training and/or continuous professional development to aid their understanding of AML/CFT issues?

Absolutely, as per above.

THE ROLE OF PROFESSIONAL BODIES IN AML/CFT SUPERVISION

16. What safeguards should be put in place to ensure that there is sufficient separation between the advocacy and AML/CFT supervisory functions in professional bodies? To what extent are appropriate safeguards already in place?

N/A

17. Should the government mandate the separation of representative and AML/CFT supervisory roles? What impacts might this have on the professional bodies themselves?

N/A

18. How does the UK approach to professional body supervision compare to other countries' regimes?

N/A



19. How could inconsistencies between the JMLSG guidance and the FCA's Financial Crime Guide best be resolved? Should the two be merged? Or should one be discontinued and if so, which one and why?

It is important to bear in mind that the JMLSG Guidance is intended to assist firms in meeting their legal and regulatory obligations, whilst the FCA Financial Crime Guide is not binding, but sets out supervisory expectations (including examples of good and bad practice that firms should consider) of which firms should be aware. While the JMLSG Guidance and the FCA Financial Crime Guide have a similar scope in relation to AML/CTF, they emerge from different sources and processes. The FCA Guide includes material in addition to that covered by the JMLSG Guidance. The JMLSG Guidance makes reference to the existence of the FCA Guide, with a comment that firms should be familiar with the FCA material.

The existence of two separate documents addressing AML/CTF does place a burden on firms to carry out gap analyses on two documents which, while similar, are different. Inconsistencies between the two documents in relation to AML/CTF would be resolved if only one document addressed this aspect of financial crime.

It would be sufficient for the JMLSG Guidance, in its drafting to 'have regard to' FCA findings in relation to AML/CTF (and indeed to the eventual ESA Risk Factor Guidelines); if this were so, the FCA Guide, in relation to AML/CTF, need not exist as a separate document.

The fact that the JMLSG Guidance is prepared by industry practitioners retains the industry buy-in and commitment that is so vital to good compliance, thus improving the effectiveness of the UK AML/CTF regime. The JMLSG is made up of trade association representation and its Guidance covers firms not regulated by the FCA.

20. What alternative system for approving guidance should be considered and what should the government's role be? Is it important to maintain the principle of providing legal safe harbour to businesses that follow the guidance?

The Government should co-ordinate the risk assume that which drives the guidance. If a clear safe harbour was provided supervisors would find firms much more cooperative in meeting specific requirements, to take advantage of it. The intelligence-led risk assessment, would mean the specific requirement could be flexed to meet the risks. The issue is that if criminals found a way to launder proceeds of crime despite the safe harbour compliant controls, and they will, there will always be a lag in raising the standards. However, this could be managed by directing law enforcement resource at the emerging trends.

While Treasury approval of the JMLSG Guidance is important, it is not fundamental. A court is likely to have almost the same regard to industry guidance prepared under the present JMLSG due process, and widely followed by the financial sector, whether or not it had been Treasury approved. Some non-JMLSG industry sectors have consciously chosen not to offer their industry-prepared guidance for Treasury approval, in the belief that a court would in practice have equal regard to the 'best practice' nature of their guidance.

Treasury approval is, however, widely seen as a safe harbor for firms that follow the JMLSG Guidance. The degree of legal 'certainty' that this provides should not be underestimated.

21. Should the government produce a single piece of guidance to help regulated businesses understand the intent and meaning of the Money Laundering Regulations, leaving the supervisors and industry bodies to issue specific guidance on how different sectors can comply? If so, would this industry

guidance need to be Treasury approved? Should it be made clear that the supervised population is to follow the industry guidance?



There is a danger that more guidance will produce more confusion, not less. It is more important that we are clear about what regulation firms are supposed to comply with. A significant change could be made in setting out outcome specific regulation, rather than setting specific rules about how operational processes (e.g. customer identification) are carried out.

If the government does develop such a guidance explaining the legal framework, it must avoid overlap with the existing JMLSG Guidance. The financial services industry is very diverse, with the universe of sectors covered by the AML regulations even more varied (from banks to law firms, casinos and estate agents).

The JMLSG Guidance is seen as a fundamental requirement by much of the financial services industry. It enables practical guidance to be drafted by those who have experience of AML compliance in practice, and provides significant 'buy-in' from the industry – both of these factors are significant in the effectiveness of the guidance, and would be difficult for a public sector body to deliver.

Firms in the financial sector are already expected by the regulator, through the FCA Enforcement Guide, to follow the JMLSG Guidance, or to explain why they chose not to.

TRANSPARENCY

22. Should supervisors be required to publish details of their enforcement actions and enforcement strategy, perhaps as part of the Treasury's annual report on supervisors, or in their own reports? What are the benefits and risks in doing so?

Yes. This is the only way of managing policy, principle and precedent in Money laundering supervision.

23. Should the government publish more of the detail gathered by the annual supervisor's report process? For example, sharing good practice or weaknesses across all supervisors?

Yes

24. Should supervisors be required to undertake thematic reviews of particular activities or sections of their supervised populations, as the FCA currently does? If so, how often should such reviews be undertaken?

Yes. Depends on the industry.

INFORMATION SHARING



25. What is the best way to facilitate intelligence sharing among supervisors and between supervisors and law enforcement? What safeguards should be imposed?

The intelligence mechanisms, people and system are already there, eg.g NCA. They need significant resourcing, but they are capable of bringing this information together.

26. As one means of facilitating better sharing of intelligence among supervisors and between supervisors and law enforcement, could the government mandate that all supervisors should fulfil the conditions for, and become members of, a mechanism such as FIN-NET? Are there other suitable mechanisms, such as the Shared Intelligence System (also hosted by the FCA)?

FIN-NET excludes the private sector, which will always restrict the intelligence that is shared.

27. Should the government require all supervisors to maintain registers of supervised businesses? If so, should these registers cover all registered businesses or just certain sectors? Should such registers be public? What are the likely costs and benefits of doing so?

Yes, I cannot see how proper supervision can take place otherwise.

ENSURING THE EFFECTIVENESS OF THE FCA

28. How can credit and financial institutions best be encouraged to take a proportionate approach to their relationships with customers and avoid creating burdensome requirements not strictly required by the regulations?

These issues are addressed above: the FCA is setting the standard using guidance not commensurate with the risks, and is not outcome focused, it is getting buy-in to its approach through fines rather than consensus on risk. The issue is not whether AML is systemic risk, but that the regulator and the firms should already be in agreement that the systems should prevent proceeds of crime from getting in, and the universal risk assessment should be the way they agree what we are trying to stop and how to stop it.

29. Does failure of AML/CFT compliance pose a credible systemic financial stability risk? If so, does this mean that the FCA should devote more resource to the largest banks which have the greatest potential to have systemic effects?

As stated in our answer to Q28

30. How should the FCA address the perception from evidence submitted to the Cutting Red Tape Review that it is overly focused on process and ensure that its AML/CFT supervision is focused proportionately on firms which pose the greatest risk?

As stated in our answer to Q28



THE NUMBER OF SUPERVISORS

31. Is the number of supervisors in itself a barrier to effective and consistent supervision? Is so, how should the number be reduced and what number would allow a consistent approach?

Sector specific supervision is the best way of making sure industry specialists are looking at AML programme, they just to be AML specialists too.

32. If this is an issue, are there other ways to address it? For example, would supervisors within a single sector benefit from pooling their AML/CFT resources and establishing a joint supervisory function?

Exposure to different industries and approaches has to be a good thing.