

Consultation on Changes to the Trust Registration Service
Assets & Residence Policy Team
HM Revenue and Customs
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Dear Sir or Madam

RE: Fifth Money Laundering Directive and Trust Registration Service Technical consultation document

The Investment Association is delighted to provide input to your consultation.

The prevention of money laundering and terrorist financing is essential to confidence in, and correct functioning of, the financial markets in the United Kingdom. The Investment Association, therefore, strongly supports the implementation of the Fifth Money Laundering Directive (5MLD). It is important that the UK is seen to be meeting its obligations in this area.

We consider that Unit Trusts, including Authorised Unit Trusts established under s237 of the Financial Services and Markets Act 2000, should be exempt from the scope of the extended TRS. This is an issue of utmost importance to those that could be, inadvertently, effected by it.

We would, of course, be happy to discuss *any* aspect of our response in more detail. If you have any questions, please contact me directly (adrian.hood@theia.org).

Yours faithfully

Adrian Hood

Regulatory and Financial Crime Expert

ANNEX I



RESPONSES TO QUESTIONS

ABOUT THE INVESTMENT ASSOCIATION

The Investment Association is the trade body that represents UK investment managers, whose 240 members manage over £1.3 trillion in collective investment funds on behalf of clients. The money our members manage is in a wide variety of investment vehicles including authorised investment funds, pension funds and stocks & shares ISAs, and pertinently, in OEICs and Unit Trusts. More than £420bn of this is invested in UK domiciled Unit Trusts.

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 Unit Trusts, 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](#).

CHAPTER 3. WHAT INFORMATION IS REQUIRED



QUESTIONS: WHO IS REQUIRED TO REGISTER

- 1. Are there other express trusts that should be out of scope? Please provide examples and evidence of why they meet the criteria of being low risk for money laundering and terrorist financing purposes or supervised elsewhere.**

UNIT TRUSTS

We note that the consultation proposes new requirements for “type A trusts”, which are UK trusts that are express trusts and to which the exemptions listed in the draft regulation do not apply. For avoidance of doubt, we would expect that that the proposed extension to the TRS would continue to exclude, for these purposes, trusts that are not express trusts, for example Unit Trusts, which are collective investments constituted under a trust deed, including Authorised Unit Trusts established under s237 of the Financial Services and Markets Act 2000.

The FCA [authorises](#) and [supervises](#) Authorised Unit Trusts (AUTs) as regulated investment. They are generally seen as being lower risk investment products for money laundering purposes.

Investors into unit trusts would be identified and verified for AML purposes, under Part 3 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692) (the MLRs), by the Fund Management company, before they can invest.

It should also be noted that AUTs maintain a register of investors – which equates to the beneficial owners of the assets in the Unit Trust. This, due to fact that AUTs tend to have daily dealing, will change on a daily basis. Requiring the AUT Register to be replicated with the TRS would seem onerous and disproportionate.

Regulators and Law Enforcement Agencies would be able to gain access to the AUT Register, should they need to, just as they would be able to gain access to the TRS should they need to. There is no need to duplicate this register.

It would seem that AUTs could be added as another type of trust which is not a type A trust, just after the proposed Regulation 45ZA(2)(c), which exempts trusts holding pension schemes.

Should they not be excluded from the scope of the requirements, then the imposition of this TRS reporting obligation would lead to a significant ‘level playing field’ discrepancy when they are compared with OEICs (Open Ended Investment Companies) with which they are, otherwise, comparable as regulated investments.

CHILD TRUST FUNDS

While CTFs are, legally, trusts, they cease to be trusts when the child turns 18 years old. Legislation now provides for CTFs to be rolled over directly into a CTF Continuation Account, which is a special type of protected account, just like an ISA. The CTF Continuation Account are restricted so that no further contributions are allowed and the money must be withdrawn in full – no partial withdrawals are required.

Providers can, alternatively, auto-bulk-transfer CTFs into an actual ISA at maturity.

Each account was opened with a voucher from the government identifying the child. All of this results in CTFs being a very low risk for money laundering and financial crime.



As such, we consider that there should be a specific exclusion for CTFs, in view of the low value (typically £1500 average) and the limited time period over which they will mature, 2020-2029, so including them in the scope of the extended TRS would only be for a relatively short time, and consequently a disproportionate effort for firms, with minimal benefits derived.

2. Do the proposed definitions and descriptions give enough clarity on those trusts not required to register? What additional areas would you expect to see covered in guidance?

It would be helpful if the proposed changes to the regulations, or associated Guidance from HMRC, would make clear the differentiation between express and bare trusts.

While high level guidance on the main HMRC website should be easily intelligible by the general public, there is a definite demand for more comprehensive and technical guidance that would be of use to professionals in the industry and legal advisers who specialise in trust issues. As such, this could be written with such an audience in mind.

QUESTION: DEADLINES, DATA RETENTION AND PENALTIES FOR NON-COMPLIANCE

3. Do the proposed registration deadlines and penalty regime have any unintended consequences that would lead to unfair outcomes for specific groups?

The proposed penalty regime would seem reasonable, unless it were to be applied to Authorised Unit Trusts (AUTs).

As explained above, AUTs tend to have daily dealing, so the investors in the Unit Trust, who are the beneficial owners, would tend to change on a daily basis. Expecting the managers of AUTs to ensure that all the changes in their Register were duplicated via notifications to the TRS would seem disproportionate and onerous.

Otherwise, we support the proposal that trustees not be fined for a first offence of failing to register, or failing to update details. It is appreciated that many trustees are not professional trustees, and in the absence of professional advice, may remain entirely, albeit, innocently, ignorant of these obligations.

4. WHO CAN ACCESS THE INFORMATION?

No questions are asked about the process whereby relevant persons require that trustees provide them with 'proof of registration or an excerpt of the register'. We note that when, what were under 4MLD 'obliged entities', but are now referred to as 'relevant persons' under 5MLD, want information about the beneficial owners of a trust which is a client of theirs, then they go to the trustee, on whom the onus remains to provide this information, rather than the relevant person having direct access to the register. This means that the trustee has control over who sees the information.

Regulation 30A(1) of the MLR results in relevant persons being provided with 'proof of registration or an excerpt of the register'. It is necessary, for MLROs at relevant persons to do their job and prevent their firms being used for money laundering, for this 'proof' or 'extract' to include all relevant information in the register on the trust and its beneficial owners.

A bare confirmation that the trust is registered on the TRS, with no details of beneficial owners would significantly undermine the ability of relevant persons to do their job in identifying and verifying the beneficial owners of their clients, to counter money laundering.

There should also be recourse to the TRS should a relevant person have any suspicions that the proof of registration is not genuine or accurate.

QUESTION: LEGITIMATE INTEREST & THIRD COUNTRY ENTITY REQUESTS

- 4. Do you consider that the revised definitions and application process for legitimate interest and third country entity requests set the right boundaries for access to the register? If not, please provide specific examples of where you would consider this not to be the case.**

We have no specific comments on the proposals relating to legitimate interest and third country entity requests.

QUESTION: EXEMPTIONS TO PROVIDING BENEFICIAL OWNERSHIP INFORMATION

- 5. Does the proposed handling of exemptions for legitimate interest and third country entity requests provide the right access to the beneficial ownership data whilst protecting beneficial owners from potential risk of harm?**

No comments.

QUESTION: PROCESS, REVIEWS AND APPEALS

- 6. Are there any instances where the above proposals would not give investigators access to the information they require to follow a specific lead in suspected money laundering or terrorist financing? Please be specific and provide examples.**

No comment.