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

Annex A

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, ie 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 insititution 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 ie 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 pertinently, 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.

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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

in its formulation via the BBA and its Money Laundering Advisory Panel.

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 du 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 xxdate. 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 tolls 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, eg a communist state of a theocracy, ie 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 this 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 should 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. 6342 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, ie 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 (SI975/2009).

• 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.