

RESPONSE OF THE BRITISH BANKERS' ASSOCIATION

FCA CONSULTATION- PROPOSED GUIDANCE ON FINANCIAL CRIME SYSTEMS AND CONTROLS (GC14/7)

Dear Carolin

The BBA welcomes the opportunity to respond to the consultation (GC14/7) on proposed changes to the FCA Guidance on financial crime systems and controls. The BBA is the leading trade association for the UK banking sector with 230 member banks headquartered in over 50 countries with operations in 180 jurisdictions worldwide. Our members manage more than £7 trillion in UK banking assets, employ nearly half a million individuals nationally, contribute over £60 billion to the UK economy each year and lend over £150 billion to UK businesses.

We have developed this response through liaison with the BBA Money Laundering Advisory Panel and the BBA Financial Crime Policy Group. These are the leading banking industry committees for strategic and technical financial crime policy matters, bringing together a range of firms including banks providing retail, investment, corporate and private banking services. As such this response can be considered a comprehensive description of the views of the British banking industry. Our response comprises this covering letter setting out high level comments and the annex that provides more detailed points on the text of the consultation document.

High Level Observations

We recognise that the consultation GC 14/7 is focused on changes to the FCA Financial Crime Guide and our response provides commentary on the specific text proposed. As a starting point though we would emphasise that BBA members pay significant attention to FCA Thematic Review reports, FCA press statements/speeches and the FCA Guidance itself. Indeed, there are aspects of the Thematic Review report that we would be pleased to discuss with the FCA beyond the consultation on the Guidance.

Overall, our members acknowledge that FCA Thematic Reviews and Financial Crime Guidance provide important information to firms considering their financial crime compliance approaches. We welcome the recognition within this Thematic Review report of the enhanced AML measures put in place by some banks and that senior management engagement in this area has increased. Our members also appreciate that there is a need for consistently high quality controls across the banking industry and the need to constantly review and enhance measures in light of emerging risks and changes to regulation and legislation. The BBA has been pleased to engage closely with the FCA on regulatory expectations for AML/CTF and we have welcomed the particularly useful conversations we have had over recent months in this respect. The BBA is committed to helping ensure an effective dialogue between the FCA and the full range of our member banks.

Beyond the engagement with the FCA the BBA has a programme of work, endorsed by our Board, to support our member banks to address financial crime risks including:

- New industry intelligence mechanisms to support effective identification and mitigation of financial crime risks (including the BBA Financial Crime Alerts Service)
- Benchmarking initiatives between members and BBA guidance materials
- BBA led campaigns to raise bank staff awareness of financial crime issues

- Intensified dialogue with key public authorities in the UK, including through the new Serious and Organised Crime Financial Services Forum and overseas bodies such as the FATF, EC, UN and World Bank.

In relation to the Guidance Consultation, our members have made the following high level observations:

- **Timing:** The proposed amendments to the Guidance focus on approaches for AML compliance in particular in relation to some higher risk situations. We recognise the political, policy and regulatory focus on areas such as systems and controls for PEPs and beneficial ownership. However, we also note that the 4th EU Money Laundering Directive is close to being finalised and there will also be new guidelines produced by the EU authorities. The Directive and Guidelines may have significant implications for expectations of banks in managing some higher risk situations. BBA members will therefore be examining the practical implementation requirements of the new EU Directive, alongside considering the implications of the proposed changes to the FCA Guidance. BBA members have suggested it may be more appropriate to delay finalising the changes to the FCA Guidance until the 4th EU Money Laundering Directive and the accompanying EU Guidelines have been published. This is of course a matter for the FCA to consider but from the banking industry perspective, clarity of expectations and coherence between the FCA Guidance and EU Guidelines will be very important.
- **Resource and customer service implications:** Some of the proposed amendments to the Guidance appear to expand the expectations of AML/CTF policies, systems and controls in particular for source of wealth/source of funds measures. The expectations appear to go beyond the current FATF standards/guidance and UK regulations/laws. Whilst we are generally supportive of the format of the FCA Guidance that draws out good practice examples, when those good practice examples go beyond current regulatory and legislative minimum standards this could be usefully highlighted as such. Additionally it may be helpful to differentiate within the Financial Crime guide those aspects which are legal/regulatory requirements ("must") from what is good practice ("should") and what is optional ("may") – perhaps through colour coding or something similar.

We would also wish to outline that there are difficulties for BBA members, especially smaller firms, in terms of resourcing the measures required to meet the heightened regulatory expectations. There has also been a great deal of legislative and policy change over the past few years for AML/CTF and these requirements have added further complexity and resource pressure. Some firms are simply finding it very difficult to recruit sufficient numbers of staff with the requisite expertise to meet these requirements.

BBA members would be keen to continue a constructive dialogue with the FCA on the practical implications of the changes to the FCA Guidance, in particular around Source of Wealth and Source of Funds. This will help banks to consider how financial crime compliance resources can be applied in the most proportionate and effective manner, in line with FCA expectations. We thank you for your consideration of our suggestions.

Yours Sincerely

Mat Allen
Director Financial Crime
British Bankers' Association

ANNEX

Specific comments

- **Box 2.1 (Management Information):** This states that examples of financial crime MI (should) include *“an overview of staff expenses, gifts and hospitality....”*

Whilst we appreciate the need for such an activity, these matters would generally be dealt with by counter fraud, anti bribery and corruption (ABC) and audit functions within firms. **The FCA may wish to consider moving this text to a more appropriate section(s) of the Guidance, perhaps under ABC?**

In relation to the Management Information section on page 8, clarification on what definition of dormant accounts is intended here would also be helpful. i.e. would this include suspended accounts or only those considered dormant after a certain period of time?

- **Box 2.3 (Risk Assessment):** This states *“A firm should identify and assess the financial crime risks...”*

We acknowledge that a Risk Assessment provides the fundamental basis for the financial crime strategy for most firms, as set out in the recommendations of the FATF and guidance from the FCA and other regulators. **As such we suggest that the text should be amended to make it clear that firms “must identify and assess financial crime risks”** to ensure coherence with international standards and UK regulations, as well as other references within the current FCA Guidance.

- **Box 2.3 (Risk Assessment):** *“Firms should regularly review their risk assessments”*

Most firms will conduct a corporate wide financial crime risk assessment on at least an annual basis. Specific assessments may then be conducted to assess risks pertaining to particular categories of customers, products etc. The proposed text could though in our view be more explicit in terms of the regularity of the risk assessment and scope. **We suggest it should be made clear within the proposed text for the financial crime guidance that “firms should establish an appropriate process to review the business wide financial crime risk assessment on at least an annual basis”.**

- **Box 3.7 (Handling higher risk situations- Enhanced Due Diligence):** *“The extent of the EDD must be commensurate to the risks..... but firms can decide, in most cases which aspects of CDD they should enhance”*

We recognise that there is a need to ensure that appropriate levels of due diligence. We suggest it may be helpful to **add a reference to clarify that a Risk Based Approach should be adopted in this respect**

- **Box 3.7 (Handling high risk situations- Enhanced Due Diligence):** states examples of EDD include *“establishing the source of the customer’s or beneficial owner’s funds to be satisfied”*

There are significant challenges in conclusively establishing the source of funds for some customers and beneficial owners. **We suggest it may be helpful to add “reasonably satisfied” given the complexities in this area.** (and this is consistent with the FATF

guidance) We would also welcome clarity on the extent to which some or all of the examples of EDD are expected.

- **Page 11 and 12:** As set out in our covering letter, BBA members have concerns over the bullets relating to establishing the source of wealth and establishing the source of funds. Our key points/suggestions are:
 - consistency with the earlier boxes
 - expectations that appear to go beyond current law/regulation and practice, as well as the FATF standards.

We are concerned that the proposed text could exacerbate criticisms banks are facing in relation to delays and burdens posed to high net worth clients in particular by financial crime compliance actions. **We would welcome an opportunity to discuss the practical implementation expectations with the FCA.**

- **Sanctions**

We have noted the following proposed amendments to the parts of the Financial Crime Guide dealing with sanctions. The key concerns relate to the text below (marked in red).

In addition to guidance contained in Part 1 Chapter 7 of Financial crime: a guide for firms, examples of good practice include:

- *firms carry out 'four-eye' checks on sanctions alerts before closing an alert or conducting quality assurance on sanctions alert closure on a sample basis*
- *firms regularly screen their customer database (including associated persons) against sanctions lists using systems with fuzzy matching capabilities*
- *alert handlers have access to CDD information held on each of the bank's customers*

BBA members would not contend with the suggestion of regular screening, however, in relation to clients/customers we would note that banks are required to fulfil AML/KYC obligations in relation to the customer and we would welcome removal of the term "(including associated persons)" unless greater clarity can be provided as regards the intended "associated persons" may be? Specifically we would draw attention to the fact that under sanctions there is no requirement to screen associated persons and banks would not generally ask for or hold information on associated persons (if associates persons are meant to be for example relatives and close associates) and that, even if such screening could be carried out, it is not the case that an asset freeze on a sibling for example would also carry over to their brother or sister absent a known arrangement whereby those parties would be working on behalf of the designated person.

Additionally, the organisational/infrastructural arrangements which exist across banks will vary according to the risk profile of the firm. It may not be possible or appropriate for all alert handlers to have access to this information. Also, particularly in relation to lower level "L1 and L2" type dis-positioning it may not be necessary and there are also data privacy issues which may apply. **It would be our preference that this be removed or caveated to note that "specified, senior dispositioning teams to have access, directly, or indirectly to CDD information held on each of the bank's customers".**