Consultation Response

AFME response to HM Treasury's consultation on improving the effectiveness of the Money Laundering Regulations

June 2024

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on HM Treasury's consultation on improving the effectiveness of the Money Laundering Regulations.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate for stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA), a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76.

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Q1. Are the customer due diligence triggers in regulation 27 sufficiently clear?

With regard to the requirement in regulation 27(1)(a) to apply customer due diligence when a person 'establishes a business relationship', we note that guidance on the meaning of 'business relationship' is provided in regulation 4. This definition does not however offer guidance as to the point at which a relationship is to be understood as having been 'established'.

We interpret 'establish' to mean the point at which a service provider agrees to take an action at the request of and for the benefit of another person under contract law - to open an account, to enter into a written or verbal contractual agreement, to initiate a transaction, or similar action. The precise point of 'establishment' of a relationship may however be ambiguous in certain circumstances. Communication may continue between two parties without any action being taken in the near term. Such contact could however lead to later action. It is not clear at what point the regulations would understand a relationship to have been established in such circumstances. We would welcome clarification of the intended meaning of 'establish'.

We consider that the definition of 'business relationship' should clearly incorporate reference to its customer-centric nature, to make clear that it is a contractual relationship between a customer and a service provider.

We also request additional clarity in the context of 'contracting parties', for example, in situations where a firm may have a guarantor or a collateral services provider as part of a contract or legal agreement, but the regulated financial service is not provided to that party. Currently we consider that if there is a contracting party, agnostic of the role, then this would constitute a 'business relationship', which would then require due diligence to be undertaken. We would welcome clarification.

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The requirement to carry out customer due diligence (CDD) where the firm suspects money laundering or terrorist financing poses challenges in situations where the firm's decision is to proceed to an immediate exit, or where the firm wishes to avoid tipping off. Suspicion of money laundering should not automatically require the refreshing of CDD. Information held on the customer including transactional activity should be considered during the investigation but there should not be a need to conduct full CDD (including requesting new documentation) unless the investigation cannot otherwise be concluded.

We suggest that consideration should be given to potentially removing suspicion of money laundering or terrorist financing (ML/TF) as an automatic trigger for CDD. We suggest instead the inclusion of a requirement to review customer information and transactions as part of work undertaken to confirm or discount suspicions, in accordance with an intelligent risk-based approach. This would allow firms to decide if a full CDD refresh is required, or if only certain elements of CDD need to be refreshed.

Some market participants report uncertainty as to whether the triggers set out in regulation 27(8) require measures in addition to those mandated by regulation 28(11)(b). This could be remedied by amending the text to make clear that 27(8)(i) and (ii) may trigger a review of existing records to ensure CDD information is up-to-date, rather than requiring the fulfilment of a broader obligation to 'apply customer due diligence measures'.

We request clarification of expectations and requirements for scenarios in which a regulated market is located in the UK but a transaction on that market is booked outside of the UK.

Q2. In your view, is additional guidance or detail needed to help firms understand when to carry out 'source of funds' checks under regulation 28(11)(a)? If so, in what form would this guidance be most helpful?

We agree that it is unhelpful to include in law specific examples of when source of funds checks under regulation 28(11)(a) should be required. We agree that such an inclusion could lead to disproportionate checks which may be considered mandatory in practice, even in situations where reasonable assessment of the risk present would not otherwise conclude that such checks would be necessary. We share the view that the better approach is to require the person in question to undertake appropriate risk-based analysis and to apply their judgment to the relevant level of risk.

To the extent that any guidance or examples could be produced, we consider that this could most appropriately be provided by relevant industry groups. Such guidance could direct users to review National Risk Assessments (NRAs), FATF recommendations, JMLSG publications, and internal intelligence to help users identify current trends and scenarios which may suggest that source of funds checks could usefully be undertaken. Such guidance (which could also cover the extent of corroboration that would be appropriate for a given situation) could be more quickly updated than examples set out in law and could leverage the knowledge of industry professionals at the edge of rapidly evolving technologies and markets.

Q3. Do you think the wording in regulation 28(10) on necessary due diligence on persons acting on behalf of a customer is sufficiently clear? If not, what could help provide further clarity?

Relevant persons are applying the scope of the 'acting on behalf of' identification and verification (ID&V) requirements in a variable fashion, and as a result, may be treating a wider range of scenarios as falling under the requirements than is proportionate and effective.

We request that HM Treasury clarifies the intended scope of the 'acting on behalf of' requirements. This will be useful for wholesale banks in their interactions with corporates or other non-personal customers who may have many individuals authorised to act on the customer's behalf throughout the customer lifecycle.

To mitigate ML/TF risk the regulation should be clarified to take account of the scenario where external parties or persons are acting on behalf of the customer (e.g. an external lawyer), where the additional ID&V requirement has mitigation utility. CDD measures under regulation 28 already require the ID&V of related persons who direct or control the business in the corporate context, which would lead to the identification of risk factors for ML/TF.

The scenario where internal parties or persons acting on behalf (through internal employment) of a corporate/financial institution or company is deemed not to be in scope of this regulation, due to internal controls over employees of regulated entities (e.g. conduct staff, certified staff and SMFs) and corporate businesses. We consider that a firm should be able to devise its own risk-based approach and should decide whether additional ID&V requirements are proportionate.

Q4 What information would you like to see included in published digital identity guidance, focused on the use of digital identities in meeting MLR requirements? Please include reference to the level of detail, sources or types of information to support your answer.

AFME provided considerations on this subject in response to HMT's 2021 Call for Evidence on the Review of the UK's AML/CFT regulatory and supervisory regime. We stated that it was necessary to clarify how to assess the level of assurance that is appropriate when making use of digital identity, the appropriate use of distributed ledger technology in customer due diligence, and the appropriate use of artificial intelligence at this point in the development cycle. More detail can be found in our 2021 submission, available at www.afme.eu/Portals/0/DispatchFeaturedImages/211021_HMT%20consultation%20-%20call%20for%20evidence.pdf

In addition to this, we request government-backed assurance on how digital identity can be used in the corporate banking context, when identifying and verifying directors, beneficial owners or other related parties.

Q5 Do you currently accept digital identity when carrying out identity checks? Do you think comprehensive guidance will provide you with the confidence to accept digital identity, either more frequently, or at all?

AFME members operate in the UK, in the EU, and in third country jurisdictions. Member acceptance of digital identity when carrying out identity checks varies between jurisdictions.

In the UK, AFME members make varied use of digital identity when carrying out identity checks in a wholesale market context. In other jurisdictions – which include Hong Kong, Singapore, Nigeria and India – digital identity is used to a greater extent. This is mostly a matter of broader market practice in a given territory rather than a consequence of regulatory limits or lack of guidance.

AFME members would expect to make greater use of digital identity in conducting identity checks if and when the broader digital identity ecosystem becomes more developed in the UK. As the discussion in the consultation document notes, this is a larger question affecting the whole of the UK economy. If the Government can build a strong, whole-economy foundation for digital identity technology, it is likely that financial institutions' use of digital identity will follow as the market (and confidence in it) develops.

AFME supports the development of comprehensive guidance on this subject.

Q6 Do you think the government should go further than issuing guidance on this issue? If so, what should we do?

As noted in the previous answer, the use of digital identity technology in conducting identity checks is unlikely to be a question that can be resolved with efforts focused on this particular use case. It is rather a question of developing the digital identity ecosystem to a level equivalent to that which exists in other jurisdictions. When this occurs, the financial sector will act as part of the broader economy to make greater use of digital identity technology.

If (some form of) digital identity technology were approved by Government, recognition and use would likely increase rapidly. This could lead to a significant reduction in effort and cost for obliged entities to verify the solution themselves, and a better use of societal resources overall.

Q7 Do you think a legislative approach is necessary to address the timing of verification of customer identity following a bank insolvency, or would a non-legislative approach be sufficient to clarify expectations?

We note the question asks if a legislative approach is 'necessary'. In the strict sense, we do not consider this to be the case. As with many policy choices, a non-legislative approach could offer a practical and functional solution. A non-legislative approach would however depend on banks and their supervisors sharing a very clear understanding of expectations and requirements in what may prove to be challenging times.

If the failure of the bank which had become insolvent could in any way be linked to a failure of that bank to undertake appropriate or effective due diligence prior to its failure, it would likely not be appropriate or acceptable to rely on the due diligence that bank may previously have undertaken. In other circumstances, such reliance may be appropriate. In times of stress when confidence in institutions may waver, it may be that banks choose not to rely on a failed institution's due diligence in any case.

A legislative carve-out would provide greater certainty and security to banks taking on the customers of failed institutions. Such circumstances are rare – but it is reasonable to assume that when they arise, political interest in (and pressure on) banks is likely to be high. Clarifying in law what onboarding banks may and may not do when onboarding large numbers of customers in times of stress would likely prevent distractions from the task at hand and allow banks to focus on providing services to persons experiencing disruption while maintaining safeguards to prevent high-risk transactions from taking place.

Q8 Are there other scenarios apart from bank insolvency in which we should consider limited carve-outs from the requirement to ensure that no transactions are carried out by or on behalf of new customers before verification of identity is complete?

Yes, to support the UK in furthering its effectiveness, proportionality and attractiveness as a financial centre.

We suggest that a specific carve out should include secondary market transactions or other wholesale activity operated principal-to-principal amongst FCA regulated entities on an approved regulated market, MTF or OTF.

This would improve the operational efficiency of UK capital markets, reduce missed transactional opportunities in a lower risk, fully regulated environment, and increase the attractiveness of UK capital markets from a counterparty operational experience perspective.

It would reduce burdens proportionately by permitting flexibility to the timing of approved CDD/KYC in a specific, fully regulated and lower risk context.

At a broader level, we suggest consideration of other scenarios including corporate restructures, consolidations and/or acquisitions involving large client migrations, similar to those experienced as a result of Brexit. JMLSG guidance (5.3.21- 22 - *Acquisition of one financial services firm, or a portfolio of customers, by another*) provides some guidance on this matter and, in principle, there appears to be a degree of overlap between this and bank insolvency scenarios.

We also suggest guidance should include scenarios such as business continuity planning where digital identity systems are unavailable, large scale regional or national emergencies, and bulk onboarding during mergers and acquisitions.

Q9 Have you ever identified suspicious activity through enhanced due diligence checks, as a result of the risk factors listed above? (Regulations 33(6)(a)(vii), 33(6)(a)(viii) and 33(6)(b)(vii)). Can you share any anonymised examples of this?

AFME members have discussed the listing and retaining of the risk factors cited in the regulations. Their thoughts are provided in the response to the following question.

We note the utility of 33(6)(b)(vii) ('there is a transaction related to oil, arms, precious metals, tobacco products, cultural artefacts, ivory or other items related to protected species, or other items of archaeological historical, cultural or religious significance or rare scientific value') for assessing and mitigating AML/CTF risk.

It would be helpful to include specific and contextual risk factors which are highlighted by the UK NRA and the translation of that for regulated markets by the FCA.

More generally, it would be useful for the UK NRA to be more dynamic and to be updated in an ongoing manner.

Q10 Do you think that any of the risk factors listed above should be retained in the MLRs?

AFME members consider the risk factors listed in Question 9 to be useful and worthy of retention in the MLRs. Members also consider that these factors should be informed by national and international risk assessments and understood and used as part of an intelligent and considered risk-based approach. This should mean that each criterion is considered as one part of a holistic assessment to form an overall view of the risk a potential customer presents. It should not mean that any customer who fulfils a given criterion should automatically be subject to EDD.

AFME members consider that the intention of the regulation is clear on this point. The consultation document discussion also emphasises that this is the case. It is not clear however that all market participants share this understanding.

Government and regulatory authorities may help here by reiterating the importance of the risk-based approach, by recalling that regulation 33(6) provides an illustrative but not exhaustive list of risk factors to consider, and by underlining that firms are not obliged to carry out unnecessary checks on customers who may fulfil one of the listed criteria but for whom fair assessment of the overall evidence suggests should be considered low risk.

Q11 Are there any risk factors for enhanced due diligence, set out in regulation 33 of the MLRs, which you consider to be not useful at identifying suspicious behaviour?

Following on from our response to Question 10, the risk factors set out in regulation 33 serve as a starting point for intelligent analysis and should not be viewed as an exhaustive list. If any particular firm acting intelligently and in good faith finds a particular factor not to be useful in identifying suspicious behaviour, it can (and should) discount it to focus on other factors it considers to be more useful.

To the extent that such discounting may serve as evidence of actively engaging with the task at hand, the view of a firm that a particular risk factor is less useful may serve as evidence that the system is working as intended in prompting proper consideration and assessment of indicators of suspicious behaviour.

Q12 In your view, are there any additional risk factors that could usefully be added to, for example, regulation 33, which might help firms identify suspicious activity?

We consider that it would assist the UK MLR framework if the following risk factor were added –

> (*6) When assessing whether there is a high risk of money laundering or terrorist financing in a particular situation, and the extent of the measures which should be taken to manage and mitigate that risk, relevant persons must take account of risk factors including, among other things—*
>
> > *(a)customer risk factors, including whether—*
> >
> > *[…]*
> >
> > *NEW: the customer takes the form of an exclusive intermediary or agent on behalf of unknown parties.*

This guides relevant persons to consider where it becomes known that the customer is acting as an intermediary or agent for underlying parties which are not known. This is a ML/TF risk which the regime should explicitly call out as part of risk assessments.

More generally, the risk factors currently listed serve as a useful regulatory stimulus for assessment. It is clear from the consultation document discussion however that the intended purpose of the examples provided – as a trigger for assessment and not as an exhaustive checklist – has not been universally understood. Adding further items to the list may reinforce the misconception that regulation 33 provides a master list of factors against which to assess a given situation. This would not further the objective of the regulation as stated.

A *de facto* master list would also fail to take account of the rapid evolution of the market and the advent of new risks. It is unlikely that the list can or should be updated each time a potential new risk factor is identified. It would be better therefore not to add significantly to the list but rather to emphasise the importance of the risk-based approach and the need to assess each situation intelligently and on the basis of the evidence available.

Given the uncertainty of some market participants regarding the intended purpose of the examples provided, it would be helpful to confirm that there is no requirement to consider *all* risk factors set in regulation 33(6) whenever CDD measures are undertaken. The regulation should clarify that firms should take an intelligent, risk-based approach to consider situations in which the risk factors listed are relevant for their business, and where they are relevant, that they must be considered when assessing whether there is a high risk of ML/TF in a particular situation.

If there is a preference to signpost firms in their efforts to identify suspicious activity, the regulations could point to relevant NRAs, information sharing practices, or internal intelligence units which may be useful to help obliged entities to determine an appropriate risk-based approach.

We note the risk posed by new and/or small financial institutions. Generally, an entity which is lacking specific risk factors (e.g. adverse information, country risk, product risk) will be assigned a lower risk rating within other firms' risk assessments. Recent investigations and enforcement actions have however demonstrated that such entities have often been at the heart of money laundering, fraud and tax evasion schemes. Due to their youth and size they often lack the maturity of internal financial crime controls or understanding of sanctions trade controls seen in larger firms. This can result in a weaker overall financial crime/sanctions prevention framework.

Q13 In your view, are there occasions where the requirement to apply enhanced due diligence to 'complex or usually large' transactions results in enhanced due diligence being applied to a transaction which the relevant person is confident to be low-risk before carrying out the enhanced checks? Please provide any anonymised examples of this and indicate whether this is a common occurrence.

We consider that it is reasonable to apply EDD to unusually large transactions generally. Large transactions being contextualised as 'unusual' warrant further exploration. The term 'complex' is more difficult to interpret. We therefore suggest amending to 'unusually or unduly complex or opaque in nature' to target the specific risk of such transactions. This practical amendment would help relevant persons navigate situations where they are confident the context is low risk, by focusing on the unusual or suspicious.

In firms which are comfortable with the risk-based approach, which have confidence in the systems and controls they operate, and in which practices and interaction between first- and second-line functions are mature and well-functioning, enhanced due diligence is applied in a proportionate and risk-based manner, as the FATF and MLRs set out.

Q14 In your view, would additional guidance support understanding around the types of transactions that this provision applies to and how the risk-based approach should be used when carrying out enhanced check?

We welcome additional guidance. Such guidance could be provided by the official sector or by the JMLSG. If provided, it should be updated as the market evolves and new types of complexity emerge.

Q15 If regulation 33(1)(f) was amended from 'complex' to 'unusually complex' (e.g. a relevant person must apply enhanced due diligence where… 'a transaction is unusually complex or unusually large'):

• in your view, would this provide clarity of intent and reduce concern about this provision? Please explain your response.

• in your view, would this create any problems or negative impacts?

We consider that such an amendment would improve understanding of the intent of this provision but would not (and perhaps could not) prevent all situations of doubt.

As the consultation document discusses, what constitutes a 'complex' transaction differs between industries and across customer bases. A given level of transaction complexity may be usual for one actor or one part of

the market and unusual for another. What is commonplace in the wholesale markets for example may be complex to a simple consumer lending business. Qualifying the current use of 'complex' with 'unusually' would likely help to prevent the undertaking of potentially unnecessary work with little or no associated benefit where a given level of complexity is routine for a given firm or sector.

Q16 Would removing the list of checks at regulation 33(3A), or making the list non-mandatory, reduce the current burdens (cost and time etc.) currently placed on regulated firms by the HRTC rules? How?

Yes, removing the list of checks at regulation 33(3A), or making the list non-mandatory, would reduce the current burdens currently placed on regulated firms by the HRTC rules. We recommend the use of the term 'may' rather than 'must', so a bespoke risk-based approach can be adopted.

We agree with the idea of allowing firms to select which enhanced checks should be required for customers established in or transactions involving High Risk Third Countries (HRTCs). We consider that firms are best placed to judge the risks of the customers and business they take on.

A risk-based approach to EDD checks, rather than a mandatory set of measures applicable to all of a given class of customers or transactions, could allow more resources to be focused on persons or situations where risk is highest as part of an intelligent risk-based approach, and thus allow more or greater harm to be prevented.

We note that FATF itself has explicitly stated that its expectation is not that firms apply EDD to jurisdictions on the 'Increased Monitoring' list but rather that firms take inclusion on the list into consideration as part of overall risk analysis.

We also note that the EU is moving away from a prescriptive list of EDD requirements for HRTCs. UK-EU alignment in this area would help firms with a European footprint to ensure a consistent approach for customers. It would also be beneficial for UK competitiveness.

Q17 Can you see any issues or problems arising from the removal of regulation 33(3A) or making this list non-mandatory?

Making the list non-mandatory but maintaining it in the regulations could lead to it still being interpreted as mandatory in practice. If such an interpretation were taken, HM Treasury would have missed the opportunity to reduce the burden which arises when firms incur costs which are unlikely to produce any associated benefit.

It would be more appropriate to make clear to firms that they must use their judgment to assess situations for the risks they present, to decide which checks are appropriate, and to allocate resources accordingly.

Q18 Are there any High Risk Third Country-established customers or transactions where you think the current requirement to carry out EDD is not proportionate to the risk they present? Please provide examples of these and indicate, where you can, whether this represents a significant proportion of customers/transactions.

We understand the purpose and importance of the 'Call for Action' and 'Increased Monitoring' lists to the FATF, and to global financial stability. Removal of the lists from the MLRs would likely reduce the costs of doing business with the countries concerned. This could erode the FATF policy objective to incentivise a country's compliance with all FATF standards to remove itself from the lists.

We do not however consider that the current requirement to carry out all mandatory EDD measures for all HRTC-established customers or relevant transactions – with no regard to any other factor – to be proportionate to the risk they present, or to contribute to an effective AML/CTF framework. We also do not consider that such an approach is in keeping with a well-tailored, proportionate, risk-based approach.

AFME members have domestic clients who occasionally undertake business in HRTCs. In the absence of any other risk factors, it does not automatically follow on that such customers are higher risk. It would therefore be disproportionate to apply enhanced due diligence to such customers.

A better approach would be to require EDD for any customers or relevant transactions established in countries on the FATF's 'Call for Action' list and to require further risk-based scrutiny (but not necessarily full EDD) for customers or relevant transactions established in countries on the 'Increased Monitoring' list.

If a country has for example a deficiency in sharing information with an FIU, this may be sufficient for it to be placed on the 'Increased Monitoring' list. This has little relevance for customers or relevant transactions established in that country, or the risk they present to wholesale firms. And yet, such a deficiency (beyond the control of any given customer) would currently require all associated customers or transactions to be subject to EDD, creating high costs but yielding minimal actionable SARs to support asset recovery and criminal prosecution.

A powerful example in recent history is provided by the Cayman Islands. When the Cayman Islands was added to the 'Increased Monitoring' list, AFME members had to conduct EDD on tens of thousands of subjects, costing collectively millions of pounds to UK industry. Many of these Cayman Island entities were funds with a low/medium risk Fund Manager based in an equivalent jurisdiction, reducing the risk further. Due to the chronological nature of the list, the remediation of such EDD uplift of all in-scope customers was completed in some cases only weeks before the country was removed from the list, rendering all of the work undertaken of limited value and largely ineffective in terms of identifying, reporting and preventing ML/TF. No AFME member reported identifying any suspicious activity as a result of these checks, which were undertaken at considerable cost.

In light of such examples, it is difficult to conclude in the wholesale market context – given the significant cost incurred and the little benefit which resulted – that the requirement to conduct EDD for HRTC-established customers or transactions is sensible or proportionate to the risk they present.

Q19 If you answered yes to the above question, what changes, if any, could enable firms to take a more proportionate approach? What impact would this have?

In line with our answer to the previous question, AFME members recommend removing the requirement to conduct mandatory EDD on customers or relevant transactions established in a country on the FATF 'Increased Monitoring' list and instead emphasise that inclusion on such a list is one factor that firms should consider in conducting assessment as part of an intelligent, risk-based approach.

This can be achieved by amending the MLRs to replace 'must' with 'may' when referring to the application of EDD measures to countries on the FATF 'Increased Monitoring' list, and by including a reference to the application of EDD measures bespoke to the situation and tailored to the risk of the customer or relevant transaction.

This would apply a similar approach to that already taken in 33(5) – '[d]epending on the requirements of the case, the enhanced customer due diligence measures required under paragraph (1) may also include, among other things…'.

Q20 Do you agree that the government should expand the list of customer-related low-risk factors as suggested above?

Yes, we agree that the Government should expand the list of customer-related low risk factors as set out in the consultation document and as included in the JMLSG Guidance. This would help to reduce the burden of compliance and prevent the incurring of unnecessary costs with little or no associated benefit.

An expansion of the list of customer-related low risk factors could however lead to adding to the existing burden on firms, if this is understood as an obligation to take account of *all* the risk factors listed. Therefore, and if the list to be expanded, the term 'must' should be replaced with 'may', to make clear these are factors which firms may consider when assessing the degree of risk posed by a particular customer, and the appropriate level of customer due diligence measures to apply.

We also suggest broadening the regulation 28(5) to make the SDD concept more proportionate and effective by adding the following text:

> *Paragraphs (3)(b)[F124, (3A)] and (4) do not apply where the customer is a company which is listed on a regulated market or to relevant persons authorised by the Financial Conduct Authority under FSMA.*

This would reduce low value costly CDD activity in a lower risk regulated context, which is duplicative amongst UK firms, and yields little in terms of AML/CTF SAR/intelligence outcomes for the UK. It would also increase the attractiveness of UK capital markets.

This would rely on the fact that the FCA requires submission of extensive information, at the point of authorisation and periodically (e.g. close links/controllers reporting) on changes to UK firm details, directors or beneficial owners/controlling parties. The FCA supervises firms for compliance with these regulatory reporting requirements. Requiring firms to collect and screen this information is therefore duplicative and of limited value.

We support the uplift of JMLSG Guidance into regulation for SDD risk factors and SDD due diligence measures.

Depending on the circumstances, SDD might involve

- verifying identity on the basis of one document only
- assuming the nature and purpose of the business relationship because the product is designed for one particular use only
- undertaking less frequent CDD updates and reviews of the business relationship relative to relationships presenting fewer high risk factors
- undertaking less frequent and lower intensity monitoring of transactions relative to transactions presenting fewer high risk factors.

While not exhaustive, this list could be updated to include, where the customer is a business

- whether, and the extent to which, the business is itself regulated under the MLRs or equivalent legislation overseas

- whether the business is, otherwise, subject to regulatory or professional conduct obligations (such as an obligation to apply CDD measures) which are effective at reducing the risk it presents
- whether the business's source of funds is regulated by a government approved scheme (e.g. as for many letting/property/estate agents in England) in a way which is relevant to the risk presented by the business relationship
- whether the business applies CDD measures to its own customers of the type required under regulation 28
- whether the purpose of the relationship or transaction presents a low risk of money laundering or terrorist financing.

An expansion of the list as envisaged would however only be a first step. As the consultation document notes, uptake of SDD is not as high as it could be. Firms often default to conservative interpretations of what regulation requires. Firms are mindful of potentially undertaking SDD – even when the evidence suggests this would be appropriate – and then finding themselves having to explain to authorities why they may have missed a very unusual occurrence that might have been detected had more comprehensive due diligence been undertaken. Such situations would be extremely rare – but cannot be discounted. The SDD approach should be enhanced to be more proportionate and effective.

Government can help here by clarifying that a risk-based approach cannot and should not mean zero failure.

Q21 Do you agree that as well as (or instead of) any change to the list of customer-related low-risk factors, the government should clarify that SDD can be carried out when providing pooled client accounts to non-AML/CTF regulated customers, provided the business relationship presents a low risk of money laundering or terrorist financing?

Yes. We note the use of the word 'can'. We interpret this as meaning that responsibility is placed on the firm to judge what is appropriate for the particular circumstances of a given situation. We judge this to be in keeping with the risk-based approach and more likely to allow the concentration of limited resources on situations where evidence suggests the risk is greatest.

Q22 In circumstances where banks apply SDD in offering PCAs to low-risk businesses, information on the identity of the persons on whose behalf funds are held in the PCA must be made available on request to the bank. How effective and/or proportionate do you think this risk mitigation factor is? Should this requirement be retained in the MLRs?

We do not submit a response to this question.

Q23 What other mitigations, if any, should firms consider when offering PCAs? Should these be mandatory under the MLRs?

We do not submit a response to this question.

Q24 Do you agree that we should expand the regulation on reliance on others to permit reliance in respect of ongoing monitoring for PCA and equivalent scenarios?

We do not submit a response to this question.

Q25 Are there any other changes to the MLRs we should consider to support proportionate, risk-based application of due diligence in relation to PCAs?

We do not submit a response to this question.

Q26 Do you agree that we should amend the MLRs to permit the FCA to share relevant information with the Financial Regulators Complaints Commissioner?

Yes, we support this approach.

Q27 Should we consider extending the information-sharing gateway in regulation 52(1A) to other public bodies in order to support system coordination? If so, which public bodies? Please explain your reasons.

We consider that public bodies are best placed to judge the extent to which the data they collect may be relevant for AML/CFT purposes, and the extent to which they may or may not have powers to share such data under relevant legislation.

Q28 Should we consider any further changes to the information sharing gateways in the MLRs in order to support system coordination? Are there any remaining barriers to the effective operationalisation of regulation 52?

We do not submit a response to this question.

Q29 Do you agree that regulation 50 should be amended to include the Registrar for Companies House and the Secretary of State in so far as responsible for Companies House?

Yes, we support this approach.

Q30 Do you consider there to be any unintended consequences of making this change in the way described? Please explain your reasons

Noting that the proposed change intends to improve public authorities' ability to tackle economic crime, that considerable precedent exists to demonstrate what safe and effective information-sharing between organisations looks like, and that the alternative *status quo* option is that public authorities who could cooperate to tackle economic crime would remain without the legislative base to do so, we consider the change likely to offer more benefit than drawback. Industry has a strong interest in public authorities being able to cooperate effectively to fight financial crime. We therefore support the change.

Q31 In your view, what impact would this amendment have on supervisors, both in terms of costs and wider impacts? Please provide evidence where possible.

We consider that supervisors are best placed to respond to the impact the amendment would have on them. From first principles, we see the advantages of giving supervisors the ability to access information which could help them to fulfil their objectives.

Q32 Do you think the MLRs are sufficiently clear on how MLR regulated firms should complete and use their own risk assessment? If not, what more could we do?

Yes. The regulations require MLR-regulated firms to take appropriate steps to identify and assess the risks of money laundering and terrorist financing to which their businesses are subject. In conducting this assessment, the regulations require firms to take into account information made available to them by supervisory authorities and risk factors which include (but are not limited to) their customers, their territories of operation, their products or services, their transactions and their delivery channels. Firms are also required to take into account the size and nature of their business when deciding what is appropriate in planning and when undertaking risk assessments.

We consider that these requirements are sufficiently clear. We consider that firms are best placed to judge their particular circumstances and the risks they face. We note that firms are required to record the steps that they have taken to conduct their risk assessment, the risk assessment itself, and the information on which the risk assessment was based, and to provide these to supervisory authorities upon request. We consider that this is an appropriate balance of flexibility and supervisory oversight.

We do not consider that there is a need to be more prescriptive in the regulations about how firms should complete and use their own risk assessment. This right approach will depend on the circumstances of each firm. Supervisory authorities are best placed to form a view on a firm's completion and use of its risk assessment, based on their knowledge of the firm and its activity.

Q33 Do you think the MLRs are sufficiently clear on the sources of information MLR-regulated firms should use to inform their risk assessment (including the NRA)? If not, what more can we do?

We consider the MLRs are sufficiently clear on the sources of information MLR-regulated firms should use to inform their risk assessment. If HM Treasury wishes to emphasise that the list is a starting point for assessment and not a simple checklist for completion, it may wish to add 'including (but not limited to…)' to regulation 18(2)(b).

The UK NRA could benefit from being more dynamic and ongoing and updated more frequently, informing the supervisory statements of the FCA, to further alert firms to the most salient threats.

Q34 One possible policy option is to redraft the MLRs to require regulated firms to have a direct regard for the NRA. How do you think this will impact the activity of: a) firms b) supervisors? Is there anything this obligation should or should not do?

Most reputable firms – and all AFME members – will have regard for the NRA in conducting their risk assessment. It is unlikely therefore that such a proposal would significantly increase the burden of compliance.

The NRA must however be meaningful for relevant persons of various sectors. It would therefore benefit from being contextualized by supervisors in each case to achieve the best AML/CTF result. It may also be helpful to have an industry-specific view in the NRA to allow for more accurate understanding of applicable risks within a specific industry/sector and internal tailoring of systems and controls.

Q35 What role do you think the NRA versus system prioritisation should play in the allocation of regulated firms' resources and design of their AML/ CTF programmes?

We strongly support the idea of government, regulators, law enforcement and the private sector working together to tackle economic crime. We understand that scarcity of resources requires prioritisation. We recognise that this true as much at the system level as at a firm level. We are cautious however about efforts to pursue and agree a single view of threats.

We are mindful of the risk of group think, and of the potential for risks which may be deemed by a collective to be less significant for the system overall to be given less attention by a particular firm or sector than might otherwise be the case, based on the circumstances of that particular firm or sector. We emphasise here the importance of consistency in messaging that firms should take an intelligent, risk-based approach and judge each situation on the evidence available.

We suggest that it may be more appropriate for public and private sector actors to remain in dialogue and to share information effectively and appropriately, but for each to retain responsibility for tackling the risks they identify in their particular branch of activity, and to allocate resources accordingly.

Q36 In your view, are there any reasons why the government should retain references to euros in the MLRs?

The retention of references to euros in the MLRs fosters consistency between jurisdictions in Europe. We recognise however the drawbacks which result for UK regulation and firms active in the UK market from a floating sterling-euro exchange rate. We do not oppose the replacement of references to euros with references to pound sterling.

Q37 To what extent does the inclusion of euros in the MLRs cause you/your firm administrative burdens? Please be specific and provide evidence of the scale where possible.

The inclusion of references to euros in the MLRs creates operational and administrative complexities. The replacement of these with references to pounds sterling has the same effect. Our members can operate with UK thresholds expressed in euros or in sterling.

Q38 How can the UK best comply with threshold requirements set by the FATF?

If the question intends 'best' to mean the approach which offers the optimal overall balance of considerations and not an exact carrying across of FATF limits set in a currency other than the pound sterling, then that suggests an approximation of the FATF thresholds with sums expressed in pounds sterling to one or two significant figures.

Q39 If the government were to change all references to euros in the MLRs to pound sterling which of the above conversion methods (Option A or Option B) do you think would be best course of action?

We can see merit in both approaches. Of the two, we agree that Option A is the simpler. We accept that it would represent a slight increase in the thresholds given the current relative values of the euro and the pound sterling. We also note however that using an exchange rate of 1 GBP = 1.15-1.20 EUR (which has prevailed for most of the decade and a half since the financial crisis), changing all references to euros into pounds on a 1:1 basis would mean an increase on current thresholds of no more than 15 to 20%. Given the inflation which has occurred in the last two years, such an increase would only represent a return to the real value of thresholds which prevailed as recently as 2022. We do not consider this to be a material increase.

Q40 Please explain your choice and outline with evidence, where possible, any expected impact that either option would have on the scope of regulated activity.

See previous answer.

Q41 Do you agree that regulation 12(2) (a) and (b) should be extended to include formation of firms without an express request, sale to a customer or a person acting on the customer's behalf and acquisition of firms to sell to a customer or a person acting on the customer's behalf?

Q42 Do you consider there to be any unintended consequences of making this change in the way described? Please explain your reasons.

Q43 In your view, what impact would this amendment have on TCSPs, both in terms of costs and wider impacts? Please provide evidence where possible.

We do not submit a response to these questions.

Q44 Do you agree that the MLRs should be updated to take into account the upcoming regulatory changes under FSMA regime? If not, please explain your reasons.

Q45 Do you have views on the sequencing of any such changes to the MLRs in relation to the upcoming regulatory changes under the FSMA regime? If yes, please explain.

Q46 Do you agree that this should be delivered by aligning the MLRs registration and FSMA authorisation process, including the concepts of control and controllers, for cryptoassets and associated services that are covered by both the MLRs and FSMA regimes? If not, please explain your reasons.

Q47 In your view, are there unique features of the cryptoasset sector that would lead to concerns about aligning the MLRs more closely with a FSMA style fit and proper process? If yes, please explain.

Q48 Do you consider there to be any unintended consequences to closer alignment in the way described? If yes, please explain.

We do not submit a response to these questions.

Q49 Does the proposal to make these trusts that acquired UK land before 6 October 2020 register on TRS cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

Q50 Does the proposal to change the TRS data sharing rules to include these trusts cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

We do not submit a response to these questions.

Q51 Do the proposals to exclude these trusts for two years from the date of death cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

Q52 Does the proposal to exclude Scottish survivorship destination trusts cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

We do not submit a response to these questions.

Q53 Does the proposal to create a de minimis level for registration cause any unintended consequences? If so, please describe these, and suggest an alternative approach and reasons for it.

Q54 Do you have any views on the proposed de minimis criteria?

Q55 Do you have any proposals regarding what controls could be put in place to ensure that there is no opportunity to use the de minimis exemption to evade registration on TRS?

We do not submit a response to these questions.

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