HM Treasury
1 Horse Guards Road
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29 September 2023

AFME response to the HMT consultation on reforming the Anti-Money Laundering (AML) and Counter-Terrorism Financing (CTF) supervisory regime.

Dear Sir/Madam,

We are writing to you on behalf of AFME members in response to the consultation on reforming the Anti-Money Laundering (AML) and Counter-Terrorism Financing (CTF) supervisory regime. In this letter, we have provided comments on the proposed four models and rationale for the preferred option – model 3 Single Professional Services Supervisor (SPSS)

We recognise that one of the drivers for this work is to correct the current disparity between sectors concerning the approach taken and we support efforts to reform the AML/CTF framework focusing on effectiveness, risk-based approach and enhancing supervision of the legal and accountancy professions. We advocate for an approach that is fairer and outcomes based.

Our members have carefully reviewed all four models and provide the observations set out below. AFME members are most supportive of model 3 Single Professional Services Supervisor (SPSS). However, we do have concerns regarding the timeline and professional resources.

OPTION 1: Office for Professional Body Anti-Money Laundering Supervision (OPBAS)+

We agree that the supervision of the professional service providers should be enhanced with consistent oversight and enforcement amongst all entities subject to AML regulation. We note that option 1 would provide OBPAS with enhanced powers to increase effectiveness of their supervision and provide the swiftest changes to the structure. However, we do note that this option will keep the supervision of these sectors private, thereby potentially limiting their reach in terms of supervisory, investigative and enforcement powers and potentially limiting the possibility for consistent and equally strong approach.

It could also limit the effectiveness of sharing resources, systems, data and intelligence that would have greater impact under a single body. The creation of a private sector body that does not have the same level of public sector scrutiny (for example the FCA) would potentially limit its impact and gravitas.

OPTION 2 Professional Body Supervisors (PBS) consolidation.

We note that this and Option 1 directly affect the legal and accountancy firms, providing enhanced powers to or consolidating the PBSs. AFME supports a level playing field for

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effective enforcement. The sanctions imposed on banks are wide ranging, including public censure, enforcement actions, remedial action and other restrictions. The fines imposed by the PBSs should take into consideration the nature of the issue, the size of the firm, and whether there was actual wrongdoing, or a lack of framework and they should seek to have a consistently robust approach.

The creation of either two or six PBSs could create inconsistencies in approach due to a lack of aligned thinking and consistent decision making across all supervised firms. The funding required for two or six separate bodies would be inefficient, as this would limit the scope of their effectiveness. We would welcome further clarity on the proposals to fund these private sector options.

OPTION 3: Single Professional Services Supervisor (SPSS):

AFME members support option 3 as this option meets the HMT's objectives for reforming the AML/CTF supervisory regime and enhancing its powers of supervision. However, members welcome further clarity on the implementation timeline and resources.

In support of option 3, we draw attention to the following considerations:

- Importance of the professional service providers as gatekeepers of the AML regime preventing or interrupting illicit financial flows:

Firms regularly place a level of risk-based assurance for Know Your Customer (KYC) purposes on additional verification provided by accountants, legal professionals, and other accredited individuals in certain situations, as they attest to the veracity of documentation. Enhanced supervision provides wholesale financial services firms assurance that these supervised entities and associated accredited individuals are subject to effective oversight for their activities and are subject to regulatory accountability.

- Importance of effective and consistent supervision of the industry:

If this body is to take on the supervision of TCSPs and potentially Estate Agency Business and Letting Agency Business, this would still leave a number of bodies to be supervised by HMRC. It would create greater efficiency to bring all bodies currently under the supervision of HMRC into this new body to create consistency of approach and reduce overhead cost of supervision. Creating a body capable of taking on the supervision of all firms or entities currently, under the supervision of HMRC will ensure consistency of decision making as well as give HMRC the ability to focus on its primary objective.

An option that should be considered is that the FCA model is efficient/long standing and there should be observation of its existing efficiencies to allow the proposed body to target its resources more effectively.

- Efficiency of resources - time, allocation and cost:

Information sharing between industry supervisors should be encouraged and no unnecessary burden should be placed on the supervised firms. Creating a single body will allow for a risk-based approach to be taken with firms that present the greatest need for supervision based on their nature of business.

Creating a body that has a breadth of supervision will ensure that there is for a degree of informed judgement in terms of supervision. This, in turn, would, allow for a risk-based approach to be taken in allocating resources to those firms that are facing greater AML/CTF risks due to the nature of their business, their customer base, industry specific risks and the jurisdiction exposure they face and the size and complexity of the firm.

We welcome the shift to a public body that will align with the majority of our regulatory relationships. This will enhance the supervisory/enforcement powers of the new authority. There is an expectation of enhancement to powers to impose financial penalties, public censure, impose prohibitions on management and to apply for court injunctions.

- Limiting the disruptions of supervisory regime changes/enhancements:

Whilst we agree that there will be disruption in any of the options, this option will provide the greatest balance between disruption and advantage gained. The creation of a public body will increase the gravitas and legitimacy of the supervision of the PBSs. This will enhance the supervisory/enforcement powers of the new supervisory body.

For an SPSS (model 3), creating a new public body seems most feasible whilst being mindful of our concerns on timelines and professional resources for this new public body.

OPTION 4 Single Anti-Money Laundering Supervisor (SAS), Members note that the Financial Conduct Authority (FCA) and the Gambling Commission (GC) will continue to supervise firms in areas other than AML/CTF and some impacted firms would not necessarily have a single supervisor. This creates a dual or multiple regulation model that may not be harmonious and may result in certain firms having more than three separate regulators which increases the regulatory and compliance burden. This will disproportionately affect firms that must also consider direction from supervisory bodies outside the UK.

AFME members strongly oppose this SAS model for the following reasons.

- Members believe that this model will create unnecessary disruption in the supervisory system. Under this model, banks will be supervised by the SAS for AML/CTF purposes and for other areas (for example, conduct, market abuse, fraud, and Sanctions) banks will be supervised by the FCA. This will risk creating divergence in approaches that may affect the way a firm structure itself.

- On efficiency, we note that it will be costly for banks to allocate resources to 2/3 different supervisors with different remits. Firm will need to manage the effects of cross-regulator administration and potential organisational misalignment.

- We also note the longer timeframe necessary to enact new legislation which will inevitably place operational and resource burdens on our member firms. On the cost of Compliance, we note the difference in compliance costs for law firms or accountancy firms when compared to for example, financial services firms.

- Members believe that the larger population that would be supervised under this model risks compromises the HMT’s objective of supervisory effectiveness. We would be concerned that coordination between the SAS and other statutory supervisors (in our case the FCA) will be challenging.

- Our members have established existing supervisory relationships with the FCA and do not wish to see these eroded or diminished. There is a history of effective supervision that may be lost.

- We consider that this option will require significant start up costs, many of which will be levied against the financial services industry who are managing increasing AML costs elsewhere. This will require firms to invest more resources. We also recognise that it could take several years to create this new body potentially creating a gap in supervision.
- We are concerned that this approach risks being duplicative as its unclear which powers the FCA will retain, and which will be delegated to the SAS. The areas where there could be a potential overlap need a very clear outset and we would welcome this clarity. Our concern is that creating a SAS can lead to inconsistency in supervision. We do not believe this is HMT's objective for reforming the supervisory regime.

On **Sanctions supervision**, delegating sanctions supervision to the new body (SAS) raises questions concerning the powers of the SAS and the FCA regarding reporting and enforcement. We believe Sanctions supervision should remain with the FCA to avoid costs and complexity in the Sanctions supervisory regime. We would expect that the FCA to work closely with OFSI to ensure consistency in approach. The relationship with additional bodies for sanctions supervision could also be impacted creating misalignment in direction and understanding.

We urge HMT to closely consider the above response to this consultation. We welcome further engagement with HMT to discuss in more detail.

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