THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES

ICAEW Representation

ICAEW REP 102/07

THE PROCEEDS OF CRIME ACT 2002

TACKLING MONEY LAUNDERING SUSPICIOUS ACTIVITY REPORTS: PRESCRIBED FORM AND MANNER

Memorandum of comment submitted in October 2007 by The Institute of Chartered Accountants in England and Wales, after consultation with the other members of the Consultative Committee of Accountancy Bodies, in response to the Home Office consultation paper *to the Home Office Consultation of July 2007 "Tackling Money Laundering Suspicious Activity Reports: Prescribed Form and Manner"* published in July 2007

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INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales (the Institute) welcomes the opportunity to comment on the consultation paper to the Home Office Consultation of July 2007 *"Tackling Money Laundering Suspicious Activity Reports: Prescribed Form and Manner"* ("the Consultation").

WHO WE ARE

2. The Institute operates under a Royal Charter, working in the public interest. In common with the other member bodies of the Consultative Committee of Accountancy Bodies (CCAB), the Institute's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As leading professional accountancy bodies, the CCAB bodies have wide ranging Codes of Ethics to guide members' behaviour and take action where this is not observed, in the public interest.

MAJOR POINTS

Reporting by the Regulated Sector

3. The Institute is clear and unambiguous in its support of the introduction of mandatory forms and manners of making of money laundering suspicious activity reports (SARs) by firms and MLROs in the regulated sector, based on the existing SOCA standard reporting forms. Though this may result in some increased costs for some firms, we believe that these costs will be marginal, over the whole sector, and are steadily reducing as familiarity with electronic means of communication become more generally spread through the population as a whole. Further, we recognise the increased utility and cost effectiveness, to SOCA and the law enforcement agencies (LEAs), of standardised.

4. This support relies on our understanding of how the mandatory forms of report are to be introduced. In particular, we believe that it is very important for the measures being drawn up to cover the following aspects of the current and future reporting regimes and ensure that they remain available under any future development of the regime for the prescribed form and manner of reporting.

    a) The requirements on the prescribed form and manner of reports should apply only to reports made to SOCA, not to reports made internally to nominated officers within organisations.

    b) Hard copy reporting forms must continue to be available, not only on-line but also by telephone or postal request, for use by those either not wishing to use, or not yet capable of using, internet and electronic communication.

    c) Mandation of fields in prescribed forms will be limited to those fields in the current reporting forms which are currently identified as required (see also d) below).

    d) No changes to the current definitions will be introduced in the short or medium term or without extensive consultation with those affected and adequate justification of any resulting costs borne by reporters. This applies in

relation to any changes in the definition of "required disclosure" (including "as far as is known") and "the identity of" as currently included in Section 330 of the Proceeds of Crime Act (with similar provisions in Sections 331, 332 and 338). If these terms are to be revisited, full consultation and carefully drawn up RIAs will be needed. In the meantime, further guidance on these terms will be most appropriately dealt with in industry guidance for the regulated sector, and by SOCA guidance for those not subject to regulation.

e) Where firms legitimately do not have information available to them, there will be an "information unknown" option available on the standard reporting form. This is important not only to avoid firms incurring additional costs (which could be substantial) to try and obtain information not yet available to them, but avoids the risk of suspects being alerted unnecessarily to the fact that a SAR is in the process of being drawn up.

f) We are aware that some firms are concerned about adding an innocent client's name to a SOCA form, even when described as a victim. Assurance from SOCA in their information for reporters that this description is always attached to the name of the victim subject when input to ELMER would be welcomed by firms and will encourage their full use of the prescribed forms.

g) Written guidance from SOCA will be clear and reliable. In particular, inaccuracy in indications of what is actually required in SOCA guidance is not acceptable. In this context, we note that the current SOCA guidance indicates that SARs are required *"as soon as the knowledge ... has arisen ... or at the earliest opportunity thereafter"* whereas the law only requires disclosure *"as soon as is practicable"* after the information or other matter has been received. We suggest that SOCA guidance is submitted for consultation with money laundering supervisory authorities and subjected to HM treasury approval in the same way as set out for guidance from the regulated sector.

h) In addition to the written guidance from SOCA, we consider it important that SOCA continues to provide guidance by telephone, where requested, on how to fill in and submit the form. Clearly, it is not for SOCA to provide advice on the substance of reports but guidance on process will be valuable and will help avoid any unnecessary costs on reporters unfamiliar with prescribed forms and manners.

Reporting by those Outside the Regulated Sector

5. The consultation has been framed to encourage responses mainly from the regulated sector, but the proposals also apply to reporters outside the regulated sector where reporting under Section 332 (reports by nominated officers outside of the regulated sector) and Section 338 of POCA (authorised disclosures, which provide a defence to a charge of money laundering). Such persons are not within the scope of the Money Laundering Regulations and therefore have no requirement for training in, or awareness of, the anti-money laundering regime or reporting procedures. Any perception of unfairness, should a non-regulated person be charged with a criminal offence under s 339, may discredit the SARs regime more widely in the eyes of the public.

6. We appreciate that the application of prescribed forms and manners is already set out in statute. However, given the above, we think it important that SOCA considers carefully how to raise awareness of the requirement to use prescribed forms and manners in the circumstances set out in 5 above. As well as ensuring

that regulated sector advisers are aware of this position when advising their clients, we would suggest SOCA needs to consider how to get the message to a much wider audience, and in this connection they may need to consider a campaign targeting such as the CBI, IoD, chambers of commerce and other business organisations and possibly Citizens Advice bureau and other sources of advice and information for non-regulated persons including police stations. Clearly, there will be a cost to SOCA in doing so, but we assume the judgement was made by Parliament that the benefit of prescribing forms outside of the regulated sector more than compensated for this communication burden.

7. We note that a defence of "reasonable excuse" is available under section 339(1B) of POCA but there is no clarity on what might be considered reasonable excuse in connection with default by either a regulated or non-regulated sector person. Given there may be occasion when the key issue is that a report is made with no loss of time in the circumstances that may not be ideal, the lack of any knowledge of the likely prosecution policy in this area will be a concern for all reporters whether in or out of the regulated sector.

Timing and Further Consultation

8. We regret that it was not possible to provide draft implementing legislation with this consultation. Especially in the light of the lack of clarity in the consultation document on what exactly it is that is being proposed, we consider that it is essential for there to be a further round of consultation on any draft legislative provisions, though we appreciate that in order to keep to the proposed timetable this may need to be directed at representative bodies only and on an abbreviated timescale. In this context, we consider it highly desirable for this legislation to be completed as soon as possible, and to come into force on 15th December together with the reforms resulting from the implementation of the Third Money Laundering Directive. The regulated sector incurs significant additional training costs every time the requirements change, and so far as possible changes should be brought into force together rather than incrementally.

RESPONSES TO SPECIFIC CONSULTATION QUESTIONS

Q1:Do you agree with the proposals to prescribe the manner in which SARs must be made? If not, please explain why.

Yes, subject to our comments above.

Q2 Is it reasonable and proportionate to expect hard copy submissions to be typed?

Yes, subject to our comments above.

Q3 Is the cost of implementing a prescribed form and manner of reporting proportionate to your firm/sector? If you believe the cost to be disproportionate please explain why and provide details of the cost.

Yes, the cost is proportionate for our profession.

Q4 Do the proposals provide sufficient options for your firm/sector to make SARs? If not, please explain why and give examples of additional methods which you would wish to use.

Yes, the proposals provide sufficient options for our profession, provided that the additional costs are minimised by the provisions of adequate guidance on completion of the standard reporting forms.

Q5 Does this document sufficiently reflect the benefits to your firm/sector? If you have additional comments on this section, please provide them in your response.

We do not expect these proposals to result in any direct benefits to our profession, and indeed will result in additional costs to some firms, but our response is based on the expected benefits to society of increased efficiency in law enforcement resulting from an efficiently run SARs regime. As noted above, the Institute has a public interest mandate, and our members and member firms are required to take into account maintenance of the public interest of all their functions. In addition, it is in the long term interest of our members and their clients and employers to operate in a fair and law abiding society.

Q6 Do you think the additional proposals of raising awareness of what constitutes a 'required disclosure' is necessary/critical to the effective implementation of a prescribed form and manner?

Yes.

CONCLUSION

If you have any queries on this response, please refer them to Felicity Banks, Head of Business Law at the Institute and secretary of the CCAB Money Laundering Working Party, at felicity.banks@icaew.com.

FJB