THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES

2 April 2007

Our ref: ICAEW Rep 28/07

Your ref:

The Technical Director

By email:

Dear Sir

IMPLEMENTING THE THIRD MONEY LAUNDERING DIRECTIVE: DRAFT MONEY LAUNDERING REGULATIONS 2007

The Institute of Chartered Accountants in England and Wales is pleased to respond to your request for comments on Implementing the Third Money Laundering Directive: Draft Money Laundering Regulations 2007.

Please contact me if you would like to discuss any of the points raised in the attached response.

Yours faithfully

Felicity Banks.

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THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES

ICAEW Representation

ICAEW REP 28/07

IMPLEMENTING THE THIRD MONEY LAUNDERING DIRECTIVE: DRAFT MONEY LAUNDERING REGULATIONS 2007

Memorandum of comment submitted April 2007 by the Institute of Chartered Accountants in England and Wales, in consultation with the Consultative Committee of Accountancy Bodies, in response to the consultation document issued by HM Treasury in January 2007

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INTRODUCTION AND WHO WE ARE

1. The Institute of Chartered Accountants in England and Wales ('the Institute') welcomes the opportunity to respond to the Treasury Consultation Paper "Implementing the Third Money Laundering Directive: Draft Money Laundering Regulations 2007" issued in January 2007. Though there are a number of outstanding issues in the drafting of the Regulations, we have found the consultation process to be well managed and responsive to comment.

2. The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 128,000 members in more than 140 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained.

3. The Institute has been a leading contributor in the policy debate over the fight against financial and economic crime over the last decade or longer. As a professional body for accountants, we are particularly aware of the damaging social and economic effects that are caused by money laundering and other financial crime. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The ICAEW ensures these skills are constantly developed, recognised and valued.

4. We set out below the general points we would like to make, that are not specifically covered by the issues raised for response in the consultation document, or where we consider it particularly important that an issue is addressed. These are followed by our responses to the specific questions raised in the consultation and by drafting comments on the Regulations.

MAJOR ISSUES AND GENERAL COMMENTS

Customer Due Diligence (Reg 6)

5. We strongly support the absence of prescription regarding specific due diligence measures and the continuation of the existing discretion allowed in determining appropriate risk based due diligence measures in accordance with relevant guidance.

6. Draft Regulation 6(1) requires identification before establishing a relationship. 6(2) permits, subject to conditions, identification during the establishment of the relationship. However, "before" and "during" mean the same thing because they are both prior to the point of establishment. The purpose of 6(2) appears to be to permit a delay until after establishment in low risk situations, but this is not achieved. To be effective, 6(2) should change to "…verification may be completed [during] <u>after</u> the establishment…"

7. In addition, though the general direction of Regulation 6(2) is considered appropriate, an additional degree of precision is required in certain areas. In

practical terms, HM Treasury risks 6(2)(a) being used generally to justify delays in completion of due diligence. We consider that, in the majority of cases, it is desirable for completion of due diligence to be enforced prior to the commencement of the business relationship, as subsequent withdrawal can be problematic, and costly, and so in a practical sense is less likely to occur than the rejection of a relationship before commencement. Added stringency is more likely to prevent access by launderers to regulated persons. It is, however, reasonable for there to be some limited exceptions, and we consider that the list set out in Regulation 7 (2), with the addition of insolvency practitioners preparing to act as insolvency office holders, should be cited as activities where verification may be delayed on a flexible basis even where there may be heightened risk of money laundering having taken place. In any other case, we would suggest delay may only be permitted in exceptional circumstances, for example where otherwise normal conduct of business would be interrupted in a manner likely to cause material loss to the customer and only for a period not exceeding say 7 working days (or the expected duration of the business relationship, whichever is shorter) before activity must be suspended. It is necessary in connection to Regulation 7 to make it clear that transactions may not be undertaken or a business service completed unless customer due diligence has been completed.

Reliance on Third Party Due Diligence (Reg 12)

8. As currently drafted, the provisions could impose obligations on third parties without their consent, and require the provision of information outside the normal terms of professional confidentiality and the data protection requirements. This is not appropriate and fails to protect the legitimate rights of customers. Our suggestions for the redrafting of these provisions are set out below.

Lists of Equivalent Countries and PEPs

9. Explanatory note 2.43 sets out the decision not to produce a list of politically exposed persons, leaving it to firms to determine their own lists. A similar policy position appears to have been taken, in that no definitive list of equivalent countries is envisaged under paragraphs 2.51 to 2.53 of the consultation, at least until the final outcome of discussions within the European Union.

10. Because of the nature of PEPs, the Government has the best sources of information and is best placed to determine which individuals meet the definition in order to compile the most definitive list that could be applied consistently and effectively throughout the financial sector. This is also true of equivalent countries. An opportunity has been lost for Government to provide practical help to the regulated sector, reduce their costs and enhance the effectiveness of money laundering prevention and detection. The additional costs experienced in this area will be particularly burdensome on smaller businesses, who cannot be expected to have easy or affordable access to commercial lists. These decisions therefore appear to run directly contrary to the general Government objectives of promoting the interests of smaller businesses and the enterprise economy. The decisions should be reconsidered with Government endorsed lists published with the minimum of delay.

Supervision of Accountants and Tax Advisers by HMRC

11. We note Government's comments, under paragraph 2.67, but do not find they provide sufficient assurance to allay the concerns expressed during consultation. It will be vital for Government to arrange matters in such a way as to provide unequivocal assurance that the enquiry and collection arms of HMRC will not be entitled to direct the supervisory arm, nor to obtain information from them that they would not otherwise be entitled to, under existing HMRC powers. The supervisory arm should not be authorised to report knowledge or suspicion of money laundering or tax evasion other than through the standard SOCA reporting channels and not on an "inside" basis to other parts of HMRC. Provisions to this effect should be explicitly and clearly provided for by the terms of the Regulations, and not left to the general provisions against the abuse or misuse of supervisory powers contained in the general provisions of the Regulations or elsewhere. A clear change in the law is needed, to enable and require HMRC to set up appropriate "Chinese walls" within their organisation. This is required to amend the general provision in Section 17 of the Commissioners for Revenue and Customs Act 2005 which provides that HMRC may use all the information in its possession in fulfilment of any of its functions.

12. Failure to action this point risks undermining from the start the relationship of trust between HMRC as a supervisor, and its supervised population, upon which cost effective and reliable supervision must be based.

Avoidance of Dual Monitoring and Supervision and Other Unnecessary Burdens

13. We note and endorse the intent to ensure as far as possible businesses are not subject to multiple supervision in respect of the same issues. It would be helpful if rapid framework agreements could be reached in this respect, as otherwise there is likely to be excessive supervisor activity with the potential for wasted cost and confusion.

14. Provision for the coordination of supervisory action should include not only the supervisory authorities listed in the Regulations but also other authorities, with general powers for the supervision of businesses within the scope of the regulatory requirements. One example of this is where accountancy firms are subject to ICAEW supervision, but also are included within the Audit Inspection Unit (AIU) programme (under the auspices of the Financial Reporting Council) and the FSA. The AIU and the ICAEW have agreed between them that "whole-firm" systems are reviewed by the AIU and the results shared with the ICAEW. It would be helpful if, for example, the AIU would also agree to share the results of its work on anti-money laundering systems with the FSA in order to avoid duplicated effort by supervisors and firms within the relevant sector. We suggest that *all* supervisory authorities with power over businesses wholly or partly within the scope of the Regulations should be required to cooperate, whether or not they have agreements in place under Regulation 17(2), and whether or not they are listed supervisory authorities under the Regulations.

15. Regulation 17(2) only provides that multiple supervisory authorities *may* agree that a single authority should act in relation to a relevant person, not that they *must.* In addition, no provisions are included for the resolution of

disagreements between supervisory authorities, each of which may believe that they *should* have regulatory powers, in response to their general regulatory obligations. This will tend to result in the continuation of unnecessary duplicated monitoring and control by different supervisory authorities. We suggest that Regulation 17(2) should be amended, to provide specific provision for a single default supervisory authority, in those circumstances where no agreement has been reached under Regulation 17(2). This should be the single authority which is responsible for the supervision of the greatest part of the business of the relevant person, when compared with that covered by other supervisory authorities. This should include including limiting to one supervisory authority the power to impose registration and notification requirements under Regulations 19 to 28.

16. It is also important to ensure that the duties of supervisors are not drafted in a way that makes their job unduly onerous, or even impossible. Any unnecessary costs they incur will inevitably need to be passed on to their regulated population, as well as such an approach being inconsistent with Government policy on regulatory provisions. For example, it will not be possible using a risk-related approach to supervision to always *ensure* the compliance of relevant persons with the requirements, as provided for by Regulation 18(1).

SPECIFIC ISSUES RAISED IN THE CONSULTATION

Chapter 1

The Government would welcome consultation responses on the following questions:

- ***are the draft Regulations easy to follow?***
- ***are you clear of your requirements under them?***
- ***do you believe they adequately reflect the Government's policy intention?***

17. Within the constraints of Third Money Laundering Directive, we believe that the draft Regulations do reflect the Government's policy intentions. In particular, we welcome the clear commitment to the minimisation of "gold plating" of the Directive requirements, the commitment to a risk based approach, and the continued approach adopted by HM Treasury of brief principles based law, supplemented by guidance from supervisors.

18. In some respects, however, the Government's drafting preference for using the exact wording of the Directive, and a very abbreviated drafting style, has led to wording which is inconsistent with other UK legislation and may lead to difficulties, inconsistencies or unintended consequences, when they come to be interpreted by supervisory bodies or others providing guidance or by the Courts in the application of the law and its penalties. For these reasons, and others, there are a fairly substantial number of drafting alterations needed, which we consider to be important, in ensuring that the Regulations are clear and easy to follow.

19. A particular example of this lies in relation to trusts and similar legal arrangements, where the common law system has developed very differently to the systems of law in continental Europe. The wording used in the

Directive, which refers to trusts and similar legal arrangements in terms which imply that they have "beneficial owners" who would have the same type and measure of control as the beneficial owners of companies, is inaccurate and misleading in the context of the UK. This phraseology would lead to quite unnecessary legal doubt if introduced into the Regulations without amendment.

20. In most respects, though, the draft Regulations are reasonably clear and the requirements under them will be accessible to members of the regulated sector, when supplemented by appropriate guidance issued by the supervisory bodies. The Institute is committed to producing guidance for its members and other accountants to assist them in understanding and applying the requirements. Where appropriate, this guidance will be produced in conjunction with other supervisors for accountants, will be made freely available in the public interest and Treasury approval for it will be sought.

The Government would welcome any proposals for further measures that could be undertaken to be included in your response to this consultation.

21. It would be helpful for a clear distinction to be drawn between the terms "identify" and "verify the identity on the basis of documents ..." both in the definitions section of the document and under the requirements for customer due diligence. The use of the risk related approach relies to a large degree on the distinction, and this would help ensure appropriate interpretation.

Chapter 2

The Government would welcome your comments on the list of activities included and excluded within the definition [of accountant or tax adviser].

22. We agree with an activity basis of definition, as used (in abbreviated form) in the definitions of "accountant" and "tax adviser" in Regulation 2(1). We are grateful for the clarification of the Government's intentions for the definition, as included in paragraph 2.4 of the narrative to the Regulations, but the list provided of included activities is not, in fact, activities based but is status based (for example, "chartered accountant" is a status, not an activity). A more appropriate approach would be to specify a wide description of accountancy services and tax advice, e.g. to add to Regulation 2 a definition of accountancy services as "all activities which pertain to the recording, review, analysis, calculation or reporting of financial information" and to add to the definition of a tax adviser the phrase "or assists another person in compiling returns to taxation authorities in respect of that other person's affairs". Otherwise, we suggest that clarification of the definitions of "accountant" and "tax adviser" are left to the guidance produced by the supervisory authorities for accountants and tax advisers.

23. In any case, a "law firm offering full business services" should not be included in the list of activities included within the definition of "accountant or tax adviser". If additional clarification of the services of legal professionals coming within the scope of the Regulations under 3(1)(d) is required, then this should be provided separately to any clarification on the scope of accountancy and tax advice.

24. We find it confusing to have separate definitions of "accountant" and "external accountant" and suggest that these two definitions are merged. We agree that

accountancy services provided by public authorities and provided otherwise than by way of business to third parties should be excluded from the scope of the Regulations, and that it is useful for this clarification to be included in the definitions section. However, this clarification should be located in a single definition of "external accountant", and should also be defined to clearly exclude accountancy services provided on a voluntary or non-commercial basis, as well as those not provided to third parties. The same approach and exclusions should also apply to the definition of "tax adviser".

25. The definitions used to delineate those caught by the Regulations could be improved by explicit clarification of the point that it is the businesses, not the separate individuals within them, that are subject to the Regulations. The Regulations relate to the need for a business to have systems and controls: this is in contrast to the Proceeds of Crime Act, where the reporting requirements clearly apply to individuals. We suggest that the Regulations are supplemented, either in the definitions section or in Regulation 3, to clarify this point.

26. However, also to minimise unnecessary burdens, as a well as to promote fair competition between the providers of equivalent services, it should also be clear that within an entity which provides some regulated services and some services which are unregulated, it is only those elements of the business which provide regulated services which are within the scope of the requirements.

27. The current definition of an insolvency practitioner is "a person appointed to act as an insolvency practitioner". This definition should be clarified, to apply on a basis equivalent to the provision of other professional services. In particular, it should be clear that:

- only business which is conducted by persons *licensed* to act as insolvency practitioners *and who by way of business take appointments as an insolvency officeholder,* is included; and
- the Regulations apply to the business within which the insolvency practitioner works, not to the individual licence holder.

What activities do you think fall within the terms used in Annex 1 to the Banking Consolidation Directive? When listing these, if you do not think an activity should be included, please include your reasons.

28. We have no comment to make on the terms used in Annex 1 to the Banking Consolidation Directive, and have no problem with these services being included within the scope of the Regulations as given. However, it should be noted that some of these services (such as portfolio management and advice and safe custody services) may be provided by lawyers or accountants to their clients, as part of a wide ranging professional service. In these cases, as with other "mixed service" (see also our points on the potential duplication of supervision) supervision should be carried out by the relevant professional body.

Do you agree with the proposed threshold for total turnover criterion for the financial activity on an occasional and limited basis derogation?

29. We would support the threshold being set in line with an existing threshold, which has the merit of avoiding unnecessary proliferation of limits, and consider the VAT registration limit is an appropriate threshold in this context.

The Government would welcome your comments on this proposal to refine the definition of a business relationship.

30. We support the inclusion of the definition of "business relationship" included in the draft Regulations, and are content with the wording used.

Are there any other products that you believe meet the conditions of the derogation to the implementing measures for Simplified Due Diligence?

31. We would like to raise the case of insolvency practice, as a possible additional service area where Simplified Due Diligence would be appropriate. It must be contrary to public policy for an insolvency practitioner to be required to resign from his position because he is unable to complete customer due diligence. It is unfortunately the case that instances of non co-operation, or the absence of the principals in a matter, do occur in this field. An alternative would be to include an insolvency practitioner taking appointment as an insolvency officeholder in the list of exclusions in Regulation 7(2).

32. As a matter of Government policy, we believe that all the derogations in relation to Simplified Due Diligence should be restricted to the CDD requirement to "verify the identity of the customer on the basis of documents, data or information obtained from a reliable and independent source". We believe that even in respect of low risk products and transactions, the service provider should "identify" the customer or beneficial owner, in that they should obtain the name of the customer and explanations of its structure in a way which clarifies where the control or beneficial ownership resides. We believe that the distinction drawn in the Directive, between "identifying the customer" and "verifying the customer's identity" is a clear and useful distinction, which promotes the risk based approach, while maintaining records of the identity of customers in a form which will be useful in the operation of AML controls.

Do you agree that HMRC, OFT and Local Authority Trading Standards Service, and the FSA should have these powers?

33. We would not oppose these additional powers being made available to the FSA, HMRC and the OFT, provided that they are balanced by appropriate rights of appeal and complaint, to guard against their misuse. They should only be available in relation to the body's own supervised population.

Do you agree with the list of activities that are and are not caught within the definition of a trust and company service provider?

34. The list of activities appear reasonable, although the exclusions imply that an employment agency providing temporary workers is included. Is this intended?

Do you agree with the measures included in the fit and proper test, including the 'catch all" in Regulation 22 (2)(f)? Should any other criteria be included?

35. If the Commissioners are required to refuse to register an applicant as a money service business or a trust or company service provider under the catch-all provision that the person "is otherwise not a fit and proper person with regard to the risk of money laundering or terrorist financing" then provision needs to be made for a low cost, quick and fair appeals process.

DRAFTING SUGGESTIONS

Reg 2(1) - The "nominated officer" definition refers only to POCA and therefore excludes the person appointed under the Terrorism Act. We suggest it should be extended by "…or Part III of the Terrorism Act 2000."

Reg 2(2)(3) and (4) - The "beneficial owner" definition refers in several places to "the individual" or "any individual". This does not seem to recognise the concept of joint ownership or control. The definition may therefore exclude from CDD individuals who have joint control or ownership. Draft Reg 2(2) should change to "….means the individual who, alone or jointly, ultimately owns or controls…". Similar changes should be made to 2(3)&(4).

Reg 2(4) and 4(1)(b) - Trusts and similar legal arrangements in the UK do not have beneficial owners and are not legal persons. The beneficiaries are distinct from the trustees, in whom ownership vests. The phrase "a legal arrangement (such as a trust)" should therefore be deleted. We suggest that a separate sections of Regulations 2 and 4 are included, which ensure that appropriate procedures are required for the verification of the identity of any persons with significant control over trust assets, and the identification of the classes of beneficiary and how additional beneficiaries could be added. These additional sections should be drafted in a way which is consistent with UK trust law, but which clearly complies with the spirit of the Directive. Consideration may also be given to taking a similar approach to collective investment funds where the investors have no control over the investment and management of the fund but who are the beneficiaries of the investments. The investment managers are in these cases in a position analogous to that of trustees.

Reg 4(2)(a) - We recommend that this clause refers to "transactions and activities" to align more closely to the suspicious activity reporting regime operated within the UK.

Reg 4(2)(b) - This provision requiring information to be kept up to date is too wide in its scope, as it covers everything held by a firm relating to a business relationship. The provision should apply only to the information relevant to CDD, and not to other information where the firm is entitled to make its own decision on whether it needs to be kept up to date. We suggest 4(2)(b) should change to "…held by the relevant person in relation to its customer due diligence measures are kept up to date."

Reg 5(1) - This requires ongoing monitoring in terms of 4(1)(d) when establishing a business relationship under 5(1)(a). However, as the relationship has not yet been established, monitoring is not possible and therefore cannot be complied with. Similarly, 5(1)(d) does not sit easily with 4(1)(d).

We suggest 5(1) should change to "…apply customer due diligence measures in Regulation 4(1)(a),(b) and (c) when….." and change 5.2 to read "... apply

the customer due diligence measures set out in 4(1)(a) to (d) at appropriate times ...".

Reg 5(1)(c) - This requires CDD to be applied when there is a suspicion. This should be unnecessary as risk based due diligence is required throughout a business relationship. A better place for this requirement to be reinforced is maybe to add to 5(3)(a) the phrase "including the incidence of suspicion of money laundering or terrorist financing". In practice, care will be required to ensure that a sudden change in the handling of a business relationship is not undertaken in a way that risks tipping off the customer.

Reg 7(1)((a) and (b) – These provisions would be better redrafted to refer to "transactions with or business services for the customer" as much of the work of accountants, auditors and tax advisers would not fall within the normal business meaning of the term "transaction".

Reg 7(1)(d) – We suggest that this provision is amended to clarify that it does not impose a requirement to consider a report to SOCA in circumstances of wider scope than already required under POCA and the Terrorism Act. This could be done by adding an additional phrase to the provision, to the effect that "to the extent that the circumstances of the inability to complete customer due diligence causes him to develop knowledge or suspicion or reasonable grounds for knowledge or suspicion that a person is laundering money or is engaged in terrorist financing.

Reg 10(4) - This provision requires that for a relationship with a PEP there are procedures to determine whether the customer is a PEP. This is circular and therefore not logical. We suggest that 10(4) should change as follows:

> "10(4) In respect of a prospective business relationship or occasional transaction with a customer who presents a higher than average risk of being a politically exposed person,…"
>
> 10(4)(a) should become a continuation of the lead sentence and change to "…customer is a politically exposed person and where the customer is so determined…"
>
> (b),(c) & (d) should then be designated as (a), (b) & (c).

Reg 10(8) - A firm has to have regard to any information which is publicly known in determining whether a customer is an associate of a PEP. It is unreasonable to expect a firm to know everything that is known publicly and it sets a higher standard for identifying associates than for the PEPs themselves. Reg 10(8) should change to "…in his possession or, having taken reasonable measures, to information which is publicly known."

Reg 12 - 12(1) permits a relevant person to rely on a third party and 12(3) requires the third party to hand over all information about a customer from initial CDD and ongoing monitoring immediately on demand from the relevant person. This imposes a statutory relationship between them and obligations on the third party even when the third party is not aware of nor has consented to that relationship. This is of particular concern for auditors as all large companies have auditors, which are known publicly, thus permitting any other relevant person to use the reliance provisions without the audit firm being aware. This is unreasonable and unacceptable - the reliance provisions should apply only

with consent from the third party. Even then, the requirement to produce *any* CDD information *immediately on request* is unreasonable and should apply only with adequate notice and proper reason, preferably only when requested of the relevant person by an appropriate authority. In addition, we consider it essential, in order to respect data privacy and duties of professional confidentiality, that the obligation on a relevant person to disclose information under 12(3) applies only with the consent of the customer to whom it relates.

12(3) should change to:

> "…who acts with his express consent and that of his customer, as a third party must, if requested with reasonable cause by the person…"

12(3)(a) should change to "(a) make immediately available after reasonable notice to the person…"

12(3)(b) should change to "(b) immediately after reasonable notice forward to the person.."

Reg 12(1) - This provides that the relevant person remains liable for a failure to comply with a requirement of the Regulations. In the context of reliance on third parties, the reference to a failure regarding any requirement might imply that liability extends to the third party's compliance with any of its obligations, and not limited to CDD information regarding the specific customer subject to reliance. It is also important that third parties are not provided with an opportunity to assume that there is a means of transferring their liability to other parties relying on them. Reg 12(1) should change to "…remains liable for [any] his failure to comply…".

Reg (15)(1)(a) and (b) – The requirements on internal reporting procedures refer to the nominated officer and disclosures under POCA but omit similar references in the Terrorism Act. Reg 15(1)(a) should change to "…Part 7 of the Proceeds of Crime Act 2002(a) and Part III of the Terrorism Act 2000" ; and...". 15(1)(b) should change to "…must comply with Part 7 of the Proceeds of Crime Act 2000 and Part III of the Terrorism Act 2000."

The provisions also require procedures for suspicions in the organisation to be reported, but "organisation" is not defined. Many relevant persons belong to organisations of varying formality, often including businesses which are not subject to the directive. 15(1)(a) should change to "(a) [a person in his organisation] an officer or employee is nominated…". 15(1)(b) should change to "(b) anyone [in his organisation] employed by him to whom information…"

Reg 16(b) – "and activities*"* should be inserted after "transactions".

Reg 17(2) – We do not consider that Regulation 17(2) will be sufficient to ensure that unnecessary and duplicative supervision is avoided. See our general comments above. We suggest that an additional paragraph should be included to provide that "Where no agreement has been made under paragraph (2), the supervisory authority for a relevant person will be that authority listed in paragraph (1) which is the relevant supervisor for the greatest part of the activities of that person, compared with the other supervisory authorities. No other supervisory authority will have the power to impose registration and notification requirements under Regulations 19 to 28".

Reg 17(4) - In addition, 17(4) should be reworded to provide that: "[Where no agreement has been made under paragraph (2), t] The supervisory authorities for a relevant person must cooperate in the performance of their duties whether they are appointed under this provision or by any other provision or arrangement".

Reg 18(1) - It is unlikely to be possible for supervisors to be able in many situations to "ensure" that firms comply with the Regulations, and an attempt to provide that they should would be inconsistent with the Hampton principles of good regulation or the general risk-based approach of the other provisions of the Regulations. Supervisors can monitor compliance and take enforcement action, including where appropriate requiring firms to cease activities subject to the Regulations, but none of this under normal regulatory supervision arrangements will ensure compliance. To ensure compliance would require significant supervisory resources and impose a disproportionate burden on firms. We suggest that the provision is reworded to require that supervisory authorities "take [the necessary] such measures as are necessary (on a risk related basis) to provide reasonable assurance that [to ensure] their compliance with the requirements of these Regulations has been ensured.".

Reg 18(2) - It is likely that a supervisor will on occasion obtain information from monitoring a relevant person that creates a suspicion. However, in some cases the relevant person will already have reported to SOCA or NCIS, or it may not have reported because the information creating the suspicion may have arisen prior to the reporting requirement coming into effect. Where the supervisor has no information other than already reported by the relevant person, or the information precedes the relevant person's reporting obligation, it is an unnecessary imposition on the supervisor to have to report and serves no useful crime prevention or detection purpose. The relevant person also may not have reported to SOCA because the POCA privileged circumstances provisions apply. It is important that the supervisor does not breach that "privilege". We suggest that 18(2) should change to "…inform the Serious Organised Crime Agency, unless it is satisfied that the matter has already been reported or did not require to be reported by the relevant person at the time the matter came to the attention of the relevant person."

Reg 25 - This requires authorised firms to notify the FSA if they act as a trust or company service provider. There is no recognition that such a provider may be subject to multiple supervision, as there is in other Regulations referring to registration. An example would be an FSA authorised accountancy firm which may fall under supervision of a professional accountancy body and that the FSA has agreed under 17(2) that the professional body would act as supervisor. In such a case, notification to the FSA under 25 is still required. This appears to be unnecessary. We suggest that 25(1) be changed to "…an authorised person for whom the Authority is the supervisory authority must…". Similar changes should then be made to 25(1) & (2).

Reg 27 - This permits a supervisor to decide for itself whether and when to establish a register. Because of this degree of discretion, the provisions to prohibit the conduct of business for which a register is established should be conditional upon the supervisor taking adequate measures to inform appropriate relevant persons that such a register is to be established. Reg 27 should change to "Subject to the supervisory authority taking adequate measures to make public its intention to establish a register, where a supervisory authority decides to maintain....."

Regs 30 to 34 – The additional powers granted to the FSA, HMRC and the OFT are drafted very generally, to the effect that they may be applied in respect of any "relevant person" or "connected person". These powers should only be able to be applied in relation to persons under the supervision of the authority concerned, or their connected persons, not to those under the supervision of any other supervisory authority.

Reg 30(9) – The reference to paragraph (7) should be to paragraph (8).

Sch 3 – The remaining CCAB bodies should be added to the list in this schedule. The names of the Institute of Chartered Accountants of England and Wales, and the Institute of Chartered Accountants in Scotland should be corrected.

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www.icaew.com/moneylaundering