THE INSTITUTE OF CHARTERED ACCOUNTANTS
IN ENGLAND AND WALES

10 December 2009

Our ref: ICAEW Rep 127/09

Keith Davis
Review of the Money Laundering Regulations 2007
Financial Crime Team, HM Treasury
1, Horse Guards Parade
London SW1A 2HW

Dear Keith

Review of the Money Laundering Regulations 2007

The Institute of Chartered Accountants in England and Wales (the Institute) is pleased to respond to your Call for Evidence on your *Review of the Money Laundering Regulations 2007.*

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES

ICAEW REPRESENTATION

ICAEW REP 127/09

REVIEW OF THE MONEY LAUNDERING REGULATIONS 2007

Memorandum of comment submitted in December 2009 by the Institute of Chartered Accountants in England and Wales, in response to HM Treasury's Call for Evidence of this title, published in October 2009. This response has been discussed with, and takes into account, comments made by the CCAB bodies and with other AML supervisory bodies of the Accounts Affinity Group

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INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales (the Institute) welcomes the opportunity to comment on the Call for Evidence *Review of the Money Laundering Regulations 2007* published by HM Treasury.

WHO WE ARE

2. We are responding to the Call for Evidence as a professional body for Chartered Accountants. As a professional body, we carry out a wide range of services on behalf of our members, including both regulatory and representational functions. We operate under a Royal Charter, working in the public interest – the best interests of our members depends upon us operating in the public interest, since both their reputation and our own are crucial to their long term success.

3. The Institute's 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 132,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 775,000 members worldwide.

4. 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 Institute ensures these skills are constantly developed, recognised and valued.

MAJOR POINTS

Support for the initiative

5. We agree that it is appropriate for HM Government to continuously review regulatory burdens on business, to ensure that these are proportionate, and that burdens are not imposed irresponsibly, or where an equivalent outcome can be obtained by more cost effective means. This includes the burdens imposed by the Anti-Money Laundering (AML) regime, and so we welcome this review.

6. However, changes to the requirements of Money Laundering Regulations 2007 (the 2007 Regulations) should not be made lightly. They could run the danger of being counter-productive, damaging the effectiveness of the regime without significantly reducing costs, rather than contributing significantly to the cost effectiveness of AML regime as a whole. Considerable change has been made to the AML regime during the last five years and further change to any aspect of the AML regime, as it impacts on existing regulated firms, their supervisors and customers, should be avoided at least for the next few years. The need for and details of further changes can be better judged with more experience of the operation of the current regime than currently exists.

7. In the meantime, a number of reforms could be made which would improve the regime without adversely impacting regulated firms, their supervisors or customers. We suggest that these are limited to:

   - reduction of burdens on regulated firms or their customers, which do not require immediate or significant action by the firms or the redrafting of Guidance;

   - improvements to enable the consistent application of the supervisory requirements, including the supervision of Accounting Service Providers (ASPs) by HMRC; and

- improvements to the support given to the regulated sector, through feedback on the benefits of the AML regime, and information to support the determination of equivalence and the identification of Politically Exposed Persons (PEPs).

8. Feedback on the benefits of the regime should be analysed in as much detail as possible including information to enable a judgement to be made on the cost effectiveness of the contribution of individual parts of the regulated sector. The accountancy or legal profession, for example, should be able to assure themselves that the very considerable costs they bear, in compliance with the regime, is justified by the benefits obtained.

Timing of the Review and Consequential Reforms

9. Burdens are imposed not only by the 2007 Regulations themselves, but also by changes in the Regulations and the regime as a whole, which have knock-on costs for central Government, supervisory bodies and regulated firms, in terms of the changes to be accommodated in revised Guidance, procedures and training. The 2007 Regulations were a considerable improvement on the previous 2003 Regulations, introducing more risk-based and less burdensome requirements overall. However, the final version of the 2007 Regulations was only available very shortly before they came into force in December 2007. Inevitably regulated firms have been introducing the more permissive aspects of the Regulations over time, to minimise their own burdens in terms of changes to their systems and procedures, and the burdens of training their staff in the revised procedures. The full benefits of the changes already introduced are therefore taking time to be realised. The costs of further change will be minimised if it can be introduced on a periodic basis, at intervals of no less than once very three to five years, rather than on an incremental basis.

10. Further, the perceptions of customers of regulated firms (whether private customers or representatives of non-regulated firms), individuals working within regulated firms in a non-AML capacity, and smaller regulated firms themselves, are all likely to lag improvements already made to the regime. Perceptions of the regime are likely to be coloured by experience of the sometimes very prescriptive approach taken to the implementation of the 2003 Regulations, without appreciation of the improvements made by the 2007 Regulations and other reforms to the AML regime being fully taken on board by such stakeholders in the regime.

11. If further changes are made to the AML regime, before a reasonable time has been given for implementation of the current regime, these have a higher than normal chance of being judged on an inappropriate evidential basis, as well as imposing inappropriate additional burdens, due to an inappropriately fast pace of change.

Interrelationship of the 2007 Regulations with Primary Legislation and International Requirements

12. The overall burdens and outcomes of the 2007 Regulations cannot be judged independently of the AML regime overall. The costs and benefits of the regime depend heavily on the provisions of the Terrorism Act 2000 and the Proceeds of Crime Act 2002 as well as the 2007 Regulations and the inter-relationship between them. These two Acts of Parliament have also been amended over the years since they were first put into force, which have also reduced burdens over the longer term, but in the short term introduced additional burdens, including the costs of the drafting and implementation of revised requirements, guidance, systems and procedures.

13. In addition, many of the provisions of the UK AML regime, both in terms of primary legislation and the 2007 Regulations, flow through directly from international requirements and obligations, as set out in both the EU Third Money Laundering Directive and the Recommendations of the Financial Action Task Force. In many aspects of the UK AML regime, limited change is possible, while still complying fully with our international obligations, even if it

were desirable in the UK. Over the longer term, change can be introduced to the international requirements, but unrealistic expectations should not be raised of the change that can be realised, nor its timing.

Consistency and Cost Effectiveness of AML supervision in the Accountancy Sector

14. Much of accountancy and related services are provided under the supervision of the professional bodies listed in Schedule 3 of the 2007 Regulations, who are in a position to provide flexible, proportionate and effective regulation, based on their existing powers, and their close knowledge of their members.

15. Firms which are not members of the relevant professional bodies, which have resigned their membership, or which have been excluded from membership for disciplinary reasons, must apply to HMRC for AML supervision. It is important for the proper operation of the market for accountancy services, as well as for an effective AML regime, for the powers and resources available to HMRC to be equally effective and flexible, to those available to the professional bodies, and for the fact that their supervision extends only to AML procedures to be apparent to the customers of the firms they supervise. We comment further on these matters in our response to the questions on the powers available to supervisors and the provisions on registration, in paragraphs 36-38 and 40-41 below.

16. The professional bodies listed in Schedule 3 of the Regulations have recently been brought within the remit of the Better Regulation Principles and Code, even though these are designed specifically for public sector bodies, and are inappropriate for private bodies which have alternative means, both through market forces and through the actions of their members, to enforce efficiency and risk adjusted enforcement. This represents, in itself, inappropriate and unnecessary regulation.

17. The inappropriate imposition of the Better Regulation Principles and Code is made even more potentially onerous, in that the statutory instrument which makes this change (SI no. 2981, *"Legislative and Regulatory Reform (Regulatory Functions) (Amendment) Order 2009"*) is unclear as to whether it is only the AML supervisory functions of the bodies which is covered or whether it is all their functions. This could lead to potentially costly disputes with our members or others. We suggest that an amending statutory instrument is laid without delay.

Interpretation of Responses to Specific Questions in Call for Evidence

18. Our responses to the questions posed in the Call for Evidence, as set out below, should be interpreted in the light of our main comments in the paragraphs set out above. Although we draw attention to inconsistencies in, and inappropriate implementation of, the UK AML regime (such as in the definitions of persons subject to the 2007 Regulations set out in paragraph 21 below) we do not think that it would be appropriate to introduce significant reforms at this time, certainly insofar as they impact the great majority of firms in the regulated sector or their customers. Nor should changes be made that result in failure to fully implement our international requirements. The good reputation of the UK depends in part on complying with agreements made in international agreements – if they are believed to be inappropriate, or not cost effective, efforts should be put into building up a consensus for change, rather than ignoring existing agreements made.

19. Our responses made to specific questions have been made drawing mainly on our experience as an AML supervisor and from feedback from our member firms of their experience of the AML regime as operated by our member firms. For our responses to those questions which relate to aspects of the regime which do not apply to the provision of accountancy and related services by way of business, we have drawn upon the experience of our members and other stakeholders operating in the financial services sector and elsewhere.

RESPONSES TO SPECIFIC QUESTIONS/POINTS

Questions about the Regulations

1. To what extent is the scope of the Regulations and their application to business activity appropriately risk-based?

20. The scope of the systems and control requirements of the Money Laundering Regulations in particular, the Anti-Money Laundering Regime in general, and their applicability to business activity, are increasingly well understood and applied in an appropriate manner. In particular, since the implementation of the 2007 Regulations the provisions are being applied in a more risk-based approach. The formulation of the 2007 Regulations is not particularly clear and meaningful, but has been clarified in Guidance to the extent that it is now readily comprehensible to the regulated sector.

21. The definitions of persons and activities subject to the 2007 Regulations have been taken from the 3rd EU Money Laundering Directive with little change to reflect the situation in the UK. It is not consistently risk related, in that (partly due to the Government's determination not to "gold-plate" EU legislation) it has not been adapted to the risk situation which applies in the UK. For example:

    - Casinos are included within the regulated sector, but not betting shops, book-makers or other gambling establishments, which are equally conducive to money laundering, and which may be more commonly used than casinos in the UK.

    - High value dealers are included within the regulated sector, but not high value service providers despite the fact that high value services may well be equally used as a money laundering technique. For example, use of educational establishments and private health facilities are recognised as sometimes being funded by the proceeds of corruption by foreign Politically Exposed Persons, but these are not included within the regime, even where providing a high value cash-based service.

22. We are not aware of any activities that are not currently proscribed by the Regulations, but which should be. Nor do we have any further suggestions to improve the application of the Regulations, on a risk basis.

2. To what extent are the Customer Due Diligence (CDD) requirements set out in the Regulations a proportionate response to the threat from money laundering?

23. Whether or not the CDD requirements are a proportionate response, should be judged taking into account the fact that the AML regime contributes to the fight against all crime, not just money laundering. Additionally, account should be take of the fact that CDD procedures contribute to the ease with which accountancy practices can identify the nature and identity of their clients, contributing to the appropriateness of the service which can be given to clients and reducing other professional risks, such as failure to identify related party transactions when these may have a material effect on financial statements.

24. We have no comments on the lists of activities permitting simplified due diligence or requiring enhanced due diligence.

25. Although the definition of Politically Exposed Persons (PEPs) is not particularly appropriate or risk based, we do not consider that this has a significantly disadvantageous effect, so long as it is only one element in an effective risk based system for CDD, which we believe to be increasingly the case in practice. We would not advocate change at this time. However, we understand that some supervisors may be extending the boundary of this definition, which in our view is inappropriate.

34. The obligation for financial institutions to apply procedures equal to those applying in the UK to their foreign branches and subsidiaries imposes undue competitive barriers and distortions, particularly where the jurisdictions concerned have equivalent standards, but which differ in detail.

5. To what extent do the Regulations provide Supervisors with appropriate compliance monitoring and enforcement powers and penalties to deter non-compliance?

35. The duties imposed on the private sector supervisory bodies by the 2007 Regulations, as supplemented by discussion and agreement between the bodies and HM Treasury, are clear and proportionate.

36. Certainly in relation to the accountancy sector and related services, the powers of the private sector professional bodies identified in Schedule 3 of the 2007 Regulations are sufficient for them to carry out their responsibilities, and permit a proportionate response, given the wide nature of their relationship with their members. This is backed by the possibility, in the case of severe non-compliance, of deregistering a firm, whereupon they would fall within the regulatory remit of HMRC.

37. Although the criminal sanctions available to HMRC provide an effective backstop to regulatory action, we are not convinced that in other ways the powers available to HMRC are sufficient to enable them to employ a proportionate approach to monitoring, enforcement and penalties. HMRC should have available a full range of flexible and proportionate sanctions, including administrative penalties and civil fines as well as criminal sanctions.

38. HMRC are currently limited in the fees that they may charge to their regulated population, to an amount that covers their costs. We suggest that this will tend to produce an inflexible position, where supervisory activities may need to be restricted in line with previously set budgets and charging policies, even where unexpected risks emerge. We suggest that it would not be unreasonable or disproportionate for HMRC to be permitted to set their fees at a rate which would normally be expected to generate a profit, particularly if this results in a charging structure which is not out of line with the professional bodies. This would have the additional advantages of firstly generating income available to set against the public sector deficit, and secondly reducing the competitive distortions which may result from HMRC charging a lower rate for AML supervision than is possible for the private sector, with their wider range of responsibilities in relation to the competence and ethical standards of their members.

6. To what extent do the Regulations provide for a suitable system of registration and 'fit and proper' testing to be established and carried out on a risk basis?

39. The professional bodies can already impose suitable systems of registration and "fit and proper" testing, under their existing procedures as professional bodies. If concerns are raised about the suitability of any firms registered for AML supervision by a professional body to be a member of the regulated sector, this should be raised with the professional body concerned, as part of HM Treasury's overall responsibility to ensure that supervision is adequate.

40. Accountancy Service Providers (ASPs) which are not within the supervisory population of the professional bodies fall to be supervised by HMRC, which does not have powers to reject the registration of firms on the grounds of their lack of fitness or propriety. This means that firms with a serious disciplinary record at a professional body, or a proven record of money laundering, may continue to, or embark on, practice in the regulated sector. HMRC should be given powers to apply fit and proper tests on any firms within their regulatory remit, and reject their registration upon failure, within an overall risk related approach.

41. We are aware of cases where AML registration with HMRC has been used by non-professional ASPs, using a generalised words such as "registered and authorised by HMRC to supply accountancy services" which fails to indicate the limitation of the supervision by HMRC to AML

procedures only. This could be seriously misleading to customers and other stakeholders, who may understand the phraseology as indicating a far wider oversight of the firms concerned in terms of ethical behaviour and competence. We strongly believe that HMRC should agree a standardised form of wording by the ASPs and other firms registered with it for AML supervision, and that it makes it clear that use of unauthorised wording will represent a disciplinary offence. If necessary, this should be backed with statutory powers.

7. Are the requirements of the money laundering Regulations compatible with and complementary to the requirements of a) other aspects of the UK's broader anti-money laundering regime/legislation and b) international standards/practices?

42. The requirements of the 2007 Regulations are compatible and consistent with the requirements of the Proceeds of Crime Act and the Terrorism Act.

43. So far as we are aware, financial institutions and other entities in the regulated sector which are likely to be impacted by the provisions for asset freezing, have not encountered problems of incompatibility.

44. The 2007 Regulations represent an appropriate implementation of the EU Directive and the FATF recommendations, except to the extent that international requirements have not been sufficiently adapted to the UK situation in their implementation (see, for example, paragraph 21 above).

45. Some other EU member states have been very slow to implement the Money Laundering Directives or have not been as rigorous as the UK in the degree which they have been implemented and enforced. This has led to competitive distortions.

46. Some very advanced and important jurisdictions have been identified as "equivalent" but which are nevertheless noticeably incomplete in their implementation of the FATF requirements. One of these is the US, which has no AML procedures requirements on law or accounting firms. This leads to complex competitive implications for global auditing and professional services provision.

47. Notwithstanding the anti-competitive effects of these inconsistencies in implementation, we do not think that they represent a good argument for the weakening of the AML provisions in the UK. We do not think that, as currently implemented, the 2007 Regulations significantly gold-plate our international requirements, and we think that their benefits in terms of the contribution to a safe, law abiding and fair place to do business more than compensates for the downsides.

8. How well does HMT engage with you in developing the Regulations and are the requirements of the Regulations clearly communicated?

48. HM Treasury engages with us well, in the development of the Regulations, both in our capacity as a representative of our members and member firms and as an AML Supervisor.

49. The Institute also has a number of mechanisms for engaging with our member firms and other stakeholders, in relation to the development and interpretation of the Regulations and other elements of the AML regime. These include:

- volunteer committees, with membership mainly taken from knowledgeable individuals from practising firms, who formulate policy on behalf of the Institute, and also in conjunction with our colleagues from other professional bodies which are members of the Consultative Committee of Accountancy Bodies.

- A general technical committee, the Technical Advisory Committee, which has a very wide membership of over 50 individuals from all sizes of accountancy firms and members in

business, who occasionally consider AML matters and contribute to the formulation of our response.

- Comments and discussions carried on by our Money Laundering Helpline, and our Quality Assurance Department (QAD) reviewers, who feedback to our Technical Department comments and queries from our members and member firms.

- AML roadshows and other training events, at which we encourage an interactive exchange of views and comments.

- A listing of current open consultations on our website, with an open invitation to contribute comments for the formulation of the Institute response.

The views of all these fora are fed back, for use in our communications with HM Treasury, in the development and interpretation of the Regulations.

50. We are less confident that these means of communication, discussion and development are working as well in relation to other aspects of the AML regime. For example, the regulated sector represents a very knowledgeable and engaged community, with a detailed understanding of the regime. Nevertheless, we were not consulted on the very substantive extension of powers to financial investigators in bodies other than the police, culminating in the passage of SI 2009 No. 2707. We found this very disappointing.

51. More information from the Government, to support risk based CDD, would be valuable and likely to be cost effective in supporting a more consistent approach being taken by the regulated sector. This would be particularly useful if advisories covered not just those jurisdictions which are notorious for risks of criminality, but also those jurisdictions which may be less familiar to firms in the regulated sector.

Questions about Guidance

9. To what extent does Guidance promote both an effective and proportionate approach to anti-money laundering?

52. Guidance prepared by the CCAB bodies (the "CCAB Guidance") has been adopted by the supervisors of all accountancy and related service providers, providing a consistent, effective and proportionate approach across the whole of this sector. We believe that this Guidance gives clear definitions of the persons and activities subject to the Regulations, clear guidance on the operation of the risk based approach and a clear explanation of the circumstances when firms and individuals should be considered to be acting "in the course of business".

53. It is beneficial that the Guidance is legally enforceable in the UK, as this provides a protection for firms acting in accordance with the Guidance, from differing legal interpretations of the requirements, and also ensures a means of ensuring a consistent and enforceable standard of performance.

54. The CCAB Guidance gives considerable guidance on the use of the risk based approach, for the assistance of users and understanding of the provisions, which we believe to be adequate.

10. How clear and consistent is Guidance including whether Guidance is consistent for those sectors where more than one supervisor exists and generally across sectors?

55. The adoption of the CCAB Guidance by all supervisors within the accountancy services sector means that there is no danger of inconsistent Guidance within this sector.

56. There are a number of mechanisms to promote the production of consistent Guidance across the whole of the regulated sector, including the Money Laundering Advisory Committee

(MLAC) review and approval system which must be undertaken before Treasury approval of Guidance can be achieved, and which includes a requirement for a period of public consultation. In addition, consistency of Guidance is promoted by the communication and discussion which takes place between the AML supervisory authorities at the AML Supervisors Forum.

57. We are not aware of significant problems of inconsistency in Guidance experienced by our members or member firms with more than one AML supervisor.

58. We are aware of some inconsistency in the detail of the Treasury approved Guidance issued by the Law Society and the CCAB Guidance, but though these are not trivial and are to some extent anti-competitive, we do not consider that they represent a significant problem.

11. In what ways does Guidance assist with a risk-based implementation of Customer Due Diligence (CDD) measures within your sector?

12. In what ways does Guidance assist and support Regulated Firms' anti-money laundering policies and procedures?

59. The CCAB Guidance has been carefully drafted to give adequate and appropriate Guidance on the understanding and implementation of every aspect of the 2007 Regulations and other aspects of the AML regime, including risk-based implementation, risk-based CDD, and other AML policies and procedures.

60. There are some aspects of guidance which are not susceptible to private sector action, such as the production of advisories on foreign jurisdictions and the extent of their equivalence, and the equivalence of their markets and members of their equivalents of the regulated sectors. Further authoritative guidance from the Government in these areas would be welcome.

13. How is Guidance made accessible and are there opportunities to engage in its formulation?

61. The CCAB Guidance is readily accessible and available to download free of charge from a number of web sites, including that of both the CCAB itself and the Institute.

62. There are many opportunities for engagement in the formulation and updating of the CCAB Guidance, including through the Institute's own feedback mechanisms set out in paragraph 49 above, as well as feedback through the other AML supervisory bodies and public consultation.

Questions about Supervision

14. To what extent does the supervisory framework support an effective, risk-based anti-money laundering regime and compliance with the Regulations?

63. The multi-supervisor approach has a number of challenges, including the possibility of inconsistent supervisory standards and transfers between supervisory bodies driving down standards. These dangers are minimised by discussion, mutual support and assistance provided by the AML Supervisors Forum, and the oversight of the operation of the supervisory regime by HM Treasury. For the CCAB bodies, this is reinforced by the oversight of Professional Oversight Board of the Financial Reporting Council.

64. Most professional bodies are well placed to supervise their members and member firms in an effective and efficient manner, having a long history of engagement with them. As a member organisation, we are required by our members to avoid imposing any unnecessary burdens on them, but to also effectively enforce our standards through our regulatory and disciplinary processes, to maintain the reputation of the profession and its members.

65. The efficient and risk based approach to supervision provided by the professional bodies is a function of their relationship with their members, and the competitive environment within which they work. The additional imposition of the Better Regulation Code and Principles represents unnecessary additional regulation.

15. In what ways do Supervisors communicate and engage with the firms they regulate to ensure a sound understanding of legal duties and responsibilities under the Regulations?

66. We communicate and engage with our members through the mechanisms outlined in paragraph 49 above, through which we also invite feedback. In addition, we provide a great deal of formal and informal guidance to our members, not only in the form of the CCAB Guidance, but less formal guidance, helpsheets and news items supplied through our web site, through contributions to the accountancy trade press and more widely, and through our engagement with the training organisations for accountants. These communication methods are also used to inform our members and member firms of changes that have resulted from representations and other information to Government and ourselves, to which they contribute.

67. At an individual firm level, feedback is supplied to firms by our QAD reviewers, both at our periodic monitoring visits, and in follow up reports, to promote a sound understanding of legal duties and responsibilities.

16. How do Supervisors ensure a consistent approach to compliance monitoring and enforcement is taken across the anti-money laundering regime?

68. As noted in our response in paragraph 63 above, supervisors promote a consistent approach to compliance monitoring and enforcement across the AML regime through our engagement and cooperation within the AML Supervisors Forum.

17. To what extent is Supervisors' monitoring of compliance targeted, proportionate and risk based?

69. The AML monitoring of our members and member firms is integrated into our system of Practice Assurance, under which we review the operation of the professional services of firms as a whole, to ensure that the high standards expected of our members in practice are maintained. This integration enables us to ensure that the minimum unnecessary additional time is spent specifically on AML matters, sufficient to supply the appropriate assurance that standards in this area are maintained. Firms are required to complete an annual return form, and are visited on a periodic basis, with the smaller lower risk firms expected to receive a visit about once every six years. The extent of any additional desk top monitoring, and the timing, length and frequency of visits, are adjusted according to the size and risk profile of the firm.

70. Our members are encouraged to apply the most competent, thorough and cost effective professional service to their clients. They are not encouraged to apply unnecessary procedures, further to those required on a risk assessed basis.

71. Non-compliant firms are identified through our practice assurance monitoring service and by the receipt of complaints or other intelligence. Less serious non-compliance is dealt with by providing advice and informal warnings to the firm, with more serious or persistent problems referred to the disciplinary process.

18 How effective and proportionate is the enforcement regime?

72. Our enforcement regime for AML non-compliance is integrated into our overall disciplinary processes. Full details of these, including provision for appeal are available from our web site, as part of our Members Handbook. We have available to us a wide range of sanctions for members, enabling a proportionate approach to enforcement and discipline.

73. Besides the monetary penalties, and private or public censure, the ultimate disciplinary sanction available to the Institute and the other private sector supervisors is exclusion from membership and withdrawal of AML supervision. This is sufficient in the context of the work of a professional body, but does not prevent a firm in the regulated sector from continuing to provide accountancy services by way of business, under the supervision of HMRC.

74. The AML enforcement and sanctioning regime for the accountancy sector will be incomplete, if HMRC do not have sufficient resources or powers to identify and enforce the AML requirements on the firms in their regulated populations, in a firm and consistent, as well as risk-based way. See paragraphs 36-38 and 40-41 above.

19. In what ways could the registration process for Regulated Firms be improved?

75. We believe the Institute's recruitment, training and membership acceptance processes, including the granting of practising certificates and the registration of firms for AML supervision, to be consistent with the expectations of the public and our own members, for a world class professional body for accountants. Our responsibilities as an AML supervisory body are taken into account in undertaking these procedures, but should not, and do not, have a disproportionate effect on these functions.

76. Similar considerations apply to the other CCAB bodies, under the oversight of the Professional Oversight Board. The other supervisory bodies listed in Schedule 3 of the 2007 Regulations do not have equivalent provisions for oversight, but also have a relationship with their members based upon their provision of training and competence standards. We have no reason to question the adequacy or suitability of any of the registration processes undertaken by the Schedule 3 bodies.,

77. HMRC has no equivalent ability to take into account competence and ethical background in its registration of accountancy service providers, with the result that its registration process cannot be used to support compliance with the AML requirements. Nor is the extent of the comfort that can be obtained from their supervisory functions likely to be clear to clients.

Questions about Industry Practice

20. Are there barriers to implementing risk-based policies in practice? If so, what are they?

78. The Regulations and our Guidance for our regulated firms, are designed to encourage the operation of a risk-based approach to compliance. They do not represent a barrier.

79. In a competitive environment, the procedures operated by practising firms must be designed with the needs of customers being taken into account, or the firm risks loss of business and reputation. Inevitably, the requirements of the Regulations represent a measure of costs and inconvenience for customers, but we do not think that this is disproportionate.

80. Our regulated firms are becoming increasingly experienced in the preparation of effective risk assessments, and are acquiring the necessary skills, data and tools.

81. Some firms, in particular small entities, may have more difficulty in less familiar areas, such as equivalence and the identification of PEPs, but this is not a matter of significant concern, provided they are aware of sources of advice, were they to encounter these relatively uncommon aspects of the regime.

82. The practical factor most likely to lead to prescriptive rules is the comparative ease with which rules can be imposed across a diverse firm or service offering, and the desire of firms to be consistently compliant. The risk-based approach inevitably requires a measure of judgement, and hence to some variation in application. However, with time, those responsible for ensuring consistent compliance both within firms and supervisory and advisory personnel in the

supervisory bodies, are able to develop structures and procedures which limit the operation of professional judgements to within appropriate, and risk-based, bounds.

83. However, many of our members in smaller firms and elsewhere in the regulated sector find that prospective clients are now sufficiently familiar with the longstanding requirements from the banks to present proof of identity (most frequently passport and proof of address) before embarking on a business relationship, that they present such proofs to their prospective accountants as a matter of routine. We do not think that an assumption that these documents provide appropriate evidence for AML purposes in most cases undermines the risk based approach, provided prospective clients are referred on for more varied due diligence if they either represent a higher risk or alternatively cannot easily provide these documents.

84. A further practical factor is represented by an increasing reluctance on the part of some clients to have copies of their identification documents taken and stored by firms in the regulated sector, often in a large number of places. With the increase in identity theft and other crimes based on personal information, this is very understandable.

21. During the process of customer due diligence (CDD), how are risks (in terms of likelihood and impact) taken into account to decide the type of due diligence that will be undertaken?

85. Our Guidance to our firms is aimed at encouraging them to take a reasoned judgement to the levels of CDD required for their clients, in compliance with the requirements of the Regulations. We are not aware of any particular difficulties in these procedures being applied in a reasoned fashion.

86. We do not recommend the use of the reliance provisions, for most of our firms or in most circumstances, since it is relatively risky for a firm relying upon the procedures and record keeping of another. For the firm being relied upon, the consequent record keeping procedures may be onerous. The reliance provisions as set out in the Regulations may frequently be more safely, reliably and cost effectively replaced with a request for certified copies of the identification documents, from the firm that would otherwise be relied upon.

87. Most of our member firms have a long-standing and close professional relationship with their clients, with repetitive client engagements on an annualised basis and this includes frequent contact with other bodies, such as HMRC, which provides additional comfort on CDD. Ongoing monitoring, in relation to the CDD requirements, fits well with this business model.

22. To what extent do the Regulations support or complement Regulated Firms' 'business as usual'?

88. Our responses to previous sections of the Call for Evidence, set out in paragraph 23 above, discuss the contribution that compliance with the Regulations make to risk control and client service needs of our member firms, and to the reputation of British business.

89. Damage may be done to clients and potential clients of ASPs, by a lack of understanding of the nature of the supervision of ASPs by HMRC, which could lead them to choose an inappropriate supplier of accountancy services. This could also result in damage to firms which are members of professional bodies, by the unfair competitive conditions under which they act, and to the public, in that there is less assurance of competence or ethical behaviour in the provision of those services.

23. Are "fit and proper" tests being conducted in an effective and proportionate manner?

90. None of the fit and proper tests of the 2007 Regulations apply to our regulated firms, and so there are no formal requirements for them to apply fit and proper tests to their own employees.

They will, of course, need to apply normal commercial and professional controls to staff recruitment and assessment, to ensure compliance with appropriate standards.

24. How easy or difficult is it to comply with reporting and record keeping obligations?

91. We are not aware of any undue difficulties for our member firms, in complying with the record keeping requirements, which do not greatly exceed other existing record keeping requirements.

92. Nor are we aware of problems with the reporting obligations, though the need to maintain continuous awareness of the need to report, and how, does impose some burdens in terms of staff training and awareness building.

25. What forms of communication and engagement take place with stakeholders, from government agencies through to customers?

93. See paragraphs 48-51 above, for our comments on opportunities for feedback and other engagement for our members and member firms, and the ways in which this is communicated through our relationship with government agencies.

Questions about the Customer Experience

26. How proportionate do you believe the Regulations appear once they reach the customer?

94. As noted above, our member firms are encouraged to take a proportionate and risk based approach in all their relationships with their clients. However, as noted in paragraph 10 above, client perceptions, and to a certain extent application by businesses, will inevitably lag changes in the requirements and best practice. This applies generally, to the flexibility of acceptable forms of identification evidence, and the avoidance of repeated requests for information, and across all sizes and types of firm.

27. Are you able to provide customers with access to information and resources to check what information is needed from them and why?

95. Our member firms have primary responsibility for communicating to their clients what information is required of them and why, and we have not encountered any suggestion that this is not carried out appropriately. If further information is required by clients, most of the information and guidance we supply on the AML regime is freely available on our web site, for use by members of the public as well as our member firms.

Questions about the Regime

28 To what extent do the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) provide an effective tool in the fight against money laundering?

96. We believe that the AML regime is an effective mechanism for the generation of intelligence, which is of value in the prevention, investigation and prosecution of all crime, not just money laundering. However, we have limited evidence other than anecdotal reports as to the use that is made of this intelligence. Due to the nature of crime and criminal investigation, we understand the difficulties and dangers of providing specific, quantified and detailed feedback on the use make of SARs, but it is incumbent upon Government and law enforcement to convince the public and every part of the regulated sector that the evidence gathered by the efforts they put into the AML regime is used effectively.

97. The regime also helps to avoid the more serious and blatant instances of money laundering, which undermine the integrity of the financial system and the international reputation of the UK.

98. The general reputation of the UK as a safe, law abiding and internationally cooperative jurisdiction is promoted by our thorough and complete implementation of our international obligations.

29. To what extent are the Regulations, the accompanying Guidance, the supervisory framework and industry practice (the Regime) a proportionate response to the risk of money laundering in the UK?

99. Though we have limited evidence on this matter, we would expect costs experienced by the regulated sector in the UK to be greater than the comparable costs in most other jurisdictions especially those outside the European Union. This is particularly true of the legal and accountancy professions, which are exempted from requirements for specific AML procedures in many jurisdictions, including the USA.

100. Whether the burden is proportionate in the UK depends on the effective use of the criminal intelligence which is generated by the regime. See also our response in paragraphs 96-98 above.

30. Would you say that all relevant stakeholders are able to participate in the development of the Regime?

101. Yes.

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