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By email to: aml@hmtreasury.gsi.gov.uk

6 June 2016

Dear Sir/Madam

Call for information – Anti-Money Laundering Supervisory Regime

Please find attached our response to the above consultation. If you have any questions, please contact me.

Yours sincerely

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Call for information – Anti-Money Laundering Supervisory Regime

Identification of risks

- 1. Should the government address the issue of non-comparable risk assessment methodologies and if so, how? Should it work with supervisors to develop a single methodology, with appropriate sector-specific modifications?**

We note that you say that “there is no evidence that individual supervisors are not sufficiently prioritising AML/CFT efforts”. By definition, a risk-based approach means that the amount of supervision work in any one area will vary over time as it is prioritised against other areas.

Risk assessment is not a precise science and it can be approached in different ways that may be equally valid. Supervisors should be following good practice in their approach, but there should be flexibility to allow them to shape their approach according to their specific field. Risks vary between sectors and we need room in the system to reflect that.

It would be most helpful for us if the government (HM Treasury) were to focus on the most important information that it needs from Supervisors in order to get the assurance it needs. That reporting framework should reflect the context of the National Risk Assessment. If that information requirement is well defined, it enables us to set up our systems to report accordingly. That would help achieve a common framework that supports oversight by HM Treasury.

2. How should the government best support supervisors – and supervisors support each other – to link their risk-assessments to monitoring activities and to properly articulate how they do so?

The most important starting point is a shared understanding of where the most significant areas of risk are, based on data and evidence that supervisors can use to inform their risk assessments and monitoring activities.

3. Should the government monitor the identification and assessment of risks by the supervisors on an ongoing basis? Should the supervisors monitor each other's identification and assessment of risks? How might this work?

There is already a framework for HM Treasury to do this through the annual returns, where a lot of information is already provided. The focus should be on continued efforts to work towards a shared understanding of the most significant areas of risk.

Peer support and sharing risk-based information can be provided through the Affinity groups. The focus of these meetings tends to be information sharing about policy and process cascaded from other forums that not all of us are members of, but we now have a part of the agenda allocated to emerging risks that we aim to use in a more focused way.

We do not have the financial resources, the legal framework, including rights of access, the common framework for sanction or the sector-specific expertise available to monitor each other.

4. Should smaller supervisors be encouraged to pool AML/CFT resources into a joint risk function and would this lead to efficiencies? If so, how should they be encouraged?

Our view is that unique professions bring unique risks that are best managed by individual specialist regulators. We would not see particular benefits to this approach and have not seen any evidence that it is necessary or that it would bring efficiencies. Peer support can best be achieved as described in question 3.

Supervisors Accountability

5. How should the ability of the supervisors and law enforcement agencies to share information on risks be improved?

Our experience is that ability to share information is inconsistent. This can be improved with a clear legal framework for enabling us to share information when appropriate, supported by government guidance/direction encouraging appropriate information sharing.

6. To promote discussions between the supervisors, should attendance at the AMLSF and submission of an annual return to the Treasury be made compulsory for supervisors? How could the government ensure that this happened?

We submit an annual return and attend the AMLSF and think that it would be helpful to clarify this as a compulsory requirement through legislation or regulations.

7. Could the Money Laundering Advisory Committee (MLAC) have a greater role in driving improvements in the supervisory regime?

Yes. It would be helpful for MLAC to have greater visibility across all sectors. Whilst we get some feedback on the work of MLAC through the chair of our Affinity Group, we are not directly represented. Given the size of the barrister profession and the extent of activity that brings it within the MLR, that is probably right. However, if MLAC had a more wide-reaching role we would need direct representation.

8. Should the government instigate a formal mechanism for assessing the effectiveness of all the supervisors AML/CFT activities with the power to compel action to address shortcomings? If so, should this be carried out by the Treasury directly, through another body such as the National Audit Office, or through creating a new body, perhaps along the same lines as the Legal Services Board which oversees legal services supervisors or the Financial Reporting Council which promotes high quality corporate governance and reporting? Are there other ways of ensuring effectiveness that should be considered?

There is already a mechanism to assess effectiveness through the annual returns to HM Treasury. In addition, we are already subject to regulatory oversight by the Legal Services Board. AML/CFT is already a heavily regulated area; the creation of a new body runs the risk of duplication, particularly in sectors where there already is oversight regulation. There does not appear to be sufficient evidence that more oversight is needed. Furthermore, the issue of who would fund such a

body would need to be considered. The BSB already contributes financially to the operation of its oversight regulator. We do not think that there is sufficient evidence of a need for a new body.

The National Audit Office scrutinises public spending for Parliament. The Bar Standards Board is not funded by public money so this does not seem relevant to their remit.

Penalties and Enforcement

- 9. Would an overarching body be able to add value by maintaining a more strategic view of the entire AML/CFT landscape and identifying cross-cutting issues which individual supervisors might struggle to identify? Should such a body have the authority to guide and compel the activities of the supervisors, up to and including the power to revoke approval for bodies to be supervisors?**

We do not think that there is a need for another body over and above our existing regulatory framework.

However, it is very important to find effective ways through existing mechanisms to create a better shared understanding of the key/emerging risks and sharing evidence to support that.

- 10. Should the government seek to harmonise approaches to penalties and powers? For example, should supervisors have access to a certain minimum range of penalties and powers and what should these be? Should there be a common approach for deciding on penalties and calculating fines based on variables such as turnover that are scalable to the size of the business?**

It would not be unhelpful to harmonise approaches to penalties and powers as a means of encouraging consistency of supervision and regulation.

We already have formal mechanisms in place that define our powers and our enforcement strategy, within the framework of the Legal Services Act 2007 and under direct oversight by the Legal Services Board. We are also subject to the common regulatory duty to be proportionate in our response and our use of regulatory sanctions. We therefore have in place our own means to ensure consistency of regulation within the barristers profession. However, we can see merit in developing a pan sector framework but care would need to be taken to ensure that the regulator's/supervisor's current powers are not restricted or fettered as a result.

In terms of setting fines by turnover, the challenge will be in creating a framework that recognises that professions such as the Bar comprise, in the main, self-employed barristers who do not operate through firms or legal entities.

11. Should the government seek to establish a single standard for supervisors disciplinary and appeals functions?

No, unless there is clear evidence that it is necessary. All regulators will have in place their own general disciplinary and appeals functions, all of which will be open to challenge if they are not compliant with legislation. It would not therefore be appropriate or proportionate to have a different system for AML/CFT action.

12. Does the inability of some supervisors to directly compel attendance of relevant persons to answer questions or to enter premises reduce their ability to effectively supervise, or is liaison with law enforcement agencies an appropriate mechanism? If so, how could the government address this?

Yes. The absence of such powers must limit the effectiveness of supervision.

The BSB has in place regulatory powers to access premises and to inspect documents, as well as a general requirement that barristers must be open and co-operate with their regulator. In practice, these are adequate to supervise the profession effectively, supported where necessary by liaison with law enforcement agencies.

Allied to that, we are in the process of obtaining statutory intervention powers, which will strengthen further our range of powers to manage the risks within the sector.

Ensuring high standards in supervised populations

13. Should all supervisors have powers to compel supervised businesses to submit comprehensive and up-to-date information to aid risk assessment?

Yes.

14. Is there a need for supervisors themselves to undergo training and/or continuous professional development? If so, what form might this take and should it be government-recognised?

Yes, there is a need. It can be a challenge, however, to identify training that is tailored to the Bar, with evidenced-based, up-to-date information from the government about where the key risks are in the market and what the latest

thinking is on good practice. In this respect, government-recognised training would be helpful.

The role of professional bodies in AML/CFT supervision

15. Is there a need for relevant persons in the supervised populations across all sectors to undergo training and/or continuous professional development to aid their understanding of AML/CFT issues?

Yes, there is and we encourage this through our Supervision activity.

We are introducing a new CPD regime for barristers from January 2017. It will mean that established barristers will be free to plan their own CPD activities and will have greater flexibility in the types of CPD activities they undertake. It will allow barristers to complete training that is more relevant to their careers because they will be required to identify their training needs. This means that if a barrister's practice brings them within the MLR we would expect to see evidence of periodic training to keep up to date with legislation and practice.

16. What safeguards should be put in place to ensure that there is sufficient separation between the advocacy and AML/CFT supervisory functions in professional bodies? To what extent are appropriate safeguards already in place?

Independent regulation is fundamental to the effective regulation of a profession. Our strategic plan 2016 – 2019 sets out our commitment to ensuring that we remain a strong and sustainable regulator. Independence is fundamental to that strategic aim.

The BSB therefore has in place a range of safeguards that ensure that independence of our regulation is maintained. They include:

- A protocol with the Bar Council to preserve regulatory independence https://www.barstandardsboard.org.uk/media/1549469/bar_council_and_bar_standards_board_protocol_-_final_pdf.pdf. This is complemented by the Internal Governance Rules of the Legal Services Board (the oversight regulator for the legal profession) http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/Internal_Governance_Rules_Version%203_Final.pdf
- Independence of all regulatory decision making
- Separate budget and strategic/business planning process
- Separate Board and governance structure, including lay independent members and a lay chair.
- Separate Director General and management structure.

17. Should the government mandate the separation of representative and AML/CFT supervisory roles? What impacts might this have on the professional bodies themselves?

As described in question 16, there are safeguards in place currently to preserve independence of the BSB. The wider question of regulatory and representative separation will be subject to separate consultation by the Ministry of Justice for the legal sector in the coming months and the BSB will contribute fully to that debate.

18. How does the UK approach to professional body supervision compare to other countries' regimes?

We are not in a position to comment upon this.

Guidance

19. How could inconsistencies between the JMLSG guidance and the FCA's Financial Crime Guide best be resolved? Should the two be merged? Or should one be discontinued and if so, which one and why?

This is a question for the financial sector to address. However, the JMLSG guidance is helpful for the financial sector and it would be helpful if this was not limited to the financial sector or if we had a joint legal sector equivalent.

20. What alternative system for approving guidance should be considered and what should the government's role be? Is it important to maintain the principle of providing legal safe harbour to businesses that follow the guidance?

We think that the current arrangement of Treasury approval is adequate. We think that this oversight is important for consistency and should be resourced accordingly. We support the maintenance of safe harbour guidance.

21. Should the government produce a single piece of guidance to help regulated businesses understand the intent and meaning of the Money Laundering Regulations, leaving the supervisors and industry bodies to issue specific guidance on how different sectors can comply? If so, would this industry guidance need to be Treasury approved? Should it be made clear that the supervised population is to follow the industry guidance?

Yes. This would be helpful to ensure consistency of understanding.

It seems to be an unnecessary duplication of effort for each body to document their own version of the guidance that then requires HM Treasury approval, when

a large part of the requirements/guidance is common to all sectors. Therefore, it makes sense to produce a single piece of guidance that is supplemented for sector specific matters.

The Legal Sector Affinity group may be able to support development of legal sector guidance, taking into account shared guidance being developed by the accounting sector.

The process of HM Treasury approval helps provide some assurance about consistency and can contribute to shared learning.

Transparency

22. Should supervisors be required to publish details of their enforcement actions and enforcement strategy, perhaps as part of the Treasury's annual report on supervisors, or in their own reports? What are the benefits and risks in doing so?

Yes. The BSB enforcement strategy is already published. The BSB and the Bar Tribunal and Adjudication Service (BTAS) already publish enforcement action against individual barristers.

23. Should the government publish more of the detail gathered by the annual supervisor's report process? For example, sharing good practice or weaknesses across all supervisors?

Yes. Sharing of good practice is helpful. It is crucial to ensure a shared understanding of the areas of risk/weakness before they are published.

24. Should supervisors be required to undertake thematic reviews of particular activities or sections of their supervised populations, as the FCA currently does? If so, how often should such reviews be undertaken?

Yes. We currently undertake thematic reviews in line with our risk-based approach to regulation. Their frequency is determined by risks identified rather than any commitment to a prescribed number per year. We would suggest that it is a proportionate model to adopt.

Information sharing

25. What is the best way to facilitate intelligence sharing among supervisors and between supervisors and law enforcement? What safeguards should be imposed?

More protocols and legislative provision that safeguard confidentiality and prevent prejudicing investigation and disciplinary or legal action.

26. As one means of facilitating better sharing of intelligence among supervisors and between supervisors and law enforcement, could the government mandate that all supervisors should fulfil the conditions for, and become members of, a mechanism such as FIN-NET? Are there other suitable mechanisms, such as the Shared Intelligence System (also hosted by the FCA)?

Any such tool needs to be cost-effective and provide good quality and relevant information. FIN-NET is costly given that we are unlikely to use it often.

The most relevant information for us, which would enable us to tailor our risk-based programme of work, would be shared intelligence about the most significant people or organisations of interest to the law enforcement agencies. At the moment, there is a disconnect between the NRA's assessment that the legal sector is high risk, and lack of specific information being shared with us about individuals or risks that supports that assessment.

27. Should the government require all supervisors to maintain registers of supervised businesses? If so, should these registers cover all registered businesses or just certain sectors? Should such registers be public? What are the likely costs and benefits of doing so?

Yes. It is an important means by which information about the profession can be accessed by the public and others. It helps to address the information asymmetry that can exist between the profession and those to whom it provides services.

A register of practising barristers and a list of authorised entities is published on the BSB website. We also maintain records of unregistered barristers.

Ensuring the effectiveness of the FCA

- 28. How can credit and financial institutions best be encouraged to take a proportionate approach to their relationships with customers and avoid creating burdensome requirements not strictly required by the regulations?**
- 29. Does failure of AML/CFT compliance pose a credible systemic financial stability risk? If so, does this mean that the FCA should devote more resource to the largest banks which have the greatest potential to have systemic effects?**
- 30. How should the FCA address the perception found by the Cutting Red Tape Review that it is overly focused on process and ensure that its AML/CFT supervision is focused proportionately on firms which pose the greatest risk?**

Not answered.

The number of supervisors

- 31. Is the number of supervisors in itself a barrier to effective and consistent supervision? If so, how should the number be reduced and what number would allow a consistent approach?**

No. We are not aware of any evidence that supports the suggestion that the number of supervisors in the legal sector is itself a barrier to effective supervision. Reducing the number of supervisors potentially reduces access to sector-specific expertise. Sharing of good practice, intelligence sharing and joint working where appropriate, provide a more effective way of achieving the best outcomes.

- 32. If this is an issue, are there other ways to address it? For example, would supervisors within a single sector benefit from pooling their AML/CFT resources and establishing a joint supervisory function?**

We already have the opportunity to share good practice through the legal sector Affinity group.

In our [strategic plan for 2016-19](#) one of our three key programmes is about ensuring that we are a strong and sustainable regulator. This includes embedding closer cooperation with other regulators where this is appropriate and in the interests of the public.

We have through the development of our relationships with other regulators and enforcement agencies been able to improve the way in which we regulate but also to ensure that there is a coherent and consistent approach where other agencies are involved.