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The Money Laundering Review
Room 3/15
HM Treasury
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By post and by email: MLR.review@hmtreasury.gsi.gov.uk

2 September 2011

Dear Sirs

Review of the Money Laundering Regulations 2007 – the Government Response

The City of London Law Society ("**CLLS**") represents approximately 14,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world.

This response to the "Review of the Money Laundering Regulations 2007 – the Government Response" has been prepared by the CLLS Regulatory Law Committee (the "**Committee**"). Members of the Committee advise a wide range of firms in the financial markets including banks, brokers, investment advisers, investment managers, custodians, private equity and other specialist fund managers as well as market infrastructure providers such as the operators of trading, clearing and settlement systems.

We wish to take the opportunity to comment mainly on some of the more general issues mentioned rather than on the specific consultation questions. These comments are based on our experience of advising clients who are subject to the Money Laundering Regulations 2007.

The Government Response reflects that there are concerns that the risk based approach is not as fully supported as it might be by supervisors, and by supervision and enforcement policies. We certainly agree that there is a widespread lack of understanding as to both what a risk based approach is, and as to what a firm must do to have a satisfactory risk based approach. There is a significant industry now devoted to advising firms on their procedures (and indeed on finding faults in existing procedures) and it is not at all clear that the result is either a "risk based approach" or an

approach which makes a substantive difference to the ultimate objective of detecting potential money laundering.

We believe that the Government should be actively encouraging the Joint Money Laundering Steering Group to produce further guidance on the risk based approach. We also think it has to be more generally accepted by supervisors and those responsible for enforcement that a risk based approach involves judgement, and that whilst that judgement must be reasonable and based on reasonable information, it is a judgement. Therefore another reasonable person might have formed a different judgement. Those charged with exercising these judgements have a heavy responsibility which in our experience they take seriously, they should not be at risk of personal jeopardy if subsequently someone decides that they would have formed a different judgement. Firms need to be able to recruit senior high calibre staff to take the responsibility for making these judgements and this is becoming more difficult as employees with appropriate skills reject the personal risks associated with regulatory hindsight being applied to judgements they have formed. There is a real risk that the effect will be to create a less risk based approach, a more formulaic approach, and that the highest quality staff will simply not be willing to take on the roles which expose them to personal liability. We believe this is an issue to which the Government needs to give serious attention. (We note in passing that the attempted prosecution of a money laundering officer of a City firm a few years ago was not helpful. In that case it was widely considered that the individual concerned had clearly done his best in very difficult circumstances and the belated dropping of the prosecution recognised this.)

We note the statements (see page 6) that refer to difficulties some firms have reported in complying with beneficial ownership requirements and politically exposed person requirements when dealing with large publically owned companies. We think that this is because of a misunderstanding as to what the law requires when the customer is regulated or listed. This confusion is in our experience a relatively recent development which has arisen out of the increasing regulatory focus on dealings with politically exposed persons.

Regulation 13 of the Money Laundering Regulations 2007 clearly states that a relevant person is not required to apply customer due diligence measures (unless he suspects money laundering or terrorist financing) where he has reasonable grounds for believing, inter alia, that the customer is a credit or financial institution or a company whose securities are listed on a regulated market subject to specified disclosure obligations. Customer due diligence for this purpose means identifying the customer and identifying the beneficial owner and obtaining information on the purpose and nature of the business relationship. So where the customer is such an entity this diligence is not required.

It is our understanding from the definition in the Regulations that a politically exposed person (including its close associates) would be an individual, and so would not fall within Regulation 13 and be subject to the possibility of simplified due diligence. We believe that any confusion is because a politically exposed person could be a shareholder or director of an entity to which simplified due diligence may be applied. However, by definition, the politically exposed person in such a case is not the customer, this is the regulated or listed entity, which by definition has already been scrutinised by an external body and is subject to ongoing scrutiny. It seems to us that regulation 13 is absolute, and permits simplified due diligence in this case. Indeed any other conclusion would deprive Regulation 13 of any use. We believe it would be extremely helpful if the Government were to explain this, or were to ask the JMLSG to do so.

We welcome the Government's recognition that Regulation 14 expressly refers to enhanced due diligence "on a risk sensitive basis" and we would encourage the Government to produce, or to encourage the JMLSG to produce. further more precise guidance on this as, again, we see extensive (and largely formulaic) checks being "required" in order for a firm to feel that it can demonstrate appropriate diligence.

We appreciate that these issues were not specifically further raised in the consultation, but we thought that this was an appropriate moment at which to raise them to support the Government in its efforts to have an effective anti-money laundering regime, under which both firms and supervisors understand what is expected.

In response to the specific list of consultation questions we would comment on the following:

1. *Should the existing criminal sanctions be wholly or partly repealed?*

   We support the repeal of these sanctions. The Money Laundering Regulations are essentially about the requirements for procedures and administration, the Proceeds of Crime Act ("POCA") is the appropriate place for the creation of substantive criminal offences for firms associated with money laundering (including, for regulated firms, the failure to report offence). We think that this is more than adequate cover, in particular a firm with inadequate controls would be at risk of committing the POCA offences.

2. *Should a debt purchaser be able to rely on CDD previously performed by the seller?*

   We support any proposal that this should clearly be the case, the liability for imperfect CDD should rest with the seller.

We would be happy to discuss any of our comments with you. Please contact Margaret Chamberlain on +44 (0)20 7295 3233 or by e-mail at: margaret.chamberlain@traverssmith.com.

Yours faithfully

Margaret Chi

Margaret Chamberlain
Chair, CLLS Regulatory Law Committee

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