The City of London Law Society
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19 October 2007

Dear Sirs,

Consultation Document 2007: Suspicious activity reports: prescribed form and manner

These comments are made on behalf of the City of London Law Society ("CLLS"). The City of London Law Society is the local Law Society of the City of London and represents City solicitors, who make up 15% of the profession in England and Wales. Members of the CLLS advise a wide range of firms in the financial markets including banks, brokers, investment advisors, investment managers, custodians, private equity and other specialist fund managers as well as market infrastructure provides such as the operators of trading, clearing and settlement systems.

Summary of major points

The key areas that concern the CLLS are:

(a) We strongly object to the principle that it should be a criminal offence not to use a particular form. As described below we believe that there are alternative ways of encouraging reporting in a particular manner.

(b) By virtue of the differences in the services lawyers offer, reports submitted by law firms will be less focused towards providing financial transaction detail and more focused towards factual circumstances which give rise to knowledge or suspicion. We therefore have a concern in relation to mandatory fields.

(c) In relation to online reporting, we would request that a number of technical issues are addressed so that reporting online can be done with ease.

Each of these areas is discussed in detail below.

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

1.1 Criminal sanctions

Section 339(1A) of the Proceeds of Crime Act 2002 (as amended by the Serious Organised Crime and Police Act 2005) ("**POCA**") provides that it is a criminal offence not to make a disclosure under section 330, 331, 332 or 338 otherwise than in the form prescribed by the Secretary of State. We strongly object to the principle behind section 339(1A), that is, that it should be a criminal offence not to use a particular form. We believe this is disproportionate

and inappropriate. The very fact that a person is reporting evidences their willingness to comply with their reporting obligations and should not be criminalised simply because they do not use a particular form. We understand the inconvenience to Serious Organised Crime Agency ("**SOCA**") of receiving reports in varying formats but inconvenience should not be resolved by imposing unnecessary criminal penalties. We believe that a more proportionate approach would be to allow SOCA to reject a SAR which is not in the prescribed form and require the SAR to be resubmitted in the correct format. If this suggestion is adopted the position could be reviewed after a trial period to consider whether results were being achieved without the need to impose criminal penalties.

As a result of our objection to the criminal sanctions that would be imposed if a prescribed form were introduced, we do not agree with the proposals to prescribe the manner in which SARs must be made. However, if the criminal sanctions are removed, we would be more comfortable with the proposals.

1.2 Application to internal reports

The provisions of section 339(1A) would seem to also apply to disclosures made to nominated officers pursuant to internal reporting procedures. By introducing the prescribed form pursuant to section 339, to the extent that individuals within entities do not report to their nominated officer on the prescribed form, they will be potentially liable to prosecution. Therefore to the extent that a prescribed form is introduced, it should be specifically limited to reports to SOCA. Otherwise individuals will be required to report internally in the prescribed form, thereby increasing the administrative burden.

1.3 Limited value reports

In prescribing a form consideration must be given to limited value reports (which are unlikely to follow the prescribed format). We would need to be comfortable that we would not be guilty of committing an offence under POCA by submitting a limited value report, unless this itself is also a prescribed form.

1.4 The prescribed form

In prescribing the form, it is very clear that the form is very much focused on reporting in the financial sector. We understand that a "one size fits all" approach has been adopted and that law firms will be required to report on the same form. However by virtue of the differences in the services lawyers offer, reports submitted by law firms will be less focused towards providing financial transaction detail and more focused towards factual circumstances which give rise to the relevant knowledge or suspicion being reported. Therefore many of the details requested in the proposed prescribed form will not be relevant to law firms.

One particular area of concern is that the consultation document specifies that certain fields will be mandatory, some conditional on other responses made in the form. We have the following concerns:

1.4.1 In relation to the subject identifier fields, it is not clear to us from the tables in the consultation document in what circumstances the fields will be mandatory as we note that there are differences between the different methods of reporting. We would like to have an opportunity to understand and discuss what fields should be mandatory for law firms.

1.4.2 In addition to the extent that fields are mandatory, we would like specific confirmation that "not known"/"not applicable" etc would be an acceptable response. Whilst we recognise that the more information that is provided the more beneficial it is to law

enforcement, it must be remembered that the subject of our report is frequently not our client and so we do not necessarily have access to details. It would be unreasonable and disproportionate (and costly) to expect us to make further enquiries to try to ascertain this information and we would expect that the requirement to supply subject identifiers would only apply to information in our hands at the time of making the report, with the burden of proof being on law enforcement to show that the information was deliberately withheld to further a criminal purpose.

Other comments:

1.4.3 We assume that clear guidance notes will be provided to explain what information is expected to be provided e.g. in the "Information Type" and "Unique Information Identifier" fields and that we have an opportunity to review and comment on the draft notes in advance of adoption.

1.4.4 It is important to have the ability to add additional contact details for each new SAR if necessary. This will avoid the problem that messages are not conveyed to the correct persons e.g. during holiday periods.

1.4.5 Is it necessary to state additional sheet numbers for online reporting? Why do we need to separate it out so specifically? This increases the time it takes to submit reports and in the case of online reporting should not be necessary.

1.4.6 For law firms, the existence or otherwise of cash transferring from one account to the other is either not known or is irrelevant. "Suspicions" are therefore not related to a specific transfer of funds but more to a general concern about the circumstances surrounding a transaction. However it is not clear from the notes in what circumstances we would be required to fill out the section entitled "Transaction Details". It appears that these boxes are mandatory in certain circumstances but as a law firm, we will rarely have the relevant information to complete each box e.g. we may know the amount of transfer or value of a transaction but no further details.

1.4.7 We are also concerned about metadata in the forms submitted. By virtue of the very fact that the reports from law firms are unlikely to relate to specific financial transactions but will relate to a set of circumstances particular to a matter or deal type, we require the lawyers closest to the transaction to fill out the detail required to explain the reason for disclosure. The practice of many firms is that fee earners are requested to supply relevant details of the offence in a word document which is sent to a central team who then check and, where appropriate, add in further explanatory detail or remove privileged information prior to submission to SOCA. If we were to use online forms capable of being saved, we are concerned that fee earners will complete the forms as usual for our review but may include information in the first draft which is subject to legal professional privilege which even if removed from the final submission, may be retrieved by law enforcement or be subject to electronic discovery. We would not want to be put in breach of our professional obligations because metadata is stored in the forms.

1.4.8 It is not possible for us to attach supporting documentation to SARs online – we would want the ability to do so to be introduced to ease the process of reporting. Currently the only way in which we can submit supporting material is to fax it to SOCA.

1.4.9 Will there be any changes where the report is a section 330 report?

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

Whilst all of the reports that we supply are typed, it is clearly not proportionate to impose a criminal penalty on a person who submits a handwritten report.

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

As mentioned above, at present many firms are able to request the relevant lawyer to complete a template word document, whereupon it is sent to a central team who will check and, where appropriate add in further detail, prior to sending it to SOCA. We believe that it would be beneficial for SOCA to provide the forms in a format that is capable of being saved on our own systems so that this procedure can be continued.

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

See above.

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

We agree with the principle of prescribing a form for reporting. However any prescribed form must be tailored to reflect the differences in services offered by law firms. In addition it is imperative that any form is user-friendly.

As we have already mentioned above, we strongly object to criminal penalties attaching where a SAR is not made in the prescribed form as we do not consider it beneficial or proportionate.

6 **Do you think the additional proposals of raising awareness of what constitutes a "required" disclosure is necessary/critical to the effective implementation of a prescribed form and manner.**

Yes, given the criminal liability attaching.

We hope that you find the above comments helpful, and we would welcome the opportunity to discuss the matters raised further with you. Please do not hesitate to contact us in the meantime if you would like further elaboration or information. Please contact the chair of the Regulatory Law Committee of the CLLS in the first instance: Margaret Chamberlain, Travers Smith, 10 Snow Hill, London, EC1A 2AL. Tel. 020 7295 3233. E-mail: Margaret.Chamberlain@traverssmith.com.

Yours faithfully

Margaret Chamberlain