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Mr David Swanney
Joint Money Laundering Steering Group
Pinners Hall
105/108 Old Broad Street
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16 September 2013

By Email to David.Swanney@jmlsg.org.uk

Dear Mr Swanney

Re: JMLSG consultation on proposed amendments to its Money Laundering Guidance for the Financial Sector

The City of London Law Society ("**CLLS**") represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This response in respect of the Joint Money Laundering Steering Group (the "**JMLSG**") consultation on proposed amendments to its Money Laundering Guidance for the Financial Sector has been prepared by the CLLS Regulatory Law Committee.

We welcome the JMLSG's decision to consult on its amendments to its Money Laundering Guidance for the UK Financial Sector and are pleased to have this opportunity to comment on certain aspects of the amendments.

Whilst we do not have many comments, those that we have arise out of an issue which we consider to be an important matter of principle. The JMLSG Guidance is an invaluable guide to firms as to the ways in which they may meet their legal obligations. It has a particular significance because the FCA refers to it when judging firms' compliance with FCA Rules. It is therefore very important that the Guidance does not make broad ranging propositions which overstate the obligations which a firm has as a matter of law

or which do not, in their drafting, reflect the very wide range of business carried out by the different firms who are subject to the Money Laundering Regulations.

Paragraph 4.10: A risk-based approach – Governance, procedures and internal controls

As drafted this seems to require all firms, no matter what their size or the nature of their business, to engage in an independent testing and reporting of their risk-based approach. We do not consider that this is either appropriate or proportionate for many firms. If the Guidance stated that firms should consider whether it is appropriate, taking into account the size, nature and complexity of their business and the nature of their anti-money laundering risks, to consider "independent testing" etc., then we consider this would be a more appropriate formulation.

Paragraph 4.26: Lower risk

We are very concerned by the apparent qualification to a firm's ability to apply simplified due diligence as permitted under the Regulation 13 of the Money Laundering Regulations 2007. Regulation 13 is very clear and states that a firm is not required to apply customer due diligence measures (defined in Regulation 5) in the circumstances described in Regulation 13. It does not require the firm in those circumstances to carry out an analysis of risk by country or by firm. The phrasing of the new paragraph 4.2.6 seems to suggest that such an analysis is necessary before a firm can apply simplified CDD measures. We do not think that the JMLSG should be placing additional requirements on firms which are not required by the law. It may be that this is not intended, but the drafting is not clear.

Paragraph 4.51: A risk-based approach – Record appropriately what has been done and why

We consider that the statement that firms should ensure that documents collected under the CDD process are 'kept up to date and relevant by undertaking reviews of existing records' is too absolute. By way of example, it would not make sense for CDD collected solely for the purpose of a one-off transaction to be updated and reviewed. We suggest that you should insert the words "as relevant and appropriate" at the beginning of this paragraph.

Paragraph 5.3.135: Corporate customers (other than regulated firms) and Paragraph 5.3.164: Partnerships and unincorporated bodies

These appear to require firms to do more than is required under the Money Laundering Regulations, and in addition appear to impose an obligation the scope of which is itself unclear and subjective. The definition of beneficial owner directs firms to look at those who own or control 25% or more of shares or voting rights. The additional guidance now seems to suggest that where there is in fact no individual who owns or controls more than 25%, a firm must nevertheless identify all other individuals who in fact own less than 25% in order to determine in each case whether that individual "exercises effective control", a concept for which there is no definition. We can see no basis for the introduction of this into the Guidance and consider that it places firms in an extremely difficult position. We are not aware of any reason why it should be considered necessary to introduce it.

If the JMLSG would find it helpful to discuss any of these comments then we would be happy to do so. Please contact me in the first instance by telephone on +44 (0) 20 7295 3233 or by email at margaret.chamberlain@traverssmith.com.

Yours sincerely

pp. Lauren Carson

Margaret Chamberlain

Chair, CLLS Regulatory Law Committee

THE CITY OF LONDON LAW SOCIETY
REGULATORY LAW COMMITTEE

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