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Dear Ms Gardner

FCA: Guidance consultation: Proposed guidance on financial crime systems and controls

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. 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 letter has been prepared by the CLLS Regulatory Law Committee (the "**Committee**"). The Committee not only responds to consultations but also proactively raises concerns where it becomes aware of issues which it considers to be of importance in a regulatory context.

We outline our response to the guidance consultation below.

Box 2.1A Management Information

The final example of possible financial crime management information refers to:

> "Details of any SARs considered or submitted".

We think this should be modified to reflect the fact that it may not be appropriate to provide the exact details of any SAR submitted, for example, some SARs also trigger the need to make a report under the money laundering laws. The need to maintain confidentiality of this type of information is also important. The item would be better phrased as "Appropriate

information concerning SARs considered or submitted, taking into account the relevant circumstances".

Box 2.3 Risk Assessments

This notes that a business-wide risk assessment should:

> "… draw on a wide range of information. It is not normally enough to consider just one source."

This paragraph concerns the risk assessment relating to the business of a firm, in that context it is not clear to us what is meant by "one source". In our view this needs further clarification.

Box 3.7 Handling higher risk situations – Enhanced Due Diligence

This states "The extent of EDD must be commensurate to the risk associated with the business relationship or occasional transaction but firms can decide, in most cases, which aspects of CDD they should enhance".

We think it would be helpful here to refer to the fact that it is only in the specific cases covered by Regulation 14 of the Money Laundering Regulations where there are specific EDD requirements. We were also confused by the link of this statement to Money Laundering Regulation 7. We think it should also be made clear that the references to beneficial owner and "individuals exercising control" in the examples of EDD will not always be relevant. The business of a 25% shareholder may or may not have any relevance to the business relationship actually being established between the firm and its customer.

As a general comment, the observations we have made above are relevant to the proposed amendments to Part 2 of the Guide.

Annex 1 - Common Terms

Paragraph 2.6 states that this text is not guidance on rules and is not subject to consultation.

In our view this text should be subject to consultation as it influences the interpretation of the guidance. We have the following comments:

- The current introductory paragraph to the Annex states that it is a list of common and useful terms for reference purposes.

  The current "definition" of "Source of Funds and Source of Wealth" starts with the following statement:

  > "As part of their customer due diligence and monitoring obligations, firms should establish that the source of wealth and source of funds involved in the business relationship or occasional transaction is legitimate. They are required to do so where the customer is a PEP".

  A definition should not contain the word "should" (which is explained in the introduction to the Guidance Consultation as a word which is used to describe how the FCA would normally expect a firm to meet its financial crime obligations). Provisions which are intended to have substantive effect should be in the text and not in the definitions.

In addition, the statement overstates the position and indeed does not properly reflect the more substantive provisions of the existing guidance. It is clear from the existing guidance that establishing the source of wealth and source of funds is relevant to high risk business relationships. There is no mention of this on the page which deals with standard customer due diligence checks. We suggest this paragraph should be deleted.

- The new wording inserted into "Source of Funds" says that this term refers to the activity that generated the funds, not the means through which the customer's funds were transferred. This is not always the way in which this term is used - see JMLSG paragraph 5.3.92. It may be the way it is used in the guidance, but there needs to be some clarification to avoid confusing the reader.

If you would find it helpful to discuss any of these comments then we would be happy to do so. Please contact either Karen Anderson by telephone on +44 (0) 20 7466 2404 or by email at karen.anderson@hsf.com, or Peter Richards Carpenter by telephone on +44 (0) 20 3400 4178 or by email at peter.richards-carpenter@blplaw.com, in the first instance.

Yours sincerely

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