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21 February 2020

Dear Madams/Sirs

FIFTH MONEY LAUNDERING DIRECTIVE - TRUST REGISTRATION SERVICE
Technical Consultation Document – 24 January 2020
Response of the Financial Law Committee of the City of London Law Society (CLLS)

The CLLS welcomes the opportunity to respond to the Technical Consultation Document dated 24 January 2020 relating to the proposed expansion of the Trust Registration Service (the "**TRS**") under the transposition of the Fifth Money Laundering Directive into UK law. This response is submitted by the Financial Law Committee of the CLLS.

The CLLS represents approximately 17,000 City solicitors through individual and corporate membership including some of the largest international law firms in the world. The Financial Law Committee of the CLLS comprises leading solicitors specialising in large and complex financial transactions and risk-management issues impacting upon systemically important financial market infrastructures ("**FMIs**") (a significant number of which utilise English-law trust arrangements). The proposed amendments to the Money Laundering and Terrorist Financing (Information on the Payer) Regulations 2017 would be of direct relevance to these practitioners and their clients as express trusts are used extensively in cross-border finance transactions and arrangements designed to minimise systemic or other risks in our financial markets. These solicitors and their law firms operating in the City of London act for UK and international businesses, financial institutions and regulatory and governmental bodies in relation to major financial and corporate transactions, both domestic and international. Details of the solicitors involved in the working party that prepared this response appear at the end of this document. Details of the Financial Law Committee are on the CLLS website at:

http://www.citysolicitors.org.uk/clls/committees/financial-law/financial-law-committee-members/

General Observations

The Financial Law Committee of the CLLS welcomes HM Treasury providing the opportunity for a further consultation on the widening of the TRS as part of the transposition of the Fifth Money Laundering Directive into UK law.

Our constituents advise stakeholders involved in the full spectrum of complex cross-border finance transactions and risk-management issues affecting FMIs. We welcome that the consultation document recognises that trusts are an integral aspect of the UK legal system. Trusts are fundamental to the transactions, structures and processes that our members advise on across the full spectrum of the money and other financial markets. The English-law trust has established itself as a useful tool in the world of international finance, trading, clearing, settlement and payments. It provides a well-tested and flexible method for transferring and owning rights relating to financial debts, holding property (including rights arising under dematerialised securities), creating security interests in favour of a fluctuating group of creditors and facilitating settlements of cash and securities. Participants in the markets are well-used to structures and processes where their obligations, entitlements and rights are derived from

the operation of trusts. Market participants from a plethora of different jurisdictions and traditions willingly transact under the umbrella of English law because of this flexibility and perceived fairness and transparency in the determination of entitlements.

Our responses to the consultation focus on four key areas of the market for financial services which utilise trust structures. We consider that trusts used in these areas can properly be exempted from the proposed legislation imposing registration requirements on the grounds that such scenarios are already the subject of adequate supervision and/or can be considered low risk for money laundering/terrorist financing purposes:

(i) trusts arising in the course of the provision of credit facilities (building on the exemption contemplated in draft Regulation 45ZA(2)(f));

(ii) trusts created for the purposes of an issuance of bonds (building on the exemption contemplated in draft Regulation 45ZA(2)(g));

(iii) custody arrangements (for which we propose that an additional exemption is included); and

(iv) trusts created for the purposes of managing systemic and other risks associated with the operation of, or participation in, systemically important FMIs (for which we propose that additional exemptions are included).

We are aware that a number of industry bodies are responding to HMT's consultation. Where we are aware of another response which addressees the concerns our members have, we will cross-refer to that response to avoid undue repetition and review by HMT.

Our responses to the consultation have received input and support from the CLLS Regulatory Law Committee.

Questions: Who is required to register?

Question 1 – Are there other express trusts that should be out of scope? Please provide examples and evidence of why they meet the criteria of being low risk for money laundering and terrorist financing purposes or supervised elsewhere.

Question 2 – Do the proposed definitions and descriptions give enough clarity on those trusts not required to register? What additional areas would you expect to see covered in guidance?

(i) trusts arising in the course of the provision of credit facilities

The draft Regulations contemplate an exclusion from the registration requirement for a trust (which would otherwise be considered a "type A trust") which arises "*out of, or in connection with, a provision of a facilities agreement (or of a document ancillary to the facilities agreement) under which a credit facility is, or is to be, made available by an authorised person*" (draft Regulation 45ZA(2)(f)).

Our members share the concerns that we understand will be raised by the International Capital Market Services Association (ICMSA) of which some of the members of our working group are also members, that the scope of this exemption, and the fact that it would only be triggered where the lender were an authorised person, potentially excludes a significant number of arrangements which would become subject to the registration requirement, but where there is nonetheless a similarly strong case for these transactions to be exempt.

We support the suggestions made by the ICMSA to expand this exemption to broaden the category of persons providing credit to reflect the spectrum of financing arrangements that occur in the markets, while maintaining the concept of supervision which is already inherent in the use of the term "*authorised person*". Our members believe that this exemption should extend to agreements under which more than a strict "credit facility" is advanced in order to more clearly encompass, for example, performance bonds, advance payment bonds, guarantee facilities and letters of credit which is important given the use of trusts in these financing arrangements. We also support the additional points which we understand will be

made by the ICMSA and so we propose to amend draft Regulation 45ZA(2)(f) such that it reads:

"*(f) a trust arising out of, or in connection with or which otherwise relates to, an ~~provision of a facilities~~ agreement (or ~~of~~ a document ancillary to or made in connection with an ~~a facilities~~ agreement) under which:*

(i) a credit facility (or other similar financing arrangement) is, or is to be, made available to a company which is taxed pursuant to the Taxation of Securitisation Companies Regulations 2006 (as amended); or

(ii) a credit facility (or other similar financing arrangement) is, or is to be~~,~~ made available by or has been arranged by or where the trustee is:

(1) one or more relevant supervised persons;

(2~~ii~~) ~~an~~ one or more authorised persons; or

(3) one or more persons authorised and subject to supervision by a supervisory authority of another country or territory

where:

"relevant supervised person" means a supervised person other than a third party to whom Regulation 39(4) applies; and

"supervised person" means a relevant person who is subject to these Regulations under Regulation 8 or a person referred to in Regulation 39(3)(b) or (c);

HMRC has the power to issue guidance about the meaning of "similar financing arrangement" for the purposes of this Regulation 45ZA."

Our members agree with the proposals to be put forward by the ICMSA to apply a similar exclusion to that set out in draft Regulation 45ZA(2)(f) to "type B trusts". It would be illogical for a trustee who administers trusts whose assets and beneficial owners are for all practical purposes equivalent or similar to those of a "type A trust" to be unable to benefit from an exclusion applicable to the trustee of a UK trust merely by virtue of being non-resident in the UK.

(ii) trusts created for the purposes of an issuance of bonds

Our members support the approach taken in draft Regulation 45ZA(2)(g) to exempt trusts (which would otherwise be considered "type A trusts") arising in relation to issues of debt securities where certain criteria are met. If such criteria are met in relation to an issue of bonds, it supports a conclusion that the issue is low risk for money laundering and terrorist financing purposes, or is already subject to adequate supervision and therefore out of scope of 5MLD.

We agree with the points to be made by the ICMSA that the requirement for the bonds to be issued subject to "*a subscription agreement*" for the exemption to apply is unintentionally too narrow, and would not capture bond issues which are equally low risk, but which were not issued pursuant to the terms of "*a subscription agreement*". Again, we would support the proposals put forward by the ICMSA that this exemption could properly be amended to reflect the existing exemption for trustees of debt issues embedded in Regulation 32 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, as amended (the "**MLRs**").

Accordingly our members would be supportive of the drafting for Regulation 45ZA(2)(g) which we understand will be proposed by the ICMSA, as follows:

*(g) a trust arising out of, or in connection with, or ancillary to, instruments or securities of the type specified in Regulation 32(2) ("**specified instruments**") issued or to be issued under an arrangement: ~~a provision of a subscription agreement (or of a document ancillary to the subscription agreement) under which bonds are, or are to be, issued, to—~~*

"(i) that is, or is to be, listed and/or admitted to trading on a "regulated market" as defined in Regulation 3; or

(ii) where the specified instruments are, or are to be, issued to or subscribers for the specified instruments are procured by an authorised person; or

(iii) where the specified instruments are, or are to be, issued to a "credit institution" or a "financial institution" as defined in Regulation 10; or

(iv) to which the capital market exception under section 72B of the Insolvency Act 1986 (as amended) applies; or

(v) where the trustee is a relevant supervised person or an authorised person; or

(vi) where the specified instruments are, or are to be, issued to subscribers through a central securities depository or clearing and settlement system recognised by any central bank or monetary authority member of the Bank for International Settlements*; or*

(vii) where the specified instruments are to be issued by or borrowed by a company which is taxed pursuant to the Taxation of Securitisation Companies Regulations 2006 (as amended).

HMRC has the power to issue guidance about the meaning and application of the exemptions for the purposes of this Regulation 45ZA."

For the same reasons outlined in the final paragraph of the section dealing with trusts arising in the course of the provision of credit facilities, we support the proposal to be made by the ICMSA to apply a similar exclusion to that set out in draft Regulation 45ZA(2)(g) to "type B trusts".

(iii) custody arrangements

Background

In the UK, custody of intangible assets (such as dematerialised securities) typically involves a custodian holding the assets on trust for the client; English case law treats a custodian of dematerialised securities as holding such securities on trust. In our view, this is the only practical way in which a custodian can hold intangible assets for a client in a manner which is adequate to safeguard the client's ownership rights in the event of the custodian's own insolvency, as required under the Client Assets Sourcebook of the FCA Handbook ("**CASS**"). However, CASS does not itself impose or require a trust unlike the FCA's rules for client money. Without an exemption, under the TRS requirements all UK custodians and many non-UK custodians would be obliged to provide HMRC with details of all their custody clients. This would be an extremely significant undertaking for custodians given the size of the custody industry in the UK and the volume of client relationships which would need to be registered in a relatively condensed timeframe.

Our proposal

Our members support the inclusion of an additional, express exemption under Regulation 45ZA for trusts arising in the context of custody relationships. We set out proposed drafting below.

Our reasoning

This is appropriate because we contend that the inclusion of trusts arising in connection with the provision of custody services in the TRS would be disproportionate to the risk of them being used for criminal activities on account of the fact that custody relationships are likely to already be the subject of adequate supervision. For instance, safeguarding and administration of investments (i.e. custody) is a regulated activity and so UK custodians will typically be authorised persons under the Financial Services and Markets Act 2000 ("**FSMA**") or nominees acting on the instructions of an authorised custodian. Non-UK custodians will typically be subject to supervision under local regulatory regimes.

There are other compelling reasons why we believe that applying the TRS requirements to trusts arising in the context of custody relationships would be inappropriate. This would give rise to level playing field issues and could make the UK a less attractive jurisdiction in which to invest or do business. Non-UK funds and institutional investors investing or trading in the UK market need a local UK custodian to hold their UK assets. The non-UK investor could appoint the UK custodian directly or, commonly, they may appoint a non-UK global custodian that will in turn engage the services of a local UK sub-custodian. In some jurisdictions, the non-UK global custodian may be considered to hold these assets on trust for the underlying clients, whereas in others, this may be characterised as a (non-trust) contractual arrangement. This will depend on the way in which custody arrangements are characterised under local law in the non-UK custodian's jurisdiction.

For those jurisdictions where the non-UK custodian holds assets on trust for its clients, the draft legislation would prima facie require the non-UK custodian to register these trusts as "type B trusts", to the extent that it engages in a business relationship in its capacity as trustee with a UK sub-custodian (that is a "relevant person" under the MLRs). This could cause non-level playing field issues between those jurisdictions that do and do not characterise custody relationships as trust (or trust-like) arrangements within scope of the proposed TRS requirements. Requiring custodians from jurisdictions that do characterise custody as a trust arrangement to register details of all their custody clients would put them at a competitive disadvantage compared with custodians in other jurisdictions and may act as a disincentive for those custodians to continue to offer access to UK markets and investments for their custody clients.

Also, it will be very onerous for non-UK custodians to provide details of all their custody clients to HMRC. This may give rise to client confidentiality concerns or conflicts with bank secrecy - type laws in the third country which it may not be possible to resolve through UK statutory provisions. This could have the adverse consequence of disincentivising non-UK institutional investors from doing business in the UK. Moreover, it is ultimately the underlying investor that will decide which markets it wishes to invest in, not the investor's custodian. Therefore, applying the trust registration requirements to non-UK custodians in this scenario could have the adverse consequence of disincentivising non-UK institutional investors from investing and doing business in the UK

Scope of the relevant exemption

In light of the above, our members believe that an express exemption should apply where the trustee is (i) an authorised person under FSMA; (ii) an exempt person under FSMA; (iii) a person who by virtue of article 41 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ("**RAO**") does not require authorisation under FSMA; (iv) a person on whom relevant persons may rely to conduct customer due diligence under Regulation 39 MLRs; or (v) holding assets in custody for a person referred to in points (i) to (iii).

This exemption should cover "type A trusts" and "type B trusts", both of which may arise in the context of providing custody services. "Type A trusts" may arise where a UK-incorporated or resident custodian is providing custody services in the UK. "Type B trusts" may arise where the custodian is a UK branch of a third country firm, or where a non-UK firm providing custody services outside the UK enters into a business relationship with a relevant person (as defined in the MLRs). However, limbs (iv) and (v) of the proposed exemption are relevant particularly to "type B trusts", as explained below.

Limbs (i) to (iii)

Limbs (i) to (iii) are relevant because, as referred to above, safeguarding and administration of investments (i.e. custody) is a regulated activity under FSMA and so custodians will typically be authorised persons under FSMA and subject to regulation by the FCA and/or the Prudential Regulation Authority. It is common for custodians to register assets in the name of a nominee company (e.g. in accordance with CASS 6.2.3 R). In this case, the nominee company would be a trustee (typically holding for the custodian, who holds in turn for the client) but the nominee would typically be able to rely on the exclusion at article 41 RAO, whereby the custodian accepts responsibility towards the client in respect of the assets held in custody. These entities should benefit from the exemption on the basis that a "qualifying custodian" has accepted responsibility in respect of the assets. It would be odd if custodians were exempt from the TRS requirements but their nominees were not.

Some entities in the custody chain may include exempt persons under FSMA, such as appointed representatives in respect of regulated activities for which the principal has accepted responsibility, as well as entities subject to different regulatory regimes, such as central clearing counterparties and central securities depositories. Exempt entities should benefit from the exemption on the basis that including these trusts in the TRS would be disproportionate to the risk of them being used for criminal activities. This would also be consistent with the definition of a "qualifying custodian" in article 41 RAO, which includes both authorised and exempt entities.

We also propose that the exemption should apply whenever an entity identified above holds assets on trust for a client. It is possible that in some cases a custodian may hold assets on trust for a client in circumstances falling outside the scope of article 40 RAO, for example if it safeguards assets without also administering them. However, it would be very burdensome for a custodian to assess each of its business lines (and possibly individual client relationships) to identify instances where it may be safeguarding assets in circumstances that fall outside the scope of article 40 RAO, and in practice we would expect that a high standard of care would also apply to the safeguarding of such assets. We consider that requiring custodians to carry out such a granular assessment of their activities would be disproportionate to the risk of these trusts being used for criminal activities.

Limb (iv)

This limb is intended to exempt "type B trusts" where a non-UK custodian engages a UK sub-custodian, for example, to hold UK shares through CREST. This type of structure, where a global custodian engages the services of local sub-custodians to hold assets in local markets, is very common.

As discussed above, requiring global custodians from jurisdictions that characterise custody as a trust arrangement to register details of all their custody clients would be very onerous and would create an unlevel playing field with custodians in other jurisdictions, where custody arrangements are characterised as a (non-trust) contractual arrangement. In order to avoid potential market disruption or distortion arising from these level playing field issues, we have proposed an additional limb to the custody exemption for custodians that are "relevant supervised persons". We have defined this term to capture UK and third country firms on whom relevant persons may rely to conduct customer due diligence under Regulation 39 MLRs. We consider that this strikes the right balance between providing a workable exemption for global custodians in most financial centres, whilst ensuring that the exemption is not so

broad that it would provide a loophole for custodians from high-risk jurisdictions or those that are not themselves subject to AML/CTF requirements similar to those set out in the MLR.

Limb (v)

This limb is intended to address scenarios where non-UK sub-custodians may hold assets on trust for the UK custodian. The non-UK sub-custodian is prima facie subject to the TRS requirements for "type B trusts", as it is entering into a business relationship with a UK relevant person in its capacity as trustee. However, in this scenario, the beneficiary of the trust is the UK custodian. It would therefore be disproportionate to the money laundering and terrorist financing risk to require the third country sub-custodian to register details of the trust and could otherwise act as a barrier to UK investors being able to invest in assets in certain non-UK jurisdictions (i.e. if those third country sub-custodians were unwilling to provide custody services to UK relevant persons to the extent this would trigger the TRS requirements).

Proposed drafting

"*A trust arising out of or in connection with the holding of assets (including cash) belonging to another where the trustee holds such assets in the course of, or in connection with, the business carried on by it as:*

(i) an authorised person;

(ii) an exempt person;

(iii) a person that, by virtue of article 41 RAO, does not require authorisation under FSMA; or

(iv) a relevant supervised person; or

(v) a person holding the assets for a person referred to in paragraphs (i) to (iii).

"exempt person" means a person who is exempt for the purposes of FSMA;

"RAO" means the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001

"relevant supervised person" means a supervised person other than a third party to whom Regulation 39(4) applies; and

"supervised person" means a relevant person who is subject to these Regulations under Regulation 8 or a person referred to in Regulation 39(3)(b) or (c)."

(iv) trusts created for the purposes of managing systemic and other risks in the FMI context

The use of express, bare trusts is very common in the clearing, settlement and payments space. The registration requirement could prove to be disproportionately burdensome for a number of UK trusts, particularly those that are used widely in the financial markets as legitimate and efficient legal devices designed to reduce systemic and other risks (e.g. those associated with clearing, settlement and other financial markets activities). These so-called "financial markets trusts" are generally special purpose trusts which are used to enhance market confidence in the completion of financial markets transactions, settlement and/or the holding of securities. They help to support the safe and efficient operation of financial market infrastructures, do not generate UK tax consequences and are very far removed from the types of trust and their higher risk of money laundering and terrorist financing which the legislation is primarily targeting.

Our members are aware of at least three principal types of systemically-important arrangements in relation to FMI that could potentially fall within scope of the proposed registration requirement, but where such a requirement would be wholly inappropriate. Although certain of the proposed exemptions in the implementing legislation

may be intended to capture these types of trust, it is uncertain whether they would in fact be captured based on the current drafting. For clarity, and with due regard to the "high level" of legal certainty required by Principle 1, Key Consideration 1 of the CPMI – IOSCO Principles for FMIs, we would propose drafting bespoke exemptions for these types of arrangements given their systemic importance. These areas are as follows:

1. Designated systems under the UK Settlement Finality Regulations 1999 (the "SFRs")

Designated systems under the SFRs use express trusts as part of their "default arrangements" i.e. they operate as part of those arrangements put in place by operators of designated systems for the purpose of limiting systemic and other types of risk which arise in the event of a participant appearing to be unable, or likely to become unable, to meet its obligations as a participant (e.g. in the event of a participant's insolvency).

These arrangements are constituted as express, bare trusts over cash and are designed to ensure the completion of settlement in the event of the insolvency of a participant. They have been particularly instrumental in supporting non-bank payment service provider access to payment systems, while safeguarding client monies and minimising credit, liquidity and other risks for the UK's financial system. Indeed, as far as payment systems are concerned, they find statutory recognition (outside the SFRs) in, for example, the safeguarding provisions of Regulation 23 of the Payment Services Regulations 2017 and Regulations 20 and 21 of the Electronic Money Regulations 2011.

Equally, we are aware of trusts being used as part of the "default rules" of central counterparties ("**CCPs**") (including those rules supporting the "porting" of assets and positions under EMIR) and central securities depositories ("**CSDs**") under Part 7 of the Companies Act 1989 to manage the risks associated with participant defaults.

2. Bank of England as "security trustee"

The Bank of England acts as security trustee for charges granted by participants in designated payment systems over their reserve collateralisation accounts and/or settlement collateralisation accounts held at the Bank (as settlement agent for the relevant payment systems). These arrangements also operate as part of the "default arrangements" of these systems, but here the subject matter of the bare trust is not cash itself, but the charge granted over a cash balance held with the Bank. It is probable, but not beyond argument in all potential cases where the Bank acts as security trustee with respect to an FMI, that these arrangements could also fall within the Bank "as monetary authority" exemption which is currently proposed in the consultation document.

3. Trusts in support of FMI settlement and accounting arrangements

A subsidiary of Euroclear UK & Ireland Limited ("**EUI**"), the UK CSD, issues "CREST depository interests" ("**CDIs**") under a trust deed poll in favour of CREST members who hold, from time to time, uncertificated units of the CDIs on the relevant Operator register of securities maintained and updated by EUI pursuant to its statutory obligations under the Uncertificated Securities Regulations 2001 ("**USRs**"). CDIs are English law governed securities issued in the form of dematerialised depository receipts which are cleared and settled through CREST and which represent interests in underlying overseas securities. In this way, the trust arrangements for CDIs play an important role in the wider financial markets by facilitating the safe and efficient settlement of transactions in overseas securities under so-called "link" arrangements put in place between EUI and a third country CSD.

In addition, under Article 39 of EMIR and Article 38 of the CSDR, CCPs and CSDs are required to keep and make available accounting arrangements that allow for the segregation of (a) their own assets from the assets of their clearing members and participants, and (b) the

assets of individual clearing members, or participants, from the assets of other clearing members or participants. Those articles contain similar segregation requirements on the clearing members and participants themselves.

Our members believe that 1 and 2 above are not appropriate for inclusion within the proposed trust registration requirements because, first, their purpose is the management of systemic risk and, second, in accordance with Regulations 4(1) and 7 of the SFRs, with reference to paragraph 6 of the Schedule to the SFRs, the Bank of England (as designating authority) is required to assess whether the trust arrangements (as part of the system's default arrangements) are "appropriate for the system in all the circumstances". Similar assessments are made with respect to the default rules of CCPs and CSDs by the Bank of England (or the relevant EU competent authority) as the relevant supervisory authority for these types of FMI under EMIR and the CSDR respectively. The purposive, transparency and evaluative processes inherent in these procedures make the relevant trust arrangements wholly inappropriate for the kind of anti-money laundering or terrorist financing objectives behind the proposed requirement for the registration of in-scope express trusts.

Equally, in respect of 3, the relevant particulars of the holder of each unit of a CDI, as beneficiaries under the trust constituting the securities, are entered up and maintained on the relevant Operator register of securities maintained by EUI (a body supervised by the Bank of England) under statutory obligations. The terms of the trust deed poll are published in the publicly available "CREST International Manual". With regard to the accounting requirements of Article 39 of EMIR and Article 38 of the CSDR, it is widely recognised that, in practice, trust arrangements will (under English law) be required to enable the CCP, its clearing members, the CSD and its participants, to ensure compliance with the relevant accounting requirements. It would be pointless, duplicative and administratively costly to require an additional registration of these trust arrangements pursuant to the provisions of the MLRs 2017 as amended to transpose the trust registration requirements of MLD5.

Accordingly, there are very strong policy reasons in respect of each type of financial markets trust to provide a basis for an exemption from the trust registration requirements. Such exemptions could perhaps be defined by reference to designated systems' "default arrangements" under the SFRs and/or a suitably targeted systemic protection/financial markets infrastructure exemption (for example, in a manner similar to the exclusions currently carved out for FMIs in certain UK insolvency and resolution laws).

For other financial market trusts like the CDI trust arrangements, an exemption could be created to cover all trusts where particulars (e.g. names and addresses) of the holders of the beneficial interests under the trusts are entered up on any register of securities and/or record of securities which satisfies the following conditions:

1. the relevant register or record is required by any enactment or instrument to be maintained in the United Kingdom; and
2. that register or record is required by any enactment or instrument:

a. to be made available to inspection; and/or
b. to record the names and addresses of all persons holding the relevant securities from time to time.

Such exemptions would also reflect the intention (as a matter of policy) set out in paragraph 3.4 of the consultation paper that the trust registration requirement should not:

(i) be disproportionately costly and burdensome to the risks posed by the relevant trust arrangements; and

(ii) bring into scope trusts that are already highly controlled and supervised by regulatory bodies.

Proposed drafting

Our members support the inclusion of the following paragraphs as additional paragraphs in Regulation 45ZA(2) (i.e. as trusts that are excluded from "type A trusts" within Regulation 45ZA(1)(a)).

"*(j) a trust that is set up under or in connection with or that otherwise results from the default procedures of a specified body;*

(k) a trust in relation to which the names and addresses of the beneficiaries are kept and entered up on a record of securities and/or a register of securities; and

(l) a trust set up by or for a segregating entity having regard to the segregating entity's obligation, under or by virtue of any enactment or rule –

(i) to safeguard or segregate clients' assets (including client money); or

(ii) to keep separate records and accounts."

For the purposes of this Regulation:

(a) "central counterparty", "recognised body", "recognised central counterparty" and "recognised CSD" have the meaning given in section 313 of FSMA;

(b) "clearing member" means a person which participates in a central counterparty and which is responsible for discharging the financial obligations arising from that participation;

(c) "default arrangements" and "designated system" have the meaning given in Regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999;

(d) "default procedures" means –

(i) the default arrangements of a designated system;

(ii) the default rules of a recognised body; or

(iii) any action or proceedings taken by or for a specified body under its default arrangements or its default rules.

(e) "default rules" has the meaning given in section 188 of the Companies Act 1989;

(f) the obligation of a segregating entity (which is a recognised central counterparty, a clearing member, a recognised CSD or a participant) to "keep separate records and accounts" refers to the obligation of –

(i) the recognised central counterparty or the clearing member to keep separate records and accounts in compliance with the requirements of Article 39 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;

(ii) the recognised CSD or the participant to keep records and accounts in compliance with the requirements of Article 38 of Regulation No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories; or

(iii) any corresponding obligation affecting a central counterparty and its clearing members, or a securities settlement system and its participants, under any third country law or regulation;

(g) "participant" means a person which participates in a securities settlement system and which is responsible for discharging the financial obligations which arise from settlement instructions entered into, and executed through, that system;

(h) "record of securities" or "register of securities" means -

(i) a record of securities or a register of securities as defined in Regulation 3(1) of the Uncertificated Securities Regulations 2001; or

(ii) any other record of persons holding securities or register of persons holding securities, which is required to be maintained in the United Kingdom and kept available for inspection by or under any enactment or instrument;

(i) "rule" means a rule, requirement or direction made or imposed by the FCA, the PRA or the Bank of England under powers conferred on it by any provision of any enactment;

(j) "securities settlement system" means a system that enables securities to be transferred and settled by book-entry according to a set of predetermined multilateral rules;

(k) "segregating entity" means –

(i) a clearing member of a central counterparty;

(ii) a participant in a securities settlement system; or

(iii) a specified body; and

(l) "specified body" means –

(i) a designated system; or

(ii) a recognised body."

We would suggest that a corresponding exemption, with respect to non-UK CCPs and non-UK CSDs and their obligations under EMIR and the CSDR (and corresponding non-UK/EU legislation) to keep separate accounts and operate default procedures, should be included for "type B trusts". This exemption should also extend to non-UK trusts set up by a clearing member of either a non-UK CCP or a UK CCP, and non-UK trusts set up by a participant in a securities settlement system operated by either a non-UK CSD or UK CSD.

Question: Deadlines, data retention and penalties for non-compliance

Question 3 – Do the proposed registration deadlines and penalty regime have any unintended consequences that would lead to unfair outcomes for specific groups?

Our members share the concerns of the ICMSA that if proportionate drafting is not introduced to address areas of uncertainty around the reporting requirements for trustees of trusts arising in the context of debt financing transactions (to which we would add custody arrangements and financial markets trusts for the reasons set out above), these trustees may be unable to meet the deadlines for effective remediation of their "back-book" of existing transactions for which they act as trustee. We also agree with the ICMSA that these trustees will face significant financial and administrative burdens

in providing HMRC with information which our members assert is of no practical utility to HMRC or HMT in fighting the risk of money laundering and terrorist financing that the legislation is designed to address.

Question: Legitimate interest & third country entity requests

Question 4 – Do you consider that the revised definitions and application process for legitimate interest and third country entity requests set the right boundaries for access to the register? If not, please provide specific examples of where you would consider this not to be the case.

We have no comments on this question.

Question: Exemptions to providing beneficial ownership information

Question 5 - Does the proposed handling of exemptions for legitimate interest and third country entity requests provide the right access to the beneficial ownership data whilst protecting beneficial owners from potential risk of harm?

We have no comments on this question.

Question: Process, reviews and appeals

Question 6 - Are there any instances where the above proposals would not give investigators access to the information they require to follow a specific lead in suspected money laundering or terrorist financing? Please be specific and provide examples.

We have no comments on this question.

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If you have any queries about this response, please contact Dorothy Livingston (Chair of the CLLS Financial Law Committee) at dorothy.livingston@hsf.com.

FINANCIAL LAW COMMITTEE of the
CITY OF LONDON LAW SOCIETY

Composition of 5MLD Working Group

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