HM Treasury

Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 Statutory Instrument 2022

Consultation

July 2021

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Chapter 1

Introduction

Background

1.1 This chapter sets out the context in which this consultation takes place. It provides relevant background on money laundering and terrorist financing (ML/TF), including their significance from the perspectives of the UK and the Financial Action Task Force (FATF). It also covers the government's approach and plans for amending the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLRs). This consultation invites views from industry, law enforcement, supervisors and the broader public and civil society on potential amendments to the MLRs, which under current plans, will be taken forwards through focused secondary legislation due to be laid in Spring 2022 (SI 22).

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

1.2 The UK has had regulations intended to prevent money laundering in place for nearly thirty years. Over time, these have evolved in line with international standards set by the FATF, an intergovernmental body which promotes effective implementation of measures for combatting money laundering and terrorist financing along with other threats to the integrity of the international financial system, and multiple European Union (EU) Money Laundering Directives. The most substantial recent revision was in June 2017, transposing the European Fourth Money Laundering Directive and the Funds Transfer Regulation, which were themselves heavily informed by a substantial rewrite of FATF international standards in 2012. Since 2017, the MLRs have been amended, most significantly through the transposition of the Fifth Money Laundering Directive in January 2020.

1.3 Through these revisions, the MLRs have expanded in scope, bringing in new sectors outside of the original financial industry focus, and extending the requirements falling on those in scope to ensure an understanding of the beneficial ownership structure of those involved in transactions. The MLRs are designed to detect and prevent money laundering and terrorist financing before it occurs, both directly through the UK's financial institutions and through enablers who may be involved in transactions such as lawyers, accountants and estate agents. They seek to do this while minimising the burden on legitimate customers and businesses.

1.4 The scope of this legislation, and the international standards that inform it, covers both ML and TF. As drawn out in detail in recent National Risk Assessments, ML includes how criminals change money and other assets into clean money or

assets that have no obvious link to their criminal origins. ML can undermine the integrity and stability of our financial markets and institutions. It is a global problem and represents a significant threat to the UK's national security and prosperity. ML is a key enabler of serious and organised crime, which costs the UK at least £37 billion every year1, and causes significant harm to individuals and communities. The National Crime Agency (NCA) assesses that is highly likely that over £12 billion of criminal cash is generated annually in the UK and a realistic possibility that the scale of ML impacting on the UK (including though UK corporate structures or financial institutions) is in the hundreds of billions of pounds annually.

1.5 TF involves dealing with money or property that a person knows or has reasonable cause to suspect may be used for terrorism. There is an overlap between ML and TF, as both criminals and terrorists use similar methods to store and move funds, but the motive for generating and moving funds differs. The UK has a comprehensive anti-money laundering and counter-terrorist financing (AML/CTF) regime, and the government is committed to ensuring that the UK's financial system is effectively able to combat ML/TF.

The scope of this consultation

1.6 The consultation is taking place in order to allow us to make some time-sensitive updates to the MLRs, which are required to ensure that the UK continues to meet international standards, whilst also strengthening and ensuring clarity on how the AML regime operates, following feedback from industry and supervisors on the implementation of the Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020, through relatively minor proposals for change.

1.7 The aim is to keep the proposed SI very focused and include a number of specific measures. This will allow for focus on the review of the MLRs, which will shape the UK's direction in AML for the coming years.

A Call for Evidence

1.8 As well as this consultation, HM Treasury is publishing a separate call for evidence on a wider review of the UK's AML/CTF regulatory (MLRs and Office for Professional Body Anti-Money Laundering Supervision (OPBAS) Regulations 2017) and supervisory regimes. That review will assess the overall effectiveness of the regimes, their extent (i.e. the sectors in scope as relevant entities), and the application of particular elements of the Regulations to ensure they are operating as intended. It will also consider the structure of the supervisory regime, and the work of OPBAS to improve effectiveness and consistency of Professional Body Supervisor (PBS) supervision.

1.9 The amendment of the MLRs during the review process should not have any bearing on its findings, as the proposed SI will make limited changes which will not affect the broader findings and recommendations of the review. Where we anticipate the review may more fundamentally revisit regulations, we have tended not to include minor updates in this document.

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[1] Serious and Organised Crime Strategy, November 2018, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752850/SOC-2018-web.pdf

1.10 The call for evidence and this consultation document will be published around the same time but are separate documents with distinct purposes. We understand many stakeholders will wish to respond to both documents and ask that they clearly demarcate which document they are responding to within their submissions and by reference to the specified, numbered, questions in each.

Next Steps

1.11 The consultation will be open until 14 October 2021.

1.12 The government will analyse responses to this consultation and respond in due course.

1.13 A full list of acronyms used throughout this consultation can be found at Annex A and a list of consultation questions can be found at Annex B. Drafting for consultation can be found at Annex D.

Chapter 2

Changes in scope to reflect latest risk assessments

Summary

2.1 The sectors in scope of the MLRs ('the regulated sector') are set out in Regulation 8 of the MLRs, with certain exemptions listed in Regulation 15. The risks inherent in each sector in scope of the MLRs can vary, as assessed in the National Risk Assessment of Money Laundering and Terrorist Financing 2020 (NRA 2020).

2.2 Changes to the extent of the regulated sector are currently determined by changes to international standards set by FATF, for example the inclusion of cryptoasset exchange providers and custodian wallet providers, or where risk assessments suggest a potential risk in sectors currently outside of scope. Sectors, or sub-sectors, may also be removed from scope of assessments to show they represent low risk to the extent that inclusion under the MLRs becomes disproportionate.

2.3 This consultation seeks views on specific amendments to the scope of the regulated sector to exempt particular payment service providers which may present low risk of ML and TF. The potential activities for exclusion are account information service providers (AISPs), bill payment service providers (BPSPs), and telecom, digital, and IT payment service providers (TDITPSPs). Payment initiation service providers (PISPs) have been suggested for exclusion from the regulated sector, but this consultation also seeks views on the potential ML/ TF risks presented by PISPs.

2.4 This consultation also seeks to provide further clarity to the art sector with regard to an amendment to the current definition for Art Market Participants (AMPs) in Regulation 14 of the MLRs, in order to remove artists from scope of the definition, due to the lack of significant evidence of ML and TF risk attributed to the selling of works of art by those who have created them. In accordance with this amendment, we are also seeking views on whether further amendments may be necessary in due course to bring into scope of the AMP definition those who trade in the sale and purchase of digital art.

Account Information Service Providers and Payment Initiation Service Providers

2.5 Account information services (AIS) are defined in the Payment Services Regulations 2017 (the PSRs) as:

> "an online service to provide consolidated information on one or more payment accounts held by the payment service user with another payment service provider or with more than one payment service provider, and includes such a service whether information is provided—

(a) in its original form or after processing;

(b) only to the payment service user or to the payment service user and to another person in accordance with the payment service user's instructions;"

2.6 They are used to offer an account aggregation service that allows customers to get a single view of all their payment accounts via one site. Lenders and credit reference agencies may use AISPs to make better informed lending or credit scoring decisions.

2.7 Payment initiation services (PIS) are defined in the PSRs as:

"an online service to initiate a payment order at the request of the payment service user with respect to a payment account held at another payment service provider"

2.8 They are used to initiate a payment transaction from the customer's account with another payment service provider, for example to pay a retailer or merchant. They allow merchants to determine whether the payment has been made before releasing goods or services, and provide an alternative to other payment methods, for example debit and credit cards.

2.9 Following their designation as payment services in the second Payment Services Directive, both AISPs and PISPs are financial institutions for the purposes of the MLRs and must implement appropriate policies, controls and procedures to prevent money laundering and terrorist financing. The Financial Conduct Authority (FCA) is the supervisory authority for AISP and PISPs.

2.10 The NRA 2020 assessed the overall ML and TF risk for payment services and e-money services to be medium. This was driven by the continuing proliferation of payment services offering new opportunities to criminals. The NRA noted that the introduction of new "Strong Customer Authentication" requirements in regard to electronic payments will help to reduce the risk of fraud.

2.11 However, AISPs are informational tools; they allow customers to view their data and link it to other services. They do not come into possession of funds and cannot access accounts to execute payments. These factors indicate that AIS would be of limited utility in any money laundering methodology.

2.12 PISPs are involved in payment chains, for example they can initiate a payment transaction from a customer's account with another payment service provider, e.g. to pay a retailer or merchant, so may represent marginally higher risk. However, they do not execute the payment transactions themselves and do not hold payment service users' funds.

2.13 The European Banking Authority published updated guidelines on money laundering and terrorist financing risk factors in March 2021, which noted that the inherent ML/TF risk in AIS and PIS is limited. It sets out specific risk factors AISPs and PISPs may wish to consider, and guidelines on appropriate measures.

2.14 The government welcomes views on the possibility of excluding AISPs from the regulated sector, given that the likely risk of ML/TF has been assessed as low. It

also welcomes views on PISPs, and the inherent risks present in PIS, but notes the potential higher risk relative to AIS may suggest maintaining PISPs within the regulated sector.

2.15 Any exclusion of AISP or PISP from the regulated sector would apply specifically to the carrying out of account information or payment initiation services. AISPs or PISPs which undertake other regulated activity in the MLRs would still be required to maintain appropriate policies, controls and procedures for that activity. This would also not change the requirement for firms to register or become authorised by the FCA under the PSRs.

Box 2.A: Account Information Service Providers and Payment Initiation Service Providers

1. What, in your view, are the ML/TF risks presented by AISPs and PISPs? How do these risks compare to other payment services?

2. In your view, what is the impact of the obligations on relevant businesses, in both sectors, in direct compliance costs?

3. In your view, what is the impact of such obligations dissuading customers from using these services? Please provide evidence where possible.

4. In your view should AISPs or PISPs be exempt from the regulated sector? Please explain your reasons and provide evidence where possible.

Bill Payment Service Providers and Telecoms, Digital and IT Payment Service Providers

2.16 Bill payment service providers (BPSPs) are undertakings which provide payment services which enable the payment of utility and other household bills. There are two models of bill payment services, and these are distinguished by the BPSP acting as the agent of the payee in the first model, and as the agent of the payer in the second.

2.17 The government believes that it is highly unlikely that any business in the UK operates as a BPSP. This is due to there being a limited market for this sector (as defined in the MLRs) in the UK. Such businesses effectively provide an alternative to the formal banking sector but there has been no evidence of the emergence of this sector. This is because the UK has a well-established banking network, with nearly all the population having access to the mainstream financial sector.

2.18 Telecoms, Digital and IT Payment Service Providers (TDITPSPs) are undertakings which provide payment services consisting of the execution of payment transactions, where the consent of the payer is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator acting only as an intermediary

between the payment service user and the supplier of the goods and services (and terms used in this definition which are defined in the PSRs have the meanings given in those Regulations).

2.19 Depending on the business model of a qualifying business, they will be supervised in respect of the MLRs, by the FCA or HM Revenue and Customs (HMRC). HMRC are the registration and supervisory authority for 'money service businesses' (such as Payment Service Providers (PSPs) that only have permission for money remittance), BPSPs and TDITPSPs that are not supervised by the FCA. The FCA is supervisory authority for all other PSPs, including AISPs and PISPs.

2.20 The number of businesses registered with HMRC as PSPs (BPSPs and TDITPSPs) has remained consistently small at around 130 – though the real number of PSPs is estimated to be around 20. The reason for this discrepancy is that the remainder of businesses (around 110) are also registered under another MLR sector and may have identified as a PSP in error. This has been evidenced by remote compliance checks and by cross referencing with the FCA register which shows around 20 businesses that are authorised as Authorised Payment Institutions (APIs). The government do not believe that there are significant numbers of PSPs that have not been authorised by the FCA and are in the process of conducting an exercise to correct the registration details of the 110 businesses believed to have wrongly identified as PSPs.

2.21 The small number of qualifying businesses that are correctly registered as TDITPSPs tend to be specialist or novel fintech business with the low throughput of a Small Payment Institution (SPI). If these businesses grow and become an API, they would then be supervised by the FCA as set out in the MLRs.

2.22 The government has reviewed potential risks in the PSP sectors, in liaison with supervisory partners, and deems that BPSPs and TDITPSPs are likely to be low for ML/TF purposes. This risk assessment is due to BPSPs and TDITPSPs dealing with relatively low funds and assisting only in the transfer of money between regulated bodies. The government are therefore proposing that they are taken out of scope of the MLRs. By removing the obligation for BPSPs and TDITPSPs to register for AML supervision with HMRC, it is expected that there will be a reduction in cost and administrative burden on both HMRC and registered businesses.

Box 2.B: Bill payment service providers and Telecoms, Digital and IT Payment Service Providers

5. In your view should BPSPs and TDITPSPs be taken out of scope of the MLRs? Please explain your reasons and provide evidence where possible.

6. In your view, if BPSPs and TDITPSPs were to be taken out of scope of the MLRs, what would the impact be on registered businesses, for example any direct costs? Are there other potential impacts?

7. Would the removal of the obligation for PSPs to register with HMRC for AML supervision, in your view, reduce the cost and administrative burden on both HMRC and registered businesses?

8. In your view, would there be any wider impacts on industry by making these changes?

Art Market Participants

2.23 Art Market Participants (AMPs) are defined in the MLRs as:

"a firm or sole practitioner who—
(i) by way of business trades in, or acts as an intermediary in the sale or purchase of, works of art and the value of the transaction, or a series of linked transactions, amounts to 10,000 euros or more; or
(ii) is the operator of a freeport when it, or any other firm or sole practitioner, by way of business stores works of art in the freeport and the value of the works of art so stored for a person, or a series of linked persons, amounts to 10,000 euros or more;"

2.24 The provision for bringing the art sector into scope of the MLRs came about due to the expansion of obliged entities under the 5th EU Anti-Money Laundering Directive (5MLD). 5MLD expanded the scope to include persons trading or acting as intermediaries for transactions exceeding EUR 10,000, including, but not limited to, art galleries, auction houses, and freeports. The government published a consultation on the transposition of 5MLD and following the analysis of the responses to this consultation, it was determined that the above definition would be incorporated into the MLRs under the term "Art Market Participants", with the intention that this would exclude peripheral services relating to the sale of art, for example transportation. With regard to how 'works of art' would be defined in the MLRs, in accordance with the views of the majority of responses to the 5MLD consultation, it was decided that this should align with the definition of 'work of art' as in section 21(6) to 6(B) of the Value Added Tax Act 1994.

2.25 When transposing the definition relating to art intermediaries into the MLRs, it was not the government's intention to include artists who sell their own works of art over the EUR 10,000 threshold as AMPs. However, the current definition could be interpreted to mean that in certain circumstances artists who regularly sell their

art over the threshold could be seen as 'by way of business' trading in works of art, and so might worry that they are caught by the AMP definition.

2.26 The phrase 'by way of business' is not defined in the MLRs, and it would likely have to be determined by the facts of each case. The FCA handbook suggests relevant factors include the regularity, scale, and economic benefit of the activity, as well as whether ceasing to partake in the activity would result in a significant drop of income or other direct/indirect pecuniary or economic benefit. These would likely provide a rough guide to whether an artist selling works of art over the EUR 10,000 threshold does so 'by way of business', which would have to be clarified through the AML sector guidance for the art sector, published by the British Art Market Federation (BAMF) in association with HMRC.

2.27 As there is a risk that some artists may currently be in scope of being an AMP, the government is seeking to provide greater clarity by amending the definition in the MLRs.

2.28 We do not have significant evidence of the ML/TF risk associated with artists, whether they are selling works of art themselves, or via an intermediary. Our best understanding of the scale and nature of the risk is that of the 60,000 estimated artists in the UK, between 800 and 1,500 could be caught by the present AMP definition, by selling art over the EUR 10,000 threshold. There are some artists that may sell directly, around 100 to 150 at most. However, unless the artist is exceptionally prominent, they normally use an art dealer and an art gallery for transactions above this threshold.

2.29 It is assumed that the ML risk for when an artist is part of a deal chain is quite low, but that the risk is increased when an artist sells directly to an end customer. Therefore, if an artist were to use another AMP to sell their work, this would lessen the ML risk. However, there is currently no significant evidence to inform an assessment of the ML risk of artists, and since there is a need for the scope of the MLRs to be proportionate to the risk posed, it is therefore the intention of the government to clarify the exclusion of artists who sell works of art over the EUR10,000 threshold, through an amendment to the definition of an AMP in Regulation 14 of the MLRs. Since some artists may be selling through a company or partnership, we are proposing also to exclude from the definition of an AMP a company or partnership when selling work created by a shareholder or partner.

2.30 The term artist, for the purpose of this consultation, is held to mean an individual who personally creates works of art, which are defined in the VAT Act 1994. The government welcomes views via this consultation on the impact that this amendment will have on the art sector and on HMRC, as the AML supervisor for the art sector.

2.31 The proposed drafting for the amendment to Regulation 14 can be found at Annex D. The government seeks views as to whether this drafting accurately covers the policy intention to clarify the exclusion of artists from the AMP definition, where it relates to the sale and purchase of works of art.

2.32 The statutory deadline in the MLRs for the registration of AMPs with HMRC for AML supervision was 10 June 2021. Given the need to clarify the position for the art sector of who was required to register as an AMP, it was decided to amend the

AML sector guidance for the art sector, published by BAMF in association with HMRC, to state that it was not the intention for artists selling their own art to be included within the scope of the definition. This was done with the view that the government would look to amend the MLRs to clarify the exclusion of artists selling their own art from scope of being an AMP at the next opportunity.

2.33 This consultation also seeks views on whether further amendments are needed to bring into scope of the MLRs those who trade in the sale and purchase of digital art. The term digital art, for the purposes of this consultation, means art that has been created using digital technology, for example computer generated art.

Box 2.C: Art Market Participants

9. In your view, what impact would the exemption of artists selling works of art, that they have created, over the EUR 10,000 threshold have on the art sector, both in terms of direct costs and wider impacts? In your view is there ML risk associated with artists and if so, how significant is this risk? Please provide evidence where possible.

10. As the AML supervisor for the art sector, what impact would this amendment have on the supervision of HMRC? Would the cost to HMRC of supervising the art sector decrease? Are there any other potential impacts?

11. In your view, does the proposed drafting for the amendment to the AMP definition in Regulation 14, in Annex D, adequately cover the intention to clarify the exclusion of artists from the definition, where it relates to the sale and purchase of works of art? Please explain your reasons.

12. In your view, should further amendments be considered to bring into scope of the AMP definition those who trade in the sale and purchase of digital art? If so, what other amendments do you think should be considered?

Chapter 3

Clarificatory changes to strengthen supervision

Summary

3.1 Making clarificatory changes to enhance AML and CTF supervision through the MLRs will help to strengthen and ensure clarity on how the AML regime operates.

3.2 Following feedback from supervisors, this consultation seeks views on the merits of amending the MLRs to explicitly allow for AML/CTF supervisors to have a right of access to view the content of a suspicious activity report (SAR) submitted by their supervised population(s) on request. The government is also seeking views on the potential impacts and concerns that this requirement may pose to affected firms and individuals.

3.3 This consultation also seeks views on whether the activities that make a person a credit and financial institution as per regulation 10 of the MLRs should be amended to align with the Financial Services and Markets Act (FSMA) and defined terms under the Regulated Activities Order. This consultation is considering whether an amendment to the wording of the MLRs could provide clarity for relevant persons who already fall under FSMA. The government is also seeking views on which activities do not currently have clarity on whether they fall in scope of the MLRs, to ensure this can be addressed.

Suspicious Activity Reports (SARs)

3.4 The current approach to the accessing and viewing of Suspicious Activity Reports (SARs) by supervisors, as part of the anti-money laundering (AML)/counter terrorist financing (CTF) supervisory regime, is varied.

3.5 Regulation 51(1) and Schedule 4 of the MLRs require AML/CTF supervisors to collect information necessary for performing their supervisory functions, including the number of SARs a supervisory authority or any of its supervised persons has submitted to the NCA. However, stakeholders have raised queries that the wording of the MLRs is unclear on whether supervisors are also allowed to access and view the content of those SARs within their supervisory functions. This has led to an inconsistent approach being taken across AML/CTF supervisors, with each taking their own view on whether they can access and view the content of the SARs its supervised population submits as part of their approach to monitoring.

3.6 Supervisors are also permitted by Regulation 66 - on giving notice and reasons, to collect information of a specified description which is reasonably required in connection with the performance of any of their supervisory functions.

3.7 This consultation is seeking views on whether it is useful or necessary for supervisors, for the purpose of fulfilling their functions, to collect and view the content of SARs; whether if so they consider that Regulation 51 or Regulation 66 permits them to do so; and if not, on the merits of amending the MLRs to explicitly allow for AML/CTF supervisors to view the content of SARs in an effective and appropriate manner.

3.8 For the purposes of clarity, this proposal would give AML/CTF supervisors the legal permission to directly request SARs from members of their supervised population as part of their monitoring approach. This does not permit AML/CTF supervisors to have access to those SARs via the UK Financial Intelligence Unit (UKFIU).

3.9 This proposal does not go so far as to include any additional specific legal obligation for the AML/CTF supervisor to review any SARs obtained from their supervised population for quality assessment purposes.

3.10 This proposal aims to provide a consistent power to all AML/CTF supervisors while retaining their ability to exercise discretion and flexibility on how to incorporate this access into their AML/CTF supervisory approach.

3.11 By clarifying the right of access to view the content of a SAR, where this access may support or be necessary for the performance of supervisory functions, this could aid AML/CTF supervisors in delivering their supervisory obligations under the MLRs more effectively.

3.12 For example, it is possible a supervisor may consider that it is necessary to look at the contents of SARS to draw overarching themes of threat or identify emerging risks/trends from viewing the content of the SARs submitted by their supervised population. These findings could then be fed back to the firms/individuals in their supervised population, ensuring that the risks/trends identified are incorporated into risk assessments and ultimately enhancing the supervisors and supervised firm's own understanding of sector risks.

3.13 AML/CTF supervisors could therefore benefit from an enhanced understanding of its supervised population and the risk they are exposed to as well as improving their own risk-based approach to supervision. This will allow for a consistent approach across all supervisors to accessing the content of SARs.

3.14 The government also seeks views on the potential impacts and concerns that this requirement may pose to affected firms/individuals. Regarding access to SARs content, stakeholders have raised concerns on whether a tipping off offence under POCA would be committed if a SAR is shared with their supervisor. Whilst section 333D of POCA confirms this is not the case as a person does not commit an offence under section 333A if the disclosure is to the authority that is the supervisory authority for that person by virtue of the MLRs; we welcome views on other concerns regarding supervisors accessing this information as well as potential mitigations to consider whether these can be addressed.

Box 3.A: Suspicious Activity Reports

13. In your view, is access by AML/CTF supervisors to the content of the SARs of their supervised population necessary for the performance of their supervisory functions? If so, which functions and why?

14. In your view, is regulation 66 sufficient to allow supervisors to access the contents of SARs to the extent they find useful for the performance of their functions?

15. In your view, would allowing AML CTF supervisors access to the content of SARS help support their supervisory functions? If so, which functions and why?

16. Do you agree with the proposed approach of introducing an explicit legal power in the MLRs to allow supervisors to access and view the content of the SARs submitted by their supervised population where it supports the performance of their supervisory functions under the MLRs (in the event a view is taken that a power doesn't currently exist)?

17. In your view, what impacts would the proposed change present for both supervisors and their supervised populations, in terms of costs and wider impacts? Please provide evidence where possible.

18. Are there any concerns you have regarding AML/CTF supervisors accessing and viewing the content of their supervised populations SARs? If so, what mitigations might be put in place to address these? Please provide suggestions of potential mitigations if applicable.

Credit and financial institutions (Regulation 10)

3.15 Regulation 10 of the MLRs defines credit institutions and financial institutions for the purposes of the Regulations. The extent and wording of regulation 10 has derived from the UK's past need to ensure it remained compliant with the requirements of the European Money Laundering Directives.

3.16 The government is not proposing changes to the MLRs beyond those set out in Chapter 2 of the document. However, stakeholders have raised concerns that the wording of Regulation 10 leads to confusion, particularly given it does not align well with other regulatory regimes for credit and financial institutions.

3.17 While for many credit and financial institutions it is clear whether they are caught in scope of the MLRs, some relevant persons are unsure if their activity comes within scope. This creates uncertainty over the regulatory regimes they have to follow, and risks firms which should adhere to the MLRs inadvertently failing to do so.

3.18 This consultation seeks views on the merits of updating the activities that make a person a credit and financial institution as per regulation 10 of the MLRs to align with the FSMA and defined terms under the Regulated Activities Order. This would amend the wording of the MLRs to provide clarity for relevant persons who already fall under FSMA.

3.19 The consultation also seeks views on which activities do not currently have clarity on whether they fall in scope of the MLRs, to ensure this can be addressed.

Box 3.B: Credit and Financial Institutions

19. In your view, what are the merits of updating the activities that make a relevant person a financial institution, as per Regulation 10 of the MLRs, to align with FSMA?

20. In your view, would aligning the drafting of Regulation 10 of the MLRs with FSMA provide greater clarity in ensuring businesses are aware of whether they should adhere to the requirements of the MLRs? Please provide your reasons.

21. Are you aware of any particular activities that do not have clarity on their inclusion within scope of the regulated sector?

22. In your view, what would be the impact of implementing this amendment on firms and relevant persons, both in terms of direct costs and wider impacts? Please provide evidence where possible.

23. In your view, what would be the impact of implementing this amendment on the FCA, both in terms of direct costs and wider impacts? Please provide evidence where possible.

24. In your view, would there be any unintended consequences of aligning Regulation 10 of the MLRs with FSMA, in terms of diverging from the EU position?

Chapter 4

Expanded requirements to strengthen the regime

Summary

4.1 Expanding requirements in the MLRs will continue to help strengthen how the AML regime operates.

4.2 This section of the consultation seeks views on amending Regulations 16, 18 and 19 in the MLRs to include provisions on proliferation financing. These proposed changes intend to align the MLRs with FATF standards and ensure that the UK continues to meet international standards.

4.3 This consultation seeks views on the merit of amending the wording of Regulations 12 and 4 to include the formation of limited partnerships (LPs) under the services listed for Trust or Company Service Providers (TCSPs); and to clarify that the formation of an LP constitutes a business relationship.

4.4 This consultation also seeks views on the benefits of aligning the beneficial ownership discrepancy reporting obligation to the ongoing obligation on relevant persons to carry out customer due diligence (CDD) on the beneficial ownership of their clients.

Proliferation Financing Risk Assessment

4.5 In October 2020 the FATF adopted amendments to its international standards to require countries and the private sector to identify, and assess the risks of potential breaches, non-implementation or evasion of the targeted financial sanctions related to proliferation financing (PF), as contained in FATF Recommendation 7, and to take action to mitigate these risks, as well as to enhance domestic co-ordination. In June 2021 these obligations were expanded to cover Virtual Asset Service Providers (VASPs) under FATF Recommendation 15.

4.6 This change should be reflected in legislation to ensure the UK meets international standards. Regulations 16, 18 and 19 in the MLRs set out the equivalent requirements with regards to ML/TF risk assessment and mitigation. To align with the FATF standards it is proposed to add in relevant provisions about PF to the Regulations.

4.7 The amendments will require the government to conduct a PF NRA (as committed to in the Economic Crime Plan). The government expects to publish this NRA in Summer 2021. The amendments will also require relevant persons to take appropriate steps to identify and assess the risks of proliferation financing to which their business is subject and to establish and maintain policies, controls and procedures to mitigate and manage these risks effectively.

4.8 The new FATF requirement relates solely to the risk of breaches of relevant United Nations Security Council Resolutions applying targeted financial sanctions relating to the financing of proliferation of weapons of mass destruction. Based on the legal powers under the Sanctions and Anti-Money Laundering Act 2018 (SAMLA), it is proposed to maintain this narrower scope in UK legislation.

4.9 The new FATF requirements apply to Financial Institutions, Designated Non-Financial Businesses and Professions and Virtual Asset Service Providers. This list does not cover all relevant persons under the MLRs. In order to remain within the legal powers mentioned above, it is proposed to exclude those relevant persons not covered by FATF from these requirements.

4.10 Relevant persons are already required to comply with financial sanctions, and it is anticipated that improved risk understanding would enhance sanctions compliance. The assessment of PF risk could form part of the ML and TF assessments relevant persons already undertake, which is anticipated to minimise the burdens on relevant persons.

4.11 We propose to include a definition of proliferation financing in the MLRs. This will be based on the FATF definition, which is: "the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, trans-shipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual use goods used for non-legitimate purposes), in contravention of national laws or, where applicable, international obligations." The proposed drafting for this amendment can be found at Annex D. The government seeks views as to whether this drafting accurately covers the intention of this change as set out above.

Box 4.A: Proliferation Financing Risk Assessment

25. Do you agree with the proposal to use the FATF definition of proliferation financing as the basis for the definition in the MLRs?

26. In your view, what impacts would the requirement to consider PF risks have on relevant persons, both in terms of costs and wider impacts? Please provide evidence where possible.

27. Do relevant persons already consider PF risks when conducting ML and TF risk assessments?

28. In your view, what impact would this requirement have on the CDD obligations of relevant persons? Would relevant persons consider CDD to be covered by the obligation to understand and take effective action to mitigate PF risks.

29. In your view, what would be the role of supervisory authorities in ensuring that relevant persons are assessing PF risks and taking effective mitigating action? Would new powers be required?

30. In your view, does the proposed drafting for this amendment in Annex D adequately cover the intention of this change as set out? Please explain your reasons.

Formation of Limited Partnerships

Extension of the terms 'Trust or Company Service Provider' and 'business relationship'

4.12 Companies House is responsible for incorporating and registering information about companies and certain types of partnership and making information about them available to the public. In December 2018 the Department for Business, Energy and Industrial Strategy (BEIS) issued proposals to reform limited partnership legislation, and in September 2020 issued proposals for improving the transparency and integrity of the register. The government intends to support these objectives by making changes to the scope of Regulations 12 and 4 of the MLRs.

4.13 Regulation 12(2) of the MLRs defines a TCSP as a firm or sole practitioner who, by way of business, provides any of the services listed within the Regulation. Some of these services include forming companies or other "legal persons" or providing formal addresses for them. However, the government considers that the present requirements for TCSPs in the MLRs do not adequately cover all business arrangements and services provided that are required to be registered with Companies House.

4.14 Therefore, the government is seeking views on amending the wording of Regulation 12(2)(a) to include the formation of all forms of business arrangement which are required to register with Companies House, specifically to include LPs which are registered in England and Wales or Northern Ireland (Scottish Limited

Partnerships are already included as they are "legal persons" and so are caught under the current provisions).

4.15 TCSPs are also required to undertake CDD checks on their customers in certain circumstances, as set out in Regulation 27(1), including when they establish a business relationship. The government considers that the term "business relationship" should apply to when a TCSP forms all types of business arrangement that are required to register with Companies House, as well as when a TCSP provides the services in Regulation 12(2)(b) (acting, or arranging for another person to act, as a director or secretary of a company, as a partner of a partnership or in a similar capacity in relation to other legal person) and (d) (acting, or arranging for another person to act as a trustee of an express trust or similar legal arrangement or as a nominee shareholder for a person other than a company whose securities are listed on a regulated market), notwithstanding that these transactions may otherwise lack the expectation of duration otherwise required for a business relationship, and is therefore seeking to amend Regulation 4(2).

Extension of the application of the term TCSP to cover all forms of business arrangement (that are registered with Companies House)

4.16 Under Regulation 12(2)(a) of the MLRs, a firm or sole practitioner would be considered a TCSP if it forms "companies or other legal persons". The term "legal person" does not extend to all forms of business arrangement that must register at Companies House. For example, an LP that is registered in England and Wales or Northern Ireland is not a "legal person" in its own right because such partnerships are not distinct from their partners (in contrast to Scottish partnerships which have separate legal personality distinct from their partners and so are caught under the current provisions).

4.17 The government is not seeking to change the legal status of these business arrangements but would like to ensure that the firms or sole practitioners which form them fall under the definition of a TCSP. We therefore propose to amend the MLRs so that Regulation 12(2)(a), which currently uses the term "legal persons", is amended so that it captures these business arrangements.

4.18 The government is therefore seeking views on whether Regulation 12(2)(a) should be amended to include, as a service provided by a TCSP, the formation of a "firm", whose formation is given effect by or necessitates a filing with Companies House. The term "firm" would refer to the definition of a "firm" in Regulation 3(1) of the MLRs, which states:

> "firm" means any entity that, whether or not a legal person, is not an individual and includes a body corporate and a partnership or other unincorporated association;

Box 4.B: Extension of the terms 'Trust or Company Service Provider' and 'business relationship'

31. Do you agree that Regulation 12(2)(a) should be amended to include all forms of business arrangement which are required to register with Companies House, including LPs which are registered in England and Wales or Northern Ireland?

32. Do you consider there to be any unintended consequences of making this change in the way described? Please explain your reasons

33. In your view, what impact would this amendment have on TCSPs, both in terms of costs and wider impacts? Please provide evidence where possible.

34. In your view, what impact would this amendment have on business arrangements, including LPs which are registered in England and Wales or Northern Ireland, both in terms of costs and wider impacts? Please provide evidence where possible

Extension of the term "business relationship" for services provided by TCSPs

4.19 The government wishes to ensure that any person that is a TCSP is obliged to conduct CDD checks if it is seeking to form any business arrangement that must be registered with Companies House.

4.20 This should be irrespective as to whether a TCSP expects to have a continuing relationship with a prospective business arrangement. For example, a formation agent might be asked by a customer to seek to form a limited liability partnership (LLP) with Companies House but want to file the LLP's confirmation and update statements entirely independently, for reasons that are entirely legitimate. The government intends the law to provide that the customer would be made subject to CDD checks in such circumstances, before it can be registered with Companies House.

4.21 The MLRs specify that where a person forms a company for its customer, this is to be treated as forming a business relationship with the customer (notwithstanding that this transaction might otherwise lack the expectation of duration otherwise required for a business relationship) (Regulation 4(2)).

4.22 The government also considers that the scope of Regulation 4 should properly apply so that a business relationship exists where a TCSP provides services under Regulation 12(2)(b) (where arranging for another person to act as a director, secretary, or partner etc) or 12(2)(d) (where arranging for another person to act as a trustee of an express trust or similar legal arrangement or a nominee shareholder for a person other a listed company) even if this might otherwise lack the element of duration required under Regulation 4(1)(b).

4.23 In relation to partnerships, the government regards general partners as the actors whose management activities are thought to give rise to the higher risk of

ML/TF as opposed to limited partners of an LP who have no role in the management of the LP. Therefore, the amendment to Regulation 4(2) would be limited so that a one-off appointment of a limited partner does not constitute the establishment of a business relationship.

4.24 The government is therefore seeking views on whether to amend Regulation 4(2) in this way.

Box 4.C: Extension of the term "business relationship" for services provided by TCSPs

35. Do you agree that Regulation 4(2) should be amended so that the term "business relationship" includes a relationship where a TCSP is asked to form any form of business arrangement which is required to register with Companies House?

36. Do you agree that Regulation 4(2) should be amended so that the term "business relationship" includes a relationship where a TCSP is acting or arranging for another person to act as those listed in Regulation 12(2)(b) and (d)?

37. Do you agree that the one-off appointment of a limited partner should not constitute a business relationship?

38. Do you consider there to be any unintended consequences of making these changes? Please explain your reasons.

39. In your view, what impact would this amendment have on TCSPs, both in terms of costs and wider impacts? Please provide evidence where possible.

40. In your view, what impact would this amendment have on business arrangements, including LPs which are registered in England and Wales or Northern Ireland, both in terms of costs and wider impacts? Please provide evidence where possible.

Reporting of discrepancies

Expansion of Regulation 30A to introduce an ongoing requirement to report discrepancies in beneficial ownership information

4.25 Regulation 30A in the MLRs requires relevant persons to report to the registrar of companies any discrepancies between the information they hold about the beneficial owners of companies, as a result of CDD measures, and the information recorded by Companies House on the public companies register. This requirement applies at the onboarding stage, "before establishing a business relationship", as stated in Regulation 30A(1).

4.26 The registrar must take such action as the registrar considers appropriate to investigate and, if necessary, resolve the discrepancy (Reg 30A(5)).

4.27 The requirement exists before the establishment of the business relationship, and this means that if a relevant person later comes into possession of beneficial ownership information about its customer that is different from that held at Companies House, there is no clear obligation to report this to the registrar. Whilst the option is available to voluntarily report the information, concerns about client confidentiality in the absence of a requirement to report constrain reporting later on.

4.28 This has implications for the accuracy of the company register, and whilst the lack of reporting means it is difficult to assess the extent of this gap, the government considers that, in line with other government proposals to enhance the accuracy and integrity of the companies register, the obligation to report beneficial ownership discrepancies identified by relevant persons should be ongoing.

4.29 Since the MLRs came into force on 10 January 2020, over 35,000 beneficial ownership discrepancies have been reported to Companies House. Whilst around a third of these prove not to be valid (for example, minor discrepancies in spellings of names, and differences in interpretation of the nature of the control exercised by an identified beneficial owner), the number of reports suggest that relevant persons can play an even more valuable part in ensuring that the UK's companies register is accurate and up-to-date.

4.30 Further enhancing the accuracy and reliability of the companies register will play an important role in the fight against economic crime. Where discrepancies exist but have not been highlighted to the registrar, action cannot be taken against those abusing UK corporate structures by providing false or misleading information to Companies House.

4.31 One of the FATF's key criteria for assessing if a country has a robust anti-money laundering regime is the availability of accurate and up to date information on basic company and beneficial ownership information. Under wider reforms on the future of Companies House, the government has indicated its intention to extend the scope of the discrepancy reporting regime.

4.32 The government is therefore seeking views through this consultation on whether to align the beneficial ownership discrepancy reporting obligation to the ongoing obligation on relevant persons to carry out CDD on the beneficial ownership of their clients. This should provide significant additional information on discrepancies, helping to identify those who seek to undermine the UK's open business environment for the purpose of facilitating economic crime.

Box 4.D: Reporting of discrepancies: Expansion of Regulation 30A to introduce an ongoing requirement to report discrepancies in beneficial ownership information

41. Do you agree that the obligation to report discrepancies in beneficial ownership should be ongoing, so that there is a duty to report any discrepancy of which the relevant person becomes aware, or should reasonably have become aware of? Please provide views and reasons for your answer.

42. Do you consider there to be any unintended consequences of making this change? Please explain your reasons.

43. Do you have any other suggestions for how such discrepancies can otherwise be identified and resolved?

44. In your view, given this change would affect all relevant persons under the MLRs, what impact would this change have, both in terms of costs and benefits to businesses and wider impacts?

Chapter 5
Information Sharing & Gathering

Summary

5.1 High quality intelligence and information sharing across both the public and private sectors is a key tool in the fight against financial crime and is an important focus in the Economic Crime Plan 2019-22. The MLRs provide a gateway for intelligence and information sharing between supervisory authorities and other relevant authorities for purposes connected with their relevant functions.

5.2 Following feedback from supervisors, this section of the consultation seeks views on minor amendments to improve the effectiveness of this intelligence and information sharing gateway – particularly on whether it would be beneficial for the Regulation 52 gateway under the MLRs be expanded to allow for reciprocal protected sharing from relevant authorities (including law enforcement) to supervisors. The government are also seeking views on expanding the list of 'relevant authorities' recognised in Regulation 52 to explicitly include other government agencies, such as Companies House, to utilise the gateway for the protected sharing of information and intelligence relevant to MLR functions. These proposed amendments would also extend the confidentially obligations and associated offences under Regulations 52A and 52B of the MLRs to all those who would be recognised as a relevant authority under the gateway.

5.3 This section also seeks views on the benefits of amending the MLRs to give further supervisory powers to the FCA to enable them to better supervise Annex 1 financial institutions; and provide a consistent approach to information and intelligence gathering across its supervised population, which can be used to inform its risk-based approach to supervision. The government is keen to seek views on whether making these changes to the MLRs would put an additional burden on affected businesses.

Disclosure and Sharing

5.4 Regulation 52(1) limits the disclosure or sharing of intelligence and/or information by supervisory authorities to relevant authorities for the purposes of their functions under the MLRs. A relevant authority is defined by 52(5) as either another supervisory authority, HM Treasury, any law enforcement authority, or an overseas authority as defined by Regulation 50(4).

5.5 Some supervisors have raised concerns that the scope and requirements of the MLRs have expanded, but the list of relevant persons has not been updated to reflect this expansion. For example, supervisors may benefit from being able to share information or intelligence with Companies House, to support its work on discrepancy reporting and register reform.

5.6 Stakeholders have also raised concerns that while the gateway provided by Regulation 52 allows supervisory authorities to share information or intelligence with relevant authorities, there is no reciprocal gateway for information and/ or

intelligence to be shared from a relevant authority to a supervisory authority for the same purpose.

5.7 Expanding the gateway to permit such reciprocal sharing would allow for confidential and protected information and intelligence to be disclosed from relevant authorities, especially law enforcement agencies to supervisory authorities. This can be used to support and enhance the supervision of individuals/ firms, increase knowledge and understanding of risks and threats in supervised sectors and may also allow regulators to contribute to disruption efforts against those seeking to exploit professional services.

5.8 The transposition of the 5MLD introduced Regulation 52A. This provided an obligation of confidentiality that any sharing through the gateway provided by Regulation 52 is subject to.

5.9 Regulation 52A(6) states that "Nothing in this regulation affects the disclosure of confidential information in accordance with regulations made under section 349 (exceptions from section 348) of FSMA". This would mean that information and/ or intelligence that is both confidential under Regulation 52A of the MLRs and section 349 of the FSMA is not prevented from being disclosed under the FSMA 2000 (Disclosure of Confidential Information) Regulations 2001 (the "FSMA Disclosure Regulations"), or any further regulations made under that s349 FSMA.

5.10 Some supervisors have expressed concern that purpose of Regulation 52A(6) is unclear, and the provisions should be redrafted to clarify the intention and extent of sharing that is permitted.

Box 5.A: Disclosure and Sharing

45. Would it be appropriate to add BEIS to the list of relevant authorities for the purposes of Regulation 52?

46. Are there any other authorities which would benefit from the intelligence and information sharing gateway provided by Regulation 52? Please explain your reasons.

47. In your view, should the Regulation 52 gateway be expanded to allow for reciprocal protected sharing from other relevant authorities to supervisors, where it supports their functions under the MLRs?

48. In your view, what (if any) impact would the expansion of Regulation 52 have on relevant persons, both in terms of costs and wider impacts? Please provide evidence where possible.

49. In your view, what (if any) impact would the expansion of Regulation 52 have on supervisory authorities, both in terms of the costs and wider impacts of widening their supervisory powers? Please provide evidence where possible.

50. Is the sharing power under regulation 52A(6) currently used and for what purpose? Is it felt to be helpful or necessary for the purpose of fulfilling functions under the MLRs or otherwise and why?

Information Gathering

FCA powers of supervision – Annex 1 financial institutions

5.11 The FCA is the supervisory authority for a number of relevant persons, including credit and financial institutions that are authorised under the FSMA, Annex 1 financial institutions and cryptoasset exchange providers and custodian wallet providers. This section of the consultation seeks views on the FCA's information gathering powers over Annex 1 financial institutions.

5.12 Annex 1 financial institutions perform activities such as renting out safe deposit boxes and commercial lending. The full list of activities is defined in Schedule 2 to the MLRs, copied in Annex C of this consultation document.

5.13 The FCA supervises Annex 1 institutions for compliance under the MLRs, but Annex 1 institutions are not regulated under FSMA. There are currently approximately 870 relevant persons registered for AML/CFT supervision with FCA as Annex 1 institutions.

5.14 The FCA is required by the MLRs to effectively monitor Annex 1 firms' compliance with the requirements of the Regulations. It has the option, but not the obligation, of maintaining a register that Annex 1 financial institutions must join. This register was opened in 2007. Since 2017, the FCA can also apply a fit-and-

proper test for applicants. Under the MLRs the FCA can take action against non-registrants, charge fees, enter premises in certain circumstances, impose penalties on registered businesses or prosecute an officer of a registered business that is in breach of the MLRs.

5.15 The FCA does not have powers to oversee the prudential strength of Annex 1 institutions or their treatment of consumers. The supervisory powers and tools available to the FCA under FSMA do not apply to Annex 1 financial institutions.

Information Gathering

5.16 The FCA's current powers to require information from Annex 1 institution are granted by Regulation 66 of the MLRs. This is a power to request information reasonably required in connection with supervisory functions with notice and giving reasons. Notices under Regulation 66 are currently determined on a case by case basis. However, the FCA has indicted that it would find the giving of notices in order to require regular reporting (e.g. by way of annual return) by a group/sub-group of Annex 1 institutions prohibitively cumbersome and costly.

5.17 FCA has indicated that this administrative hurdle prevents it from conducting sector-wide information gathering exercises for Annex 1 financial institutions, for example preventing the FCA from including Annex 1 institutions in any annual return for financial crime data. The FCA has more flexible powers to gather annual information for financial and credit institutions under FSMA, while Regulation 74A provides flexibility in relation to cryptoasset businesses.

5.18 The FCA is therefore seeking more flexible information gathering powers to use across its supervised population, which can be used to inform its risk-based approach to supervision, and as reasonably required in connection with the exercise of its supervisory powers. The government seeks views on the additional burden this may present to affected businesses, and if the widening of information gathering powers over all Annex 1 firms is proportional to the risk presented.

Further supervisory tools

5.19 The FCA has indicated that its supervisory tools under the MLRs are limited in respect of Annex 1 firms and in particular when compared against other sectors in FCA remit, particularly under FSMA. Extending FCA powers to include skilled person reports, power of direction such as restricting a businesses' ability to take on new customers would bring FCA powers in alignment to powers for cryptoasset businesses under the MLRs (Regulations 74B and 74C) and allow more effective supervision.

5.20 The FCA would be required as with exercise of any of its powers to act appropriately and proportionately as well as being required under the MLRs to have a risk-based approach.

Box 5.B: Information Gathering

51. What regulatory burden would the proposed changes present to Annex 1 financial institutions, above their existing obligations under the MLRs? Please provide evidence where possible.

52. In your view, is it proportionate for the FCA to have similar powers across all the firms it supervises under the MLRs? Please explain your reasons.

53. In your view, would the expansion of the FCA's supervisory powers in the ways described above Annex 1 firms allow the FCA to fulfil its supervisory duties under the MLRs more effectively? Please explain your reasons in respect of each new power.

54. In your view, what impacts would the expansion of the FCA's supervisory powers in the ways described above have on industry and the FCA's wider supervised population, both in terms of costs and wider impacts? Please provide evidence where possible.

55. In your view, what impacts would the expansion of the FCA's supervisory powers in the ways described above have on the FCA, both in terms of costs and wider impacts? Please provide evidence where possible.

Chapter 6

Transfers of cryptoassets

Overview

6.1 The FATF issues Recommendations for the prevention of ML/TF that its member states, which include the United Kingdom, are expected to implement. FATF Recommendation 16 (R.16) requires that countries ensure that financial institutions send and record information on the originator and beneficiary of a wire transfer, and that this information remains with the transfer or related message throughout the payment chain. This information enables financial institutions to detect potential ML/TF activity by ensuring that the identities of the parties to the transaction are known, and facilitates investigations by law enforcement by ensuring that appropriate records of transactions are kept.

6.2 In July 2019, the FATF clarified that cryptoassets1 are within scope of R.16.2 The government decided to defer the implementation of R.16, known in this context as the "travel rule", for cryptoasset transfers in order to allow compliance solutions to be developed. The government has been kept informed of technological developments, such as the development of common data standards and the progress of a large number of software solutions, and considers that the time is now right to begin planning for the implementation of the travel rule.

The approach to implementation

6.3 The government's approach to implementation is guided by the principle that the application of R.16 should be consistent across the financial services industry, regardless of the technology being used to facilitate transfers, unless there is a compelling reason to adopt a different approach.

6.4 The requirements will apply to cryptoasset exchange providers and custodian wallet providers, as defined in The Money Laundering and Terrorist Financing (Amendment) Regulations 2019, which are carrying on business in the UK.

Consistency with the Funds Transfer Regulation

6.5 For bank transfers, R.16 was implemented in the UK via the Funds Transfer Regulation (FTR), which now forms part of retained EU law. The government believes that the requirements set out in the FTR remain the right way to implement R.16, which should apply equally to all firms in scope – regardless of business model, product or sector. Our proposed approach is therefore to replicate the FTR's requirements for the cryptoasset sector, insofar as is possible.

6.6 Not all provisions of the FTR are appropriate when applied to cryptoasset firms, however, either because the terminology used would be inappropriate or

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1 "Cryptoasset" means a cryptographically secured digital representation of value or contractual rights that uses a form of distributed ledger technology, and can be transferred, stored or traded electronically.

2 https://www.fatf-gafi.org/publications/fatfrecommendations/documents/public-statement-virtual-assets.html

because of material differences in how transfers of funds and transfers of cryptoassets are made. As such, it would not be feasible to simply expand the scope of the FTR to include cryptoasset firms; it will be necessary to adapt certain provisions of the FTR to reflect the particularities of the sector.

The use of the Money Laundering Regulations

6.7 As it is retained EU law, the government does not have the ability to easily amend the FTR, except to remove deficiencies caused by EU exit. More substantial amendments of the kind necessary to apply R.16 to cryptoassets would require primary legislation. The government therefore proposes to use its powers to amend the MLRs, which will also ensure that AML legislation for the cryptoasset sector is consolidated in one place, and is therefore easier to navigate.

Timing

6.8 The government acknowledges that the process of integrating these requirements into a firm's business practices may take time. It is important that new regulations are introduced in a proportionate way, striking the right balance between reducing the harms of illicit finance and supporting innovation that benefits consumers and the economy. It is therefore proposed that firms will be allowed a grace period after the amendments to the MLRs are made, to allow the integration of compliance solutions.

Box 6.A: The approach to implementation

56. Do you agree with the overarching approach of tailoring the provisions of the FTR to the cryptoasset sector?

57. In your view, what impacts would the implementation of the travel rule have on businesses, both in terms of costs and wider impacts? Please provide evidence where possible.

58. Do you agree that a grace period to allow for the implementation of technological solutions is necessary and, if so, how long should it be for?

Use of provisions from the Funds Transfer Regulation

6.9 In line with the above approach, the government proposes that the following requirements should apply to cryptoasset service providers, replicating provisions in the FTR (subject to technical drafting changes to ensure that the legislation refers to concepts relevant to cryptoassets, where appropriate).

Information accompanying transfers of cryptoassets

6.10 Cryptoasset firms will need to put in place systems for ensuring that personal information of the originator and beneficiary of a cryptoasset transfer is transmitted and received alongside the transfer, in an appropriate format. As in the FTR, the information that must accompany the transfer will depend on its value and whether all cryptoasset service providers involved in the transfer are carrying on business in

the UK. The FATF's Interpretive Note on R.16 (INR.16) permits countries to apply a de minimis value threshold, transfers below which may be accompanied by more limited beneficiary information. The level at which this threshold will be set is discussed from paragraph 6.47 to 6.48. INR.16 also allows for domestic transfers to be accompanied by more limited beneficiary and originator information, if the full information can be made available to the beneficiary institution and the relevant AML authorities by other means.3

6.11 In order to prevent bad actors from circumventing the requirement to provide additional information alongside transfers above the threshold by dividing a pool of illicit funds into multiple transfers, each of which is below the threshold, the FTR requires that transfers from a single originator that appear to be linked and which, taken together, exceed the threshold should be accompanied by full beneficiary and originator information.

6.12 In line with INR.16 and the approach taken in the FTR, the government proposes that the following information should be required to be sent with a transfer of cryptoassets.

	Information on the originator	Information on the beneficiary
Transfers above *de minimis* threshold	• Name • Address • Account number *or* unique transaction identifier • Personal document number • Customer identification number *or* date and place of birth.	• Name • Account number/unique transaction identifier
Transfers below *de minimis* threshold	• Name • Account number/unique transaction identifier	• Name • Account number/unique transaction identifier
If all cryptoasset service providers involved in the transaction are UK-based	• Account number/unique transaction identifier (subject to requirement to provide full information to beneficiary cryptoasset service provider on request)	• Account number/unique transaction identifier

3 These requirements are the minimum information which should accompany a transfer of cryptoassets; there is nothing to prevent a cryptoasset service provider providing additional information with the transfer (such as, for example, providing full beneficiary and originator information, if the sending cryptoasset sevice provider does not know the jurisdiction in which the receiving cryptoasset service provider is based).

Obligations on intermediary cryptoasset service providers

6.13 INR.16 states that countries should ensure that financial institutions that facilitate a transfer of cryptoassets as an intermediate element in a chain of transfers should adhere to R.16.4 In line with the approach to intermediaries taken in the FTR, it is proposed that intermediary cryptoasset service providers5 should be required to ensure that all the information received about the originator and the beneficiary that accompanies a cryptoasset transfer is retained with the transfer.

Validation of information and detection of missing information

6.14 Cryptoasset service providers will be required to implement effective procedures in order to detect whether the required beneficiary and originator information is missing from an inbound transfer. This will include, where appropriate, monitoring in real time or after the transfer.

6.15 Where the transaction is above the de minimis threshold, the beneficiary's cryptoasset service provider must, before making a cryptoasset available to the beneficiary, verify the accuracy of beneficiary information received with the transfer. In practice, this may be done by checking for consistency with information verified as part of the customer due diligence process.

6.16 Where the required beneficiary or originator information is missing, the cryptoasset service provider receiving the transfer must decide, on a risk-sensitive basis, whether to ask for the required information before or after making the cryptoasset available to the beneficiary.

6.17 Where a cryptoasset service provider repeatedly fails to provide the required information, the receiving cryptoasset service provider must take appropriate steps, such as issuing warnings, before either rejecting any future cryptoasset transfers from, or restricting or terminating its business relationship with, that cryptoasset service provider.

Information retention, protection and sharing

6.18 The receiving cryptoasset service provider will be required to retain the above beneficiary and originator information for a period of five years from the date it reasonably believes the transaction is complete. In order to protect the privacy of the parties to the transaction, this information must be deleted at the end of this five-year period, unless Regulation 40 of the MLRs or a court ruling requires it to be held for longer.

6.19 Cryptoasset service providers will be required to make this information available fully and without delay in response to a written request by the FCA, HMRC, the NCA or the police, where this information is reasonably required in connection with the authority's functions.

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[4] https://www.fatf-gafi.org/media/fatf/documents/recommendations/rba-va-vasps.pdf p.30

[5] A cryptoasset service provider which receives or transmits a transfer of cryptoassets, and is acting for the cryptoasset service provider of either the beneficiary or originator (either directly or indirectly), and not directly for the beneficiary or the originator

6.20 Where a cryptoasset exchange provider repeatedly fails to provide the required information, the receiving cryptoasset service provider will be required to report the failure to the NCA.

6.21 A receiving cryptoasset service provider will be required to take into account if the required information is missing or incomplete when assessing whether a cryptoasset transfer, or any related transaction, is suspicious and whether to make a disclosure in accordance with Part 3 of the Terrorism Act 2000 or Part 7 of POCA.

6.22 Personal data received, transmitted or retained pursuant to these provisions is within scope of the UK General Data Protection Regulation (GDPR), and cryptoasset service providers will therefore need to process it in line with the requirements in that legislation.

Box 6.B: Use of provisions from the Funds Transfer Regulation

59. Do you agree that the above requirements, which replicate the relevant provisions of the FTR, are appropriate for the cryptoasset sector?

Provisions specific to cryptoasset firms

6.23 The government has identified areas where, if applied to cryptoasset firms, the requirements of the FTR would not be appropriate, and invites views on the following proposed provisions, which are adapted for the cryptoasset market. The government is also open to suggestions on additional requirements or areas where the approach taken in the FTR may not be optimal when applied to cryptoassets.

Value thresholds

6.24 The FTR sets the de minimis threshold, below which more limited beneficiary and originator information may be sent with a transfer, at EUR 1,000. The government proposes that the threshold for cryptoasset transfers should be GBP 1,000. It will therefore be necessary for firms to calculate the value in GBP of, for example, a transfer of Bitcoin. The volatility of cryptocurrencies, illiquidity in the crypto-to-fiat exchange market, and the commercial decisions of individual cryptoasset firms mean that exchange rates can vary across the market; we do not propose to specify in legislation how a firm is to calculate the value of a transfer, but it must be reasonable and justifiable.

6.25 Some cryptoasset firms also perform deposit-taking activities for fiat currency, and it is possible that the market will move towards a model where more firms offer services in both cryptoassets and fiat currency. It is therefore proposed that the linked transfers rule (outlined in paragraph 6.33) should include both cryptoasset and fiat transfers. In practice would mean that linked transfers that in total exceed GBP 1,000, whether in cryptoassets alone or a combination of both fiat and crypto, would be treated as one large transfer.

Treatment of unhosted wallets

6.26 Unlike transfers of funds, which take place via systems only accessible to regulated financial institutions, it is possible for any individual to host their own crypto wallet (an "unhosted wallet"), which is able to make and receive transfers , including from wallets hosted by custodian wallet providers.

6.27 Obligations under R.16 only fall on cryptoasset service providers, not on private individuals using unhosted wallets. Although FATF are reviewing the treatment of unhosted wallets within scope of the recommendations, current FATF Guidance states that, where a beneficiary's cryptoassets service provider receives a transfer from an unhosted wallet, it should obtain the required originator information from its own customer that receives the cryptoassets transfer. This requirement does not extend to the verification of said originator information. Where a transfer is being made from a cryptoassets service provider to an unhosted wallet, the originating provider is not expected to send information to an unhosted wallet, though it should still collect information on the intended beneficiary.6

Obligations on the cryptoasset service provider when information is missing

6.28 The FTR requires that, where the required beneficiary and/or originator information is missing or not provided in the correct format, the receiving financial institution considers, on a risk-sensitive basis, whether to reject, suspend or allow the transfer, pending the provision of the missing information. As it is not possible to reject a transfer of cryptoassets, it is proposed that this requirement is changed to preventing the cryptoasset from being made available to the beneficiary.

Box 6.C: Provisions specific to cryptoasset firms

60. Do you agree that GBP 1,000 is the appropriate amount and denomination of the de minimis threshold?

61. Do you agree that transfers from the same originator to the same beneficiary that appear to be linked, including where comprised of both cryptoasset and fiat currency transfers, made from the same cryptoasset service provider should be included in the GBP 1,000 threshold?

62. Do you agree that where a beneficiary's VASP receives a transfer from an unhosted wallet, it should obtain the required originator information, which it need not verify, from its own customer?

63. Are there any other requirements, or areas where the requirements should differ from those in the FTR, that you believe would be helpful to the implementation of the travel rule?

6 https://www.fatf-gafi.org/media/fatf/documents/recommendations/RBA-VA-VASPs.pdf, p.30, para.117

Next Steps

Responding to the consultation

7.1 The government welcomes your views in response to the questions posed, and how the proposed changes would impact the AML/CTF regime in the UK. The government encourages stakeholders to provide as much evidence as possible to help inform the government's response to these questions. This will help ensure evidence-based policy decisions.

7.2 The government would welcome comments on this consultation by 14 October 2021. However, we encourage responses before this date where possible.

7.3 Email responses should be sent to:

Anti-MoneyLaunderingBranch@hmtreasury.gov.uk

7.4 Questions or enquiries in relation to this consultation should also be sent to the above email address. Please include the words 'Consultation Views' or 'Consultation Enquiry' (as appropriate) in your email subject.

7.5 Due to the Covid-19 pandemic, we would request – where possible – responses are sent electronically. However, if needed, responses can be sent by post to:

Amendments to the Money Laundering Regulations 2017 Consultation

Sanctions and Illicit Finance Team

HM Treasury

1 Horse Guards Road

London

SW1A 2HQ

7.6 Paper copies of this document or copies in Welsh and alternative formats may be obtained free of charge from the above address. This document can also be accessed from GOV.UK.

Data protection notice

7.7 This notice sets out how HM Treasury will use your personal data for the purposes of the Amendments to the Money Laundering Regulations 2017 Consultation and explains your rights under the UK General Data Protection regulation (GDPR) and the Data Protection Act 2018 (DPA).

Your data (data subject categories)

7.8 The personal information relates to you as either a member of the public, parliamentarian, or representative of an organisation or company.

The data we collect (data categories)

7.9 Information may include your name, address, email address, job title, and employer, as well as your opinions. It is possible that you will volunteer additional identifying information about yourself or third parties.

Legal basis of processing

7.10 The processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in HM Treasury. For the purpose of this consultation the task is consulting on departmental policies or proposals, or obtaining opinion data, in order to develop good effective government policies.

Special categories data

7.11 Any of the categories of special category data may be processed if such data is volunteered by the respondent.

Legal basis for processing special category data

7.12 Where special category data is volunteered by you (the data subject), the legal basis relied upon for processing it is: the processing is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or a government department.

7.13 This function is consulting on departmental policies or proposals, or obtaining opinion data, to develop effective policies.

Purpose

7.14 The personal information is processed for the purpose of obtaining the opinions of members of the public and representatives of organisations and companies, about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

Who we share your responses with

7.15 Information provided in response to a consultation may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA) and the Environmental Information Regulations 2004 (EIR).

7.16 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.

7.17 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for

disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Treasury.

7.18 Where someone submits special category personal data or personal data about third parties, we will endeavour to delete that data before publication takes place.

7.19 Where information about respondents is not published, it may be shared with officials within other public bodies involved in this consultation process to assist us in developing the policies to which it relates. Examples of these public bodies appear at: https://www.gov.uk/government/organisations.

7.20 Where information is shared with officials within other public bodies, we will endeavour to remove personal data and special category personal data before the information is shared.

7.21 As the personal information is stored on our IT infrastructure, it will be accessible to our IT contractor, NTT. NTT will only process this data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we will hold your data (retention)

7.22 Personal information in responses to consultations will generally be published and therefore retained indefinitely as a historic record under the Public Records Act 1958.

7.23 Personal information in responses that is not published will be retained for three calendar years after the consultation has concluded.

Your rights

- You have the right to request information about how your personal data are processed and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.
- You have the right to request that your personal data is erased if there is no longer a justification for it to be processed.
- You have the right, in certain circumstances (for example, where accuracy is contested), to request that the processing of your personal data is restricted.
- You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.
- You have the right to data portability, which allows your data to be copied or transferred from one IT environment to another.

How to submit a Data Subject Access Request (DSAR)

7.24 To request access to personal data that HM Treasury holds about you, contact:

HM Treasury Data Protection Unit
G11 Orange
1 Horse Guards Road
London
SW1A 2HQ
dsar@hmtreasury.gov.uk

Complaints

7.25 If you have any concerns about the use of your personal data, please contact us via this mailbox: privacy@hmtreasury.gov.uk.

7.26 If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner, the UK's independent regulator for data protection. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

7.27 Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

7.28 The data controller for any personal data collected as part of this consultation is HM Treasury, the contact details for which are:

HM Treasury
1 Horse Guards Road
London
SW1A 2HQ
London
020 7270 5000
public.enquiries@hmtreasury.gov.uk

7.29 The contact details for HM Treasury's Data Protection Officer (DPO) are:

The Data Protection Officer
Corporate Governance and Risk Assurance Team
Area 2/15
1 Horse Guards Road
London

SW1A 2HQ
London
privacy@hmtreasury.gov.uk

Consultation principles

7.30 This consultation is being run in accordance with the government's consultation principles. The government will be consulting for approximately 12 weeks.

Annex A

List of acronyms

List of the acronyms used in this consultation:
5MLD – EU Fifth Anti-Money Laundering Directive
AIS – Account Initiation Services
AISPs – Account Initiation Service Providers
AML – anti-money laundering
AML/CTF – anti-money laundering and counter terrorist financing
AMPs – Art Market Participants
APIs – Authorised Payment Institutions
BEIS – Department for Business, Energy and Industrial Strategy
BPSPs – Bill Payment Service Providers
CDD – customer due diligence
EU – European Union
EUR – Euros (currency)
FATF – Financial Action Task Force
FCA – Financial Conduct Authority
FSMA – Financial Services and Markets Act
FTR – Funds Transfer Regulation
GBP – Pound Sterling
GDPR – General Data Protection Regulation
HMRC – Her Majesty's Revenue and Customs
INR. 16 – FATF's Interpretive Note on Recommendation 16
LPs – limited partnerships
ML – money laundering
ML/TF – money laundering and terrorist financing
MLRs/the Regulations – Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
NCA – National Crime Agency
NRA – National Risk Assessment
OPBAS – Office for Professional Body AML Supervision
PBS – Professional Body Supervisor

PF – proliferation financing

PIS – Payment Initiation Services

PISPs – Payment Initiation Service Providers

POCA – Proceeds of Crime Act 2002

PSP – Payment Service Provider

PSRs – Payment Services Regulations 2017

SAMLA – Sanctions and Anti-Money Laundering Act 2018

SAR – suspicious activity report

SI – Statutory Instrument

SPI – Small Payment Institution

TCSPs – Trust or Company Service Providers

TDITPSPs – Telecom, Digital and IT Payment Service Providers

TF – terrorist financing

UKFIU – UK Financial Intelligence Unit

USD – United States Dollar

VASPs – Virtual Asset Service Providers

Annex B

List of consultation questions

AISPs and PISPs

1. What, in your view, are the ML/TF risks presented by AISPs and PISPs? How do these risks compare to other payment services?

2. In your view, what is the impact of the obligations on relevant businesses, in both sectors, in direct compliance costs?

3. In your view, what is the impact of such obligations dissuading customers from using these services? Please provide evidence where possible.

4. In your view should AISPs or PISPs be exempt from the regulated sector? Please explain your reasons and provide evidence where possible.

BPSPs and TDITPSPs

5. In your view should BPSPs and TDITPSPs be taken out of scope of the MLRs? Please explain your reasons and provide evidence where possible.

6. In your view, if BPSPs and TDITPSPs were to be taken out of scope of the MLRs, what would the impact be on registered businesses, for example any direct costs? Are there other potential impacts?

7. Would the removal of the obligation for PSPs to register with HMRC for AML supervision, in your view, reduce the cost and administrative burden on both HMRC and registered businesses?

8. In your view, would there be any wider impacts on industry by making these changes?

Art Market Participants

9. In your view, what impact would the exemption of artists selling works of art, that they have created, over the EUR 10,000 threshold have on the art sector, both in terms of direct costs and wider impacts? In your view is there ML risk associated with artists and if so, how significant is this risk? Please provide evidence where possible.

10. As the AML supervisor for the art sector, what impact would this amendment have on the supervision of HMRC? Would the cost to HMRC of supervising the art sector decrease? Are there any other potential impacts?

11. In your view, does the proposed drafting for the amendment to the AMP definition in Regulation 14, in Annex D, adequately cover the intention to clarify the exclusion of artists from the definition, where it relates to the sale and purchase of works of art? Please explain your reasons.

12. In your view, should further amendments be considered to bring into scope of the AMP definition those who trade in the sale and purchase of digital art? If so, what other amendments do you think should be considered?

SARs

13. In your view, is access by AML/CTF supervisors to the content of the SARs of their supervised population necessary for the performance of their supervisory functions? If so, which functions and why?

14. In your view, is Regulation 66 sufficient to allow supervisors to access the contents of SARs to the extent they find useful for the performance of their functions?

15. In your view, would allowing AML/CTF supervisors access to the content of SARs help support their supervisory functions? If so, which functions and why?

16. Do you agree with the proposed approach of introducing an explicit legal requirement in the MLRs to allow supervisors to access and view the content of the SARs submitted by their supervised population where it supports the performance of their supervisory functions under the MLRs?

17. In your view, what impacts would the proposed change present for both supervisors and their supervised populations, in terms of costs and wider impacts? Please provide evidence where possible.

18. Are there any concerns you have regarding AML/CTF supervisors accessing and viewing the content of their supervised populations SARs? If so, what mitigations can be put in place to address these? Please provide suggestions of potential mitigations if applicable.

Credit and financial institutions

19. In your view, what are the merits of updating the activities that make a relevant person a financial institution, as per Regulation 10 of the MLRs, to align with FSMA?

20. In your view, would aligning the drafting of Regulation 10 of the MLRs with FSMA provide clarity in ensuring businesses are aware of whether they should adhere to the requirements of the MLRs? Please provide your reasons.

21. Are you aware of any particular activities that do not have clarity on their inclusion within scope of the regulated sector?

22. In your view, what would be the impact of implementing this amendment on firms and relevant persons, both in terms of direct costs and wider impacts? Please provide evidence where possible.

23. In your view, what would be the impact of implementing this amendment on the FCA, both in terms of direct costs and wider impacts? Please provide evidence where possible.

24. In your view, would there be any unintended consequences of aligning Regulation 10 of the MLRs with FSMA, in terms of diverging from the EU position?

Proliferation Financing Risk Assessment

25. Do you agree with the proposal to use the FATF definition of proliferation financing as the basis for the definition in the MLRs?

26. In your view, what impacts would the requirement to consider PF risks have on relevant persons, both in terms of costs and wider impacts? Please provide evidence where possible.

27. Do relevant persons already consider PF risks when conducting ML and TF risk assessments?

28. In your view, what impact would this requirement have on the CDD obligations of relevant persons? Would relevant persons consider CDD to be covered by the obligation to understand and take effective action to mitigate PF risks.

29. In your view, what would be the role of supervisory authorities in ensuring that relevant persons are assessing PF risks and taking effective mitigating action? Would new powers be required?

30. In your view, does the proposed drafting for this amendment in Annex D adequately cover the intention of this change as set out? Please explain your reasons.

Formation of Limited Partnerships

Extension of the application of the term TCSP to cover all forms of business arrangement (that are registered with Companies House)

31. Do you agree that Regulation 12(2)(a) should be amended to include all forms of business arrangement which are required to register with Companies House, including LPs which are registered in England and Wales or Northern Ireland??

32. Do you consider there to be any unintended consequences of making this change in the way described? Please explain your reasons

33. In your view, what impact would this amendment have on TCSPs, both in terms of costs and wider impacts? Please provide evidence where possible.

34. In your view, what impact would this amendment have on business arrangements, including LPs which are registered in England and Wales or Northern Ireland, both in terms of costs and wider impacts? Please provide evidence where possible.

Extension of the term "business relationship" for services provided by TCSPs

35. Do you agree that Regulation 4(2) should be amended so that the term "business relationship" includes a relationship where a TCSP is asked to

form any form of business arrangement which is required to register with Companies House?

36. Do you agree that Regulation 4(2) should be amended so that the term "business relationship" includes a relationship where a TCSP is acting or arranging for another person to act as those listed in Regulation 12(2)(b) and (d)?

37. Do you agree that the one-off appointment of a limited partner should not constitute a business relationship?

38. Do you consider there to be any unintended consequences of making these changes? Please explain your reasons.

39. In your view, what impact would this amendment have on TCSPs, both in terms of costs and wider impacts? Please provide evidence where possible.

40. In your view, what impact would this amendment have on business arrangements, including LPs which are registered in England and Wales or Northern Ireland, both in terms of costs and wider impacts? Please provide evidence where possible.

Reporting of Discrepancies

41. Do you agree that the obligation to report discrepancies in beneficial ownership should be ongoing, so that there is a duty to report any discrepancy of which the relevant person becomes aware, or should reasonably have become aware of? Please provide views and reasons for your answer.

42. Do you consider there to be any unintended consequences of making this change? Please explain your reasons.

43. Do you have any other suggestions for how such discrepancies can otherwise be identified and resolved?

44. In your view, given this change would affect all relevant persons under the MLRs, what impact would this change have, both in terms of costs and benefits to businesses and wider impacts?

Disclosure and Sharing

45. Would it be appropriate to add BEIS to the list of relevant authorities for the purposes of Regulation 52?

46. Are there any other authorities which would benefit from the information sharing gateway provided by Regulation 52? Please explain your reasons.

47. In your view, should the Regulation 52 gateway be expanded to allow for reciprocal protected sharing from other relevant authorities to supervisors, where it supports their functions under the MLRs?

48. In your view, what (if any) impact would the expansion of Regulation 52 have on relevant persons, both in terms of costs and wider impacts? Please provide evidence where possible.

49. In your view, what (if any) impact would the expansion of Regulation 52 have on supervisors, both in terms of the costs and wider impacts of widening their supervisory powers? Please provide evidence where possible.

50. Is the sharing power under regulation 52A(6) currently used and for what purpose? Is it felt to be helpful or necessary for the purpose of fulfilling functions under the MLRs or otherwise and why?

Information Gathering

51. What regulatory burden would the proposed changes present to Annex 1 financial institutions, above their existing obligations under the MLRs? Please provide evidence where possible.

52. In your view, is it proportionate for the FCA to have similar powers across all the firms it supervises under the MLRs? Please explain your reasons.

53. In your view, would the expansion of the FCA's supervisory powers in the ways described above Annex 1 firms allow the FCA to fulfil its supervisory duties under the MLRs more effectively? Please explain your reasons in respect of each new power.

54. In your view, what impacts would the expansion of the FCA's supervisory powers in the ways described above have on industry and the FCA's wider supervised population, both in terms of costs and wider impacts? Please provide evidence where possible.

55. In your view, what impacts would the expansion of the FCA's supervisory powers in the ways described above have on the FCA, both in terms of costs and wider impacts? Please provide evidence where possible.

Transfers of cryptoassets

The approach to implementation

56. Do you agree with the overarching approach of tailoring the provisions of the FTR to the cryptoasset sector?

57. In your view, what impacts would the implementation of the travel rule have on businesses, both in terms of costs and wider impacts? Please provide evidence where possible.

58. Do you agree that a grace period to allow for the implementation of technological solutions is necessary and, if so, how long should it be for?

Use of provisions from the FTR

59. Do you agree that the above requirements, which replicate the relevant provisions of the FTR, are appropriate for the cryptoasset sector?

Provisions specific to cryptoasset firms

60. Do you agree that GBP 1,000 is the appropriate amount and denomination of the de minimis threshold?

61. Do you agree that transfers from the same originator to the same beneficiary that appear to be linked, including where comprised of both cryptoasset and fiat currency transfers, made from the same cryptoasset service provider should be included in the GBP 1,000 threshold?

62. Do you agree that where a beneficiary's VASP receives a transfer from an unhosted wallet, it should obtain the required originator information, which it need not verify, from its own customer?

63. Are there any other requirements, or areas where the requirements should differ from those in the FTR, that you believe would be helpful to the implementation of the travel rule?

Annex C

Activities Listed in Points 2 to 12, 14 and 15 of Annex I to the Capital Requirements Directive

As shown in Schedule 2 to the MLRs, the activities listed in points 2 to 12, 14 and 15 of Annex I to the Capital Requirements Directive are—

"2

Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).

3

Financial leasing.

4

Payment services as defined in point (3) of Article 4 of Directive 2015/2366/EU.

5

Issuing and administering other means of payment (eg travellers' cheques and bankers' drafts) insofar as such activity is not covered by point 4.

6

Guarantees and commitments.

7

Trading for own account or for account of customers in any of the following:

(a) money market instruments (cheques, bills, certificates of deposit, etc);

(b) foreign exchange;

(c) financial futures and options;

(d) exchange and interest-rate instruments;

(e) transferable securities.

8

Participation in securities issues and the provision of services relating to such issues.

9

Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.

10

Money broking.

11

Portfolio management and advice.

12

Safekeeping and administration of securities.

14

Safe custody services.

15

Issuing electronic money."

Annex D
Drafting for Consultation

Art Market Participants

14 High value dealers, casinos, auction platforms and art market participants

(1) In these Regulations—

(d) "art market participant" means a firm or sole practitioner who—

(i) by way of business trades in, or acts as an intermediary in the sale or purchase of, works of art and the value of the transaction, or a series of linked transactions, amounts to 10,000 euros or more; or

(ii) is the operator of a freeport when it, or any other firm or sole practitioner, by way of business stores works of art in the freeport and the value of the works of art so stored for a person, or a series of linked persons, amounts to 10,000 euros or more;

(da) A firm or sole practitioner will not be an art market participant under regulation (d)(i) in respect of a transaction in which they sell or act as an intermediary in the sale of a work of art created by that sole practitioner, or by a member of that firm.

Proliferation Financing Risk Assessment

"Risk assessment by the Treasury

16A.—(1) The Treasury must make arrangements for a risk assessment to be undertaken to identify, assess, understand and mitigate the risks of proliferation financing affecting the United Kingdom ("the proliferation financing risk assessment").

(2) The proliferation financing risk assessment must, among other things—

(a) identify, where appropriate, the sectors or areas of lower and greater risk of proliferation financing;

(b) provide the information and analysis necessary to enable it to be used for the purposes set out in paragraph (3).

(3) The Treasury must ensure that the proliferation financing risk assessment is used to—

(a) consider the appropriate allocation and prioritisation of resources to counter proliferation financing;

(b) consider whether the exclusions provided for in regulation 15 (exclusions) are being abused.

(4) The Treasury must prepare a report setting out, as appropriate, the findings of the proliferation financing risk assessment as soon as reasonably practicable after the proliferation financing risk assessment is completed.

(5) A copy of that report must be laid before Parliament and sent to the supervisory authorities.

(6) The Treasury must take appropriate steps to ensure that the proliferation financing risk assessment is kept up-to-date.

(7) The proliferation financing risk assessment may be included in the risk assessment made under regulation 16.

(8) The report referred to in paragraph (4) may be included within the joint report of the Treasury and Home Office referred to in regulation 16(6).

(9) In this regulation and regulations 18A and 19A, "proliferation financing" means the act of providing funds or financial services which are to be used, or are used, in whole or in part, for the manufacture, acquisition, possession, development, export, trans-shipment, brokering, transport, transfer, stockpiling or deployment of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual use goods used for non-legitimate purposes), in contravention of—

(a) the Democratic People's Republic of Korea (Sanctions) (EU Exit) Regulations 2019, so far as it relates to the relevant UN obligations;

(b) the Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019, so far as it relates to the relevant UN obligations.

(10) In paragraph (9)—

(a) in sub-paragraph (a), "the relevant UN obligations" has the meaning given by regulation 4(3) of the Democratic People's Republic of Korea (Sanctions) (EU Exit) Regulations 2019;

(b) in sub-paragraph (b) "the relevant UN obligations" has the meaning given by regulation 4(3) of the Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019

(11) In this regulation—

"biological weapon" means a biological agent or toxin (within the meaning of section 1(1)(a) of the Biological Weapons Act 1974 (1974 c.6)) in a form capable of use for hostile purposes or anything to which section 1(1)(b) of that Act applies;

"chemical weapon" has the meaning given by section 1 of the Chemical Weapons Act 1996 (1996 c.6);

"dual-use goods" means

(a) any thing for the time being specified in Annex I of the Dual-Use Regulation, other than any thing which is dual-use technology, and

(b) any tangible storage medium on which dual use technology is recorded or from which it can be derived;

"Dual-Use Regulation" means Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items;

"dual-use technology" means any thing for the time being specified in Annex I of the Dual-Use Regulation which is described as software or technology;

"nuclear weapon" includes a nuclear explosive device that is not intended for use as a weapon.

"Risk assessment in relation to proliferation financing by relevant persons

18A.—(1) This regulation and regulation 19A apply to those relevant persons listed under the following sub-paragraphs of regulation 8(2)—

(a) sub-paragraph (a) (credit institutions);

(b) sub-paragraph (b) (financial institutions);

(c) sub-paragraph (c) (auditors, insolvency practitioners, external accountants and tax advisers), but not insolvency practitioners or tax advisers;

(d) sub-paragraph (d) (independent legal professionals);

(e) sub-paragraph (e) (trust or company service providers);

(f) sub-paragraph (f) (estate agents), except where the person is acting as a lettings agent;

(g) sub-paragraph (g) (high-value dealers), but only to the extent the person is engaged in the business of making, supplying, selling (including selling by auction) or exchanging—

(i) articles made from platinum, gold, palladium, or silver; or

(ii) precious stones or pearls;

(h) sub-paragraph (h) (casinos);

(i) sub-paragraph (j) (cryptoasset exchange providers);

(j) sub-paragraph (k) (custodian wallet providers).

(2) A relevant person to whom this regulation applies ("the relevant person") must take appropriate steps to identify and assess the risks of proliferation financing to which its business is subject.

(3) In carrying out the risk assessment required under paragraph (2), the relevant person must take into account—

(a) the assessment and report referred to in regulation 16A(5), and

(b) risk factors including factors relating to—

(i) its customers;

(ii) the countries or geographic areas in which it operates;

(iii) its products or services;

(iv) its transactions; and

(v) its delivery channels.

(4) In deciding what steps are appropriate under paragraph (2), the relevant person must take into account the size and nature of its business.

(5) The relevant person must keep an up-to-date record in writing of all the steps it has taken under paragraph (2), unless its supervisory authority notifies it in writing that such a record is not required.

(6) The relevant person must provide the risk assessment it has prepared under paragraph (2), the information on which that risk assessment was based and any record required to be kept under paragraph (5), to its supervisory authority on request.

"Policies, controls and procedures in relation to proliferation financing

19A.—(1) A relevant person to whom this regulation applies ("the relevant person") must—

(a) establish and maintain policies, controls and procedures to mitigate and manage effectively the risks of proliferation financing identified in any risk assessment undertaken by the relevant person under regulation 18A(2);

(b) regularly review and update the policies, controls and procedures established under sub-paragraph (a);

(c) maintain a record in writing of—

(i) the policies, controls and procedures established under sub-paragraph (a);

(ii) any changes to those policies, controls and procedures made as a result of the review and update required by sub-paragraph (b); and

(iii) the steps taken to communicate those policies, controls and procedures, or any changes to them, within the relevant person's business.

(3) The policies, controls and procedures adopted by the relevant person under paragraph (1) must be—

(a) proportionate with regard to the size and nature of the relevant person's business, and

(b) approved by its senior management.

(4) The policies, controls and procedures referred to in paragraph (1) must include—

(a) risk management practices;

(b) internal controls (see regulations 21 to 24);

(c) the monitoring and management of compliance with, and the internal communication of, such policies, controls and procedures.

(5) The policies, controls and procedures referred to in paragraph (1) must include policies, controls and procedures—

(a) which provide for the identification and scrutiny of—

(i) any case where—

(aa) a transaction is complex or unusually large, or there is an unusual pattern of transactions, or

(bb) the transaction or transactions have no apparent economic or legal purpose, and

(ii) any other activity or situation which the relevant person regards as particularly likely by its nature to be related to proliferation financing;

(b) which specify the taking of additional measures, where appropriate, to prevent the use for proliferation financing of products and transactions which might favour anonymity;

(c) which ensure that when new products, new business practices (including new delivery mechanisms) or new technology are adopted by the relevant person, appropriate measures are taken in preparation for, and during, the adoption of such products, practices or technology to assess and if necessary mitigate any proliferation financing risks this new product, practice or technology may cause;

(d) under which anyone in the relevant person's organisation who knows or suspects (or has reasonable grounds for knowing or suspecting) that a person is engaged in proliferation financing as a result of information received in the course of the business or otherwise through carrying on that business is required to comply with—

(i) the Democratic People's Republic of Korea (Sanctions) (EU Exit) Regulations 2019, so far as it relates to the relevant UN obligations (as defined in regulation 16A(10);

(ii) the Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019, so far as it relates to the relevant UN obligations (as defined in regulation 16A(10).

(e) which, in the case of a money service business that uses agents for the purpose of its business, ensure that appropriate measures are taken by the business to assess—

(i) whether an agent used by the business would satisfy the fit and proper test provided for in regulation 58; and

(ii) the extent of the risk that the agent may be used for proliferation financing.

(6) The relevant person must, where relevant, communicate the policies, controls and procedures which it establishes and maintains in accordance with this regulation to its branches and subsidiary undertakings which are located outside the United Kingdom."