HM Treasury's Review of the Money Laundering Regulations 2007

A joint response paper by the Futures and Options Association and the Association of Financial Markets in Europe

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Introduction

The Futures and Options Association (FOA) is the industry association for more than 160 firms and institutions which engage in derivatives business, particularly in relation to exchange-traded transactions, and whose membership includes banks, brokerage houses and other financial institutions, commodity trade houses, power and energy companies, exchanges and clearing houses, as well as a number of firms and organisations supplying services into the futures and options sector. For more information, please visit the FOA website, www.foa.co.uk.

AFME (Association of Financial Markets in Europe) promotes fair, orderly and efficient wholesale capital markets and provides leadership in advancing the interests of all market participants. AFME represents a broad array of European and global participants in the wholesale markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other market participants. AFME participates in a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association through the GFMA (Global Financial Markets Association). For more information, please visit the AFME website, www.afme.eu.

AFME and the FOA welcome the opportunity to respond to HM Treasury ("HMT") regarding its review of the Money Laundering Regulations 2007 ("MLR").

We would like to emphasize to HMT that member firms of both AFME and the FOA which operate in the UK are regulated by the Financial Services Authority ("FSA") for, inter alia, money laundering purposes. It is the perception of many of these firms that the FSA is amongst the most rigorous of supervisors for money laundering purposes of all the 28 money laundering supervisors within the UK and, accordingly, our members would wish to see other supervisors discharge their responsibilities with equal vigour.

Our submission only deals with those questions where our member firms are potentially affected or have an interest.

Q1 – Should the existing criminal sanctions be wholly or partly repealed?

Our members support the retention of the existing criminal sanctions, which should be used in only the most egregious cases, with administrative sanctions being levied in most cases.

Q2 – Should new powers be granted to supervisors allowing them to order or require actions to mitigate the potential negative impacts from the loss of criminal sanctions?

Our members recognise that the application of criminal sanctions for breaches of the MLR may have a deterrence effect and may also encourage firms to comply with the MLR. Equally, our firms are cognisant of the Law Commission's 2010 report "Criminal Liability in Regulatory Context". The report noted that notwithstanding a tendency over

the past two or so decades for Parliament to create more and more criminal offences, there has been, over the same period, fewer and fewer criminal prosecutions. At the same time, industry regulators have been given more powers to levy administrative sanctions for regulatory offences.

Our members have direct experience of the FSA applying administrative sanctions as an alternative to FSA using its powers to mount criminal prosecutions.

Should HMT decide to increase the power of supervisors to levy administrative sanctions, such sanctions should be set at a level that does not permit any business to benefit from breaching their regulatory obligations. However, our members also believe that at all times supervisors should ensure that the rules of natural justice apply to their disciplinary processes.

Q3. Do you agree that the current distinction between Parts 1 and 2 of Schedule 3, e.g. for reliance purposes, should now be removed?

Our members do not support the removal of the current distinction between Parts 1 and Part 2 of Schedule 3 as they do not believe that businesses that fall within Part 2 are supervised with the intensity with which FSA-regulated firms are supervised. Accordingly, during the course of their day-to-day operations, firms would be most reluctant to rely on a business that falls within the scope of Part 2.

As noted in the introductory section above, we believe that all businesses should be subject to a similar degree of supervisory intensity with respect to MLR. It should not be the case that those subject to FSA supervision are treated differently.

Q16. Should the ability of supervisors to exchange information with each other for the purposes of discharging their AML supervisory functions be strengthened, if necessary by the creation of new 'gateways' to allow for the exchange of information?

Yes, the ability of supervisors to share information would be helpful to our members. An entity that is expelled or sanctioned by another supervisor should be known by all supervisors to protect firms and ensure all regulated entities or individuals remain "fit and proper."

Q17. Should HMRC or other supervisors have powers to limit or prescribe the language used by regulated businesses to describe their relationship with their AML supervisor (for example to make it clear that supervision applies only to money laundering compliance)?

Yes, the level of regulation should be clear and not open to interpretation, as many entities and firms within the UK and abroad rely on the regulation of an entity to help formulate their risk-based approach to due diligence.