# IFA REPRESENTATION 10/21

The IFA welcomes the opportunity to provide feedback to the Call for Evidence: Review of the UK's AML/CTF regulatory and supervisory regime published by HM Treasury on 22 July 2021.

We would be happy to discuss any aspect of our comments and to take part in all further consultations in this area.

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Established in 1916, the Institute of Financial Accountants (IFA) is an internationally recognised professional accountancy membership body. Our members work within micro and small to medium sized enterprises or in micro and small to medium sized accounting practices advising micro and SME clients. We are part of the Institute of Public Accountants (IPA) of Australia Group, the world's largest SME-focused accountancy group, with over 46,000 members and students in over 80 countries.

The IFA is a full member of the International Federation of Accountants (IFAC) the global accounting standard-setter and regulator. We are also recognised by HM Treasury and the Financial Services Authority in the Isle of Man to regulate our members for the purposes of compliance with the Money Laundering Regulations.



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## 1. General comments

1. The IFA strongly supports the UK's drive to combat money laundering and terrorist financing. We also recognise the considerable value to be gained from identifying and understanding the associated risks that impact on our business activities and on society as a whole. We are therefore committed to supporting and contributing to the development of the effectiveness of the regulatory and supervisory regime as well as the effectiveness of the broader AML/CFT regime, including the remainder FATF MER outcomes which go beyond the remit of the supervisors.

2. We are therefore recommending that HM Treasury consults as part of a further call for evidence the effectiveness of the AML/CFT regime in other areas which contribute to FATF's immediate outcomes. In the main, the regulatory and supervisory regime are largely responsible for FATF immediate outcomes 3 and 4, but the other 9 immediate outcomes are, in the main, the responsibility of other stakeholders, such as immediate outcome 8 Proceeds and instrumentalities of crime are confiscated.

3. We believe in the Principles of Good Regulation issued by the Better Regulation Task Force (2003). They are: proportionality, accountability, consistency, transparency and targeting. In our response, we have identified areas where we believe there is a lack of accountability (oversight) and transparency in the AML/CFT regime and hope that HM Treasury will address these areas.

4. In addition, we also urge HM Treasury to consider having adequate transition periods for any future amendments to the MLRs, either as result of the SI 2022 consultation and/or this call for evidence. This transition period should be sufficient to facilitate supervisors and the regulated sector to plan ahead and implement the revised requirements and also give an opportunity for sector guidance to be drafted and approved by HM Treasury in a timely manner. In the past, wholesale changes to the MLRs and amendments to the MLRS have been implemented overnight, allowing little time for supervisors and the regulated sector to adapt and to minimise the undue impact on businesses and supervisors.

5. The IFA, and other accountancy sector professional bodies, have engaged positively and cooperated fully with HM Treasury, NCA, NECC, Home Office, HMRC, OPBAS and other key stakeholders at all times going over and above any legal requirement to share information and expertise, because we believe that fighting economic crime is in the public interest. The value of professional bodies and the roles they have to play in this regime should not be under-estimated and should be acknowledged.

6. A matter which has not been addressed by this call for evidence is HM Treasury's Anti-Money Laundering and Counter-Terrorist Financing: Supervision reports. The IFA supports HM Treasury continuing to issue an annual overarching report of the supervisory regime. However, for the supervisory report to be relevant it must be issued in a timely manner and there must be transparency regarding the process and timetable associated with the publication of this report.

7. Furthermore,, HM Treasury should consider how the publication of its report might be co-ordinated with the publication of OPBAS' reports for the accountancy and legal sectors and also the supervisors own annual supervisory reports that should be issued by 1 November. In order to ensure consistency of messaging regarding the AML/CTF supervisory regime, the timing of issuing reports and the time period that is included in all reports must be aligned to be comparable.

8. Another area which is not considered in the call of evidence is how the professional bodies' gatekeeper's functions fit into the exemptions available in the Rehabilitation of Offenders Act 1974. This is particularly relevant for regulations 26 and regulations 58.

9. All cautions and convictions may eventually become spent, with the exception of prison sentences, or sentences of detention for young offenders, of over four years and all public protection sentences regardless of the length of sentence. Once a caution or conviction has become spent under the 1974 Act, a person does not have to reveal it or admit its existence in most circumstances, unless a person is applying for a role and the role is exempt from the Act. These will normally involve a standard or enhanced DBS criminal record checks.

10. Currently, chartered and certified accountants are examples of posts that are exempt in the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975. These exceptions would not apply to those supervisors that are not chartered or certified. Therefore, there is inconsistency between the type of information that supervisors can request as part of their applications which should be addressed.

## 2. Detailed response

### Recent improvements to the regulatory and supervisory regimes

### Q1. What do you agree and disagree with in our approach to assessing effectiveness?

11. The IFA agrees with the following statements in the consultation:

- the MLRs should be well designed and drafted but not subjective so application is consistent focussed to avoid unnecessary burden. Unintended consequences should be considered as far as possible;
- the MLRs should be well understood and applied by the regulated sector;
- non-compliance should be proportionately and persuasively addressed by supervisors;
- the regulated sector should act to identify and report suspicious transactions; and
- the objectives should support FATF immediate outcomes 3,4 and 5.

12. However, the IFA does not agree with HM Treasury's overall approach to assessing effectiveness of the MLR/TF framework by just focusing on the regulatory and supervisory regimes since these regimes are one component for measuring effectiveness.

13. As noted in the consultation, the Financial Action Task Force (FATF) defines AML/CFT effectiveness as the extent to which financial systems and economies mitigate risks and threats of money laundering, and financial of terrorism and proliferation. HM Treasury's systematic review focuses on FATF immediate outcomes 3, 4 and 5. Yet, to assess a

country's effectiveness to protect the financial system from abuse, FATF will need to investigate 11 key areas or immediate outcomes to determine the level of effectiveness of the UK's efforts to combat ML/TF risks.

14. In the consultation, there is no explanation as to why HM Treasury has chosen to adopt such an approach to reviewing the systematic effectiveness of the ML/TF framework. The regulatory and supervisory regime can deter people from being involved in ML/TF activities by building resilience in the private and public sectors through supervision. But it can only go so far.

15. The Proceeds of Crime Act 2002 (POCA) and law enforcement agencies are mentioned in the consultation as being a critical element in the UK's response to ML/TF so there should be consistency and clarity on how the effectiveness of POCA, government agencies and law enforcement will be reviewed, measured and assessed. While the Home Office will be issuing a consultation on economic crime legislation in the future, this does not negate the need to evaluate the effectiveness of other areas which are integral to the effectiveness of the ML/TF framework. Key considerations for an effective ML/TF regime are from our understanding of ML/TF threats and vulnerabilities, effective management of resources to tackle ML/TF risks, developing core capabilities to address ML/TF threats and risks, effectively pursuing ML/TF in the UK and overseas, recovering of proceeds of crime and distribution of recovered funds and what activities they are spent on.

16. Other legislative considerations that feed into the ML/TF framework should also be assessed for effectiveness such as the Criminal Finances Act 2017 and Data Protection 2018 which can influence the effectiveness of the overall system. It is important that standards of effectiveness should be applied across the whole ML/TF system.

17. A review of the MLRs/POCA and other legislation was recommended by the National Audit Office, Better Regulation Framework and Regulators' Code. As far as the IFA is aware, this has not yet taken place and we recommend that the outcomes of this review, when it is completed, will be key to informing this review of the MLRs. For example, the oversight arrangements for multiple regulators needs to be formalised in the MLRs. Currently, there is little transparency about the oversight arrangements for the statutory supervisors, particularly on effectiveness. However, the accountancy and legal professional bodies have OPBAS as an oversight regulator which has produced 3 reports, the latest on effectiveness of professional bodies (PBs). Furthermore, there is a lack of clarity in the OPBAS sourcebook as to how effectiveness of its regulated population is assessed.

18. We strongly recommend that HM Treasury set out a timeline for evaluating effectiveness in this area as part of government's private-public sector commitments to preventing ML/TF in the UK. The strength of the accountancy sector is that it can go some way to preventing unintentional complicity in ML/TF through improving the education of its supervised population and indirectly their clients. However, our preventative role is limited. Acknowledging, identifying and reporting suspicious transactions is part of the accountancy sector's responsibilities, but it is debateable that the sector is responsible for preventing suspicious transactions from occurring.

19. In our view you can only prevent something that is under your watch – if clients are declined because of AML concerns they will go elsewhere – into the unregulated sector so transactions will not be prevented, they will simply occur elsewhere. Ultimately, **action** on suspicious activity reporting lies outside the accountancy sector which can

only report. If a regulated accountant with all the relevant controls in place were to identify a transaction, they can only make a report to the NCA. Whether this contributes to the prevention of ML/TF is dependent on law enforcement activity and criminal prosecutions which are outside the control of the accountancy sector.

**Q2. What particular areas, either in industry or supervision, should be focused on for this section?**

20. We would agree that the primary objectives listed are appropriate for assessing ML/TF effectiveness for the accountancy sector or supervision. However, the primary objectives, as drafted, significantly underplay the role of the regulated sector as gatekeeper to preventing criminals and money launderers from doing business in the UK using a risk-based approach to customer take-on and ongoing relationship assessment. This needs to be rectified.

21. Regarding clarify of drafting the MLRs for the accountancy sector or suspicion, the use of the term ' suspicious transaction' is not specific enough and should be explained to ensure that it is understood to apply more widely than simply monetary payments that are processed by financial institutions and others in the regulated sector. Otherwise, some key stakeholders will not view transactions as their responsibility. Alternatively, the reference to transaction could be expanded to include 'suspicious activity, concerns about potential clients unearthed during Customer Due Diligence (CDD) or Enhanced Due Diligence (EDD) – a definition in the MLRs would be helpful. Better quality information or intelligence might be shared with the NCA by the accountancy sector if the term suspicious transactions were amended to include 'suspicious activity', that is, concerns about potential clients unearthed during CDD or EDD. The accountancy sector focuses on client relationships which consider behaviours and circumstances of clients, businesses and individuals not simply transactions.

22. However, the secondary objective of the regulated sector working with government to ultimately provide valuable information to law enforcement should be expanded to a two-way sharing of information. In the accountancy sector for example, there is much that could be gained from having comprehensive and timely information on emerging threats and risk areas to inform the AML work done by the sector and supervisors.

23. However, as noted in our response in Q1, these objectives and areas are not appropriate for assessing overall effectiveness of the ML/TF system. We welcome further consultations by the government on these areas and consultation regarding the remaining 8 FATF outcomes.

24. The primary, overarching focus should be to ensure that the regulations are clear, concise, non-subjective and straight-forward in order that they can be readily adhered to with minimal additional efforts. Clarity in the regulations should have the effect of reducing the opportunity for interpretation that leads to "gold-plating" by an albeit well-meaning regulator. This will also aide supervisors in taking action when non-compliance is found as we have a clear requirement with no ambiguity in the regulations that could potentially lead to misinterpretation by the supervised population.

25. There are opportunities for reducing complexity and unintended consequences, and ensuring proportionality. There is a cost to firms of compliance in terms of lost time and hence delivery of providing clients with the services needed. An unnecessarily complex

system increases the risk that firms fail to comply as increased complexity impacts the extent of time lost on compliance matters.

26. Measures should be enshrined in the regulations to confirm that the effectiveness of the regulations can be assessed and reported upon. This will help to ensure that the requirements have a clear purpose that will have a tangible impact on economic crime and also meet the principles of better regulation and good practice guidance issued by the National Audit Office. For example, the supervisors are required to provide supervisory information to HM Treasury and, for professional bodies, the requirement to also issue and make available their own self-regulatory supervisory report (regulation 46A) to demonstrate regulatory and supervisory effectiveness.

27. There are no similar requirements to demonstrate effectiveness for the other key stakeholders involved in the ML/TF regime and believe there should be. Such inconsistency in assessing effectiveness creates inconsistencies in the regulations, making it difficult to measure performance, evaluate impact and outcomes. In addition, the MLRs should align with all the other economic crime legislation as they all need to be aligned and fit together and not create conflicting requirements or confusion.

**Q3. Are the objectives set out above the correct ones for the MLRs?**

28. We would agree that the primary objectives listed are appropriate for assessing ML/TF effectiveness for the accountancy sector or supervision. However, the primary objectives, as drafted, significantly underplay the role of the regulated sector as gatekeeper to preventing criminals and money launderers from doing business in the UK using a risk-based approach to customer take-on and ongoing relationship assessment. This needs to be rectified.

29. Furthermore, the primary objectives read as though it is solely the responsibility of the sector and supervisors to identify, prevent and report suspicious transactions. That does not seem proportionate and undermines accountability. The regulations should clearly identify the roles of all stakeholders in the ML/TF framework to ensure that the right stakeholders are enabled to take appropriate action. For example, the role of government departments should be explicit in the MLRs, in terms of oversight, sharing information and approval of sector guidance. And most importantly, their role in monitoring the effect of the regulations and provision of data against clearly defined criteria for effectiveness, which includes performance measures of outputs, outcomes and impact.

30. The responsibilities of all stakeholders with responsibilities under the Regulations should be clearly defined and assigned to ensure that these responsibilities sit with the correct agency and cannot be abdicated to other stakeholders because of non-explicit regulations. The supervisors' risk-based approach recognises the proportionality of their responsibilities and seems an appropriate priority.

31. Regarding clarity of the primary objectives and drafting the MLRs for the accountancy sector, the use of the term ' suspicious transaction' is not specific enough and should be explained to ensure that it is understood to apply more widely than simply monetary payments that are processed by financial institutions and others in the regulated sector. Otherwise, some key stakeholders will not view transactions as their responsibility. Alternatively, the reference to transaction could be expanded to include 'suspicious

activity, concerns about potential clients unearthed during CDD or EDD – a definition in the MLRs would be helpful. Better quality information or intelligence might be shared with the NCA by the accountancy sector if the term suspicious transactions was amended to include 'suspicious activity', that is, concerns about potential clients unearthed during CDD or EDD. The accountancy sector focuses on client relationships which considers behaviours and circumstances of clients/businesses/individuals, not simply transactions.

32. Other comments relating to the primary objectives include:

- we question the application of the term 'prevention'. Supervisors identify and report but ultimately it is the action of law enforcement that results in preventing criminals from money laundering and that of the courts in prosecuting criminals. Any regulation that places a requirement on the supervised population to prevent suspicious transactions needs to be clear that this is based on private-public partnership working and this shared collaborative working needs to be clearly articulated in the regulations;

- The sector and supervisors play a role in reporting People with Significant Control (PSC) discrepancies to improve Beneficial Ownership information held in Companies House. However, our role is limited to reporting and does not mean that the sector and supervisors are responsible for accurate and up-to-date Beneficial Ownership information being held in Companies House. The sectors responsibilities and that of other stakeholders regarding beneficial ownership information needs to be clarified in the regulations, taking into account the outcomes and implementation of the Companies House reforms and the SI 2022 consultations;

- there should be an explicit requirement for the regulated sector to register for supervision with their supervisor. While this requirement may be implicit in the regulations, it is not transparent and should be made explicit to help supervisors intervene more effectively in cases where there is a failure to be supervised; and

- the way in which unsupervised accountants are regulated should also be addressed, either by restriction of title or direction of non-professional body accountants to a specific supervisor with appropriate enforcement powers. While it appears that the government and its agencies such as the Department for Business, Energy and Industry Strategy (BEIS) have no current appetite to consider the matter of barriers to entry into the profession, by either licensing, protecting the tile or educational awareness campaign, such an approach is difficult to reconcile with government's commitment to the prevention of ML/TF, especially when the National Risk Assessment has stated over the years that the low barriers to entry into the accountancy sector contributes to ML/TF risks.

33. The secondary objective of the regulated sector working with government to ultimately provide valuable information to law enforcement should be expanded to a two-way sharing of information. In the accountancy sector for example, there is much that could be gained from having comprehensive and timely information on emerging threats and risk areas to inform the AML work done by the sector and supervisors.

**Q4. Do you have any evidence of where the current MLRs have contributed or prevented the achievement of these objectives?**

34. As stated in our response to Q1, evidence as to the effectiveness of the MLRs is hard to find in the absence of data from law enforcement and details on criminal and civil prosecutions.

35. With regard to the achievement of the objectives based upon the FATF risk-based approach guidance, the Annual Returns submitted by each professional accountancy body to HM

36. Treasury and the self-regulatory reports on supervision contain figures on enforcement which should provide some evidence. Other evidence includes the OPBAS annual supervisory reports, although there is a lack of transparency regarding the criteria for assessing effectiveness, including the categorisation of effectiveness and how this fed into the third OPBAS report which could be argued to be selective interpretation of data and information.

37. There is no explicit requirement to register for supervision presently. This can impact PBS taking effective sanctions when these cases are identified as the requirement is not clearly defined.

38. In addition, supervision and monitoring of unregulated accountants or those providing accountancy services under another title is missing. This means that the Regulations are ineffective as they are not targeting all accountants equally and this can only be rectified by restriction of either title or function of these advisers.

39. The experience of the accountancy professional bodies is that money laundering is infrequently encountered by the supervised population and that law enforcement sector does not always understand how infrequently practising accountants encounter criminality in their work. If this statement is incorrect, then it would appear that there are fundamental issues regarding information and intelligence sharing that need to be addressed.

40. The objective of sharing information is helpful in allowing the professional body supervisors to inform their members of risks and typologies and produce specific guidance as new threats become apparent. Professional Body Supervisors (PBSs) already share information and intelligence between each other and also work collaboratively via forums such as the

41. AASG to develop and share best practice. However information, sharing from law enforcement and regulators with the PBSs is piecemeal and often one-way in that data from government and law enforcement is not available. Information sharing between the professional bodies is effective even taking into account the apparent low level of money laundering enabled by the sector, in terms of frequency the burden of cross-body meetings is relatively high. There should be reciprocal sharing back to PBS from law enforcement to further develop this and so PBS can use it to inform their supervisory frameworks.

42. Law enforcement should build on the work undertaken to develop their understanding of the accountancy sector and issues that are faced. This will help develop the quality, type and frequency of information they share.

43. Beneficial Ownership information is not always accurate or complete in Companies House, hence the PSC regime. So, currently competent authorities do not meet this objective but perhaps after the Companies House reforms they might. Indeed, as part of due diligence, the MLRs are drafted in such a way that you cannot rely on beneficial ownership information held by Companies House.

**High-impact activity**

**Q5. What activity required by the MLRs should be considered high impact?**

44. There is no definition of 'high impact' and there needs to be more clarity of what 'high impact' means. To measure high impact there needs to be a framework to identify and assess outputs, outcome and impact to particular problems or questions. A systematic framework for measuring impact does not exist but it is needed. We are aware that some progress on this has been made as a result of the actions in the Economic Crime Plan 2019-22, but more needs to be done.

45. We have therefore taken the view that this question is asking what areas contribute to an effective AML/CFT regime. From our perspective, we believe that the following activities contribute to an effective regime:

- Client due diligence, client and firm risk assessment enable firms to identify ML/TF risks and having effective policies, procedures and controls in place enable firms to mitigate any risks to their practice;

- Ongoing client due diligence enables firms to monitor client activity and spot patterns and trends that fall outside of the client's usual activity, and where suspicious activity has been found make a SAR;

- Training is crucial as 'relevant persons' within the accountancy sector need to be trained to perform AML responsibilities and be able to spot suspicious activity;

- The supervisory risk-based approach provides firms with the ability to apply appropriate controls and systems needed to understand and assess ML/TF risks to their practice; and

- Intelligence sharing amongst PBs within the accountancy is an effective measure as it allows AML supervisors to share intelligence about supervised members and make informed decisions where a breach of the MLRs has been found.

**Q6. What examples can you share of how those high impact activities have contributed to the overarching objectives for the system?**

46. As mentioned above, we have no measures or definition of 'high impact' in the call for evidence. However, we are of the view that the following activities contribute to the overarching objectives of the system:

- Client due diligence and knowing your client policies and procedures contribute to the prevention of ML/TF at the start of a business relationship and throughout the business relationship due to ongoing monitoring;

- Risk-based supervision helps those in the regulated sector to comply with the requirements of the MLRs and where non-compliance is found, supervisors have the powers to enforce disciplinary action on non-compliance;

- Supervisors work on ML/TF awareness and education contributes to reducing ML/TF risks in the sector; and

- Intelligence sharing amongst PBs within the accountancy is an effective measure as it allows AML supervisors to share intelligence about supervised members and make informed decisions where a breach of the MLRs has been found.

**Q7. Are there any high impact activities not currently required by the MLRs that should be?**

47. There is no requirement to register for supervision in the MLRs which is a significant gap. There should be explicit wording in the MLRs for the requirement to register for supervision which avoids any ambiguity around the requirement to be supervised for AML.

48. This should be addressed as part of the SI 2022 amendments, since we regard this as a high impact activity that is overlooked by the MLRs.

**Q8. What activity required by the MLRs should be considered low impact and why?**

49. We have no measures or definition of 'low impact' in the call for evidence. Therefore, we have taken the view that the question is referring to areas that contribute to a less effective AML/CFT regime.

- We have identified that the requirement of BOOMs under regulation 26 to submit basic disclosure certificates is an increased administrative burden and costly for both PBs and firms. None our members within the scope of regulation 26 have been identified as having any criminal convictions, it is purely an administrative task for PBs and costly for members;

- Smaller practices with sole practitioners having to comply with policies and procedures documents and firm compliance reviews where there is no staff is less effective; and

- HMRC's TCSP register in its current format and the requirement for PBS to upload the list of firms who provide TCSP services is also less effective as we received no feedback as to whether this has been of use to law enforcement or any outcomes of this requirement. Why is there a focus solely on TCSPs? Perhaps, there should be a similar list of all supervised entities as we do for audit and insolvency.

**National Strategic Priorities**

**Q9. Would it improve effectiveness, by helping increase high impact, and reduce low impact, activity if the government published Strategic National Priorities AML/CTF priorities for the AML/CTF system?**

50. National Strategic Priorities (NSP) could only improve effectiveness and impact if based on appropriate evidence, including outputs, outcomes and impact of key priorities that are being assessed.

51. For the NSP to add value, actions, outputs, outcomes and impact would have to be addressed as part of the content of the report, as well as clear priorities and actions for stakeholders. Such a focused approach would be helpful if it was tailored to AML/CTF effectiveness and reduce the number of different initiatives and approaches from different government departments.

52. The current landscape is typified by several different initiatives and approaches from different government departments with competing priorities. It is unclear if NSP would then take priority and allow resources to be withdrawn from other areas. To be effective, the development of NSP would require further consultation with significant input from various stakeholders.

53. The US National Strategic Priorities document referred in the call for evidence appears to list seven key priority areas with no identifiable actions, outputs, outcomes and impacts. If the UK's National Strategic Prioritise was drafted at such a high strategic level, it is difficult to see how a NSP publication would add value and contribute to AML/CTF effectiveness.

54. Further consultation is needed on this area to understand how such a publication would improve AML/CTF effectiveness. For example, would the NSP for AML/CTF replace/substitute or complement existing publications such as the Economic Crime Plan 2019-22, National Risk Assessments, OPBAS Supervisory Reports, NCA publications as well as sector guidance such as the Anti-Money Laundering Guidance for the Accountancy Sector? Has HM Treasury undertaken a review and impact assessment of other countries' national strategic priorities or similar publications? Has a review been undertaken of existing publications and an assessment of their effectiveness?

55. Based on the information included in this consultation, we are of the view that resources would be better employed in ensuring better interaction within current initiatives, including developing a robust system for measuring AML/CTF effectiveness across the whole regime – not just regulatory and supervisory regime.

**Q10. What benefits would Strategic National Priorities offer above and beyond the existing National Risk Assessment of ML/TF?**

56. While it may help to clarify priorities for the AML/CTF regime, in order to make an informed decision on the benefits of such publication, the IFA requires further clarity on the content and linkages with other publications and initiatives. For example, the NECC issues threat assessments with input from the sector and the Accountancy AML Supervisors' Group issues JMLIT edited alerts to the sector. Without detail of what is envisaged, it is difficult to provide constructive feedback on the benefits of a NSP above and beyond the National Risk Assessment of ML/TF and NECC threat assessments, Accountancy AML Supervisors' Group (AASG) alerts and other publications.

57. We do not believe that another government publication will improve AML/CTF effectiveness unless it prioritises strategic and operational outputs and outcomes across the whole AML/CTF framework. This consultation appears to focus only on the regulatory and supervisory regimes , so further thought needs to be given regarding the scope of NSP document which should include key stakeholders such as the NCA, Home Office, BEIS and law enforcement.

**Q11. What are the potential risks or downsides respondents see to publishing national priorities? How might firms and supervisors be required to respond to these priorities?**

58. Without more detail of the scope and parameters on which the NSP would be based, the publication of such a document may be confusing to firms and supervisors, since there are plenty of existing documents which are already published in isolation from one another, mostly by government departments.

59. There is a risk that publishing NSP may provide money launderers with an insight into UK's priorities in this area, as well as law enforcement activity.

**Extent of the regulated sector**

**Q12. What evidence should we consider as we evaluate whether the sectors or subsectors listed above should be considered for inclusion or exclusion from the regulated sector?**

60. We believe that evidence based on data, analysis and key trends should inform whether or not a sector or sub-sectors should be considered for inclusion or exclusion from the regulated sector. The evidence should clearly demonstrate that there is a risk that those sectors or sub-sectors are involved in ML/TF activities and that brining these sectors and sub-sectors into the regulated sector will mitigate ML/TF risks and have a demonstrable impact.

61. Other considerations should be international evidence of ML/TF activities since these are global. HM Treasury should have a transparent and consultative process for considering EU Directives and FATF recommendations, which may, amongst other things, affect which sectors and sub-sectors are regulated within the scope of the MLRs.

62. We believe there are sufficient measures to assess the effectiveness of supervisors within the AML/CTF regime, including annual HM Treasury Anti-money laundering and counter-terrorist financing: supervision reports and annual reports issued by self-regulatory professional bodies as required by regulation 46A of the MLRs and annual OPBAS reports.

**Q13. Are there any sectors or sub-sectors not listed above that should be considered for inclusion or exclusion from the regulated sector?**

63. We have no suggestions at this time but remain open to additions to the regulated sector in light of our response to Q12.

**Q14. What are the key factors that should be considered when amending the scope of the regulated sector?**

64. The key factors to consider are:

- transparency about the chosen regulatory amendments, rationale for this and management of any benefits and costs;
- oversight arrangements and accountability, particularly if extending the scope of the regulated sector or changing it;
- keeping regulatory amendments relevant to primary and secondary objectives of the regulations and what is good practice, including prioritisation and international developments;
- ensuring a good understanding of the amendments is shared across the regulated sector, government, law enforcement and other stakeholders;
- assessing the impact of extending or changing the scope of the regulated sector on the overall AML/CFT regime, in particular on risks of ML/TF activity and identifying, preventing, disrupting and prosecuting ML/TF activities;
- effectiveness of the actual amendments in the regulations to combatting ML/TF activities, including an assessment of proportionality; and
- being responsive and future proofing amendments in regulations based on indicative ML/TF risks, data and information trends.

**Enforcement**

**Q15. Are the current powers of enforcement provided by the MLRs sufficient? If not, why?**

65. The current powers of enforcement in the MLRs are adequate for all supervisors.

66. However, omission of the requirement for relevant persons to register with their supervisors for AML/CTF supervision can cause difficulties and create unnecessary work for supervisors when taking enforcement action against their supervised

population. This can be easily rectified by HM Treasury as part of an amendment in the SI 2022 in order to improve the overall effectiveness of the AML/CFT regime.

**Q16. Is the current application of enforcement powers proportionate to the breaches they are used against? If not, why?**

67. We believe that the current application of enforcement powers is proportionate to breaches of the MLRs. However, it should be noted that regulation 49 requires PBs to make arrangement to ensure that members are liable to effective, proportionate and dissuasive disciplinary action. This is expanded upon in the principles-based OPBAS Sourcebook.

**Q17. Is the current application of enforcement powers sufficiently dissuasive? If not, why?**

68. While the IFA, and other supervisors, have disciplinary powers embedded in their own bye-laws, regulations and sanctions, very little information is available to supervisors from the NCA, law enforcement or other agencies regarding the dissuasive nature of these sanctions, in the context of facilitating money laundering and terrorist financing activities.

69. IFA disciplinary findings relate to non-compliance with the MLRs not involvement in money laundering and terrorist activities. While compliance with regulations is important in combatting money laundering and terrorist financing, the extent to which disciplinary action against non-compliant members is dissuasive for ML/TF activities is unknown.

70. To further achieve consistency and set clear expectations there may be benefit in setting common minimum disciplinary sanction guidance across the regulated sector, taking into account aggravating and mitigating factors.

71. Without a transparent assessment of the impact of the whole AML/CFT regime, which includes but is not limited to compliance with the regulations, it is difficult to determine whether the requirements in regulation 49 are being met, since proportionality should also be linked to dissuasiveness and effectiveness and not considered in isolation from one another as per this call for evidence.

**Q18. Are the relatively low number of criminal prosecutions a challenge to an effective enforcement regime? What would the impact of more prosecutions be? What are the barriers to pursuing criminal prosecutions?**

72. The IFA and other PBs cannot criminally prosecute members for ML/TF activities. From our perspective, the relatively low number of criminal prosecutions does not undermine our disciplinary activities since these are focused on compliance with the MLRs and we have in place a robust disciplinary regime, including proportionate, effective and dissuasive sanctions in relation to compliance with the MLRs.

73. However, the low number of criminal prosecutions is of wider concern for the effectiveness of the AML/CFT regime. Criminal prosecutions should be part of a range of interventions available to the relevant authorities such as HMRC and law enforcement.

There is very little information on the number of criminal prosecutions for the accountancy sector which makes evaluation of the impact of such interventions very challenging, if not impossible.

74. Given the estimated size of money laundering activities and that the accountancy sector is deemed to be high risk in the National Risk Assessment for ML/TF, it is surprising that criminal prosecutions are so low and/or take so long and or do not happen due to limited resources in law enforcement and the courts. This undermines the overall effectiveness of the ML/TF regime.

75. While disrupting ML/TF activities by law enforcement investigations is valuable, there is no estimate of disruptive ML/TF activities in the public domain, which also undermines the effectiveness of the overall ML/TF regime.

76. Increasing the number of criminal prosecutions and associated publicity would enhance the effectiveness of the AML/CFT enforcement regime, and dissuade those that may be tempted to become involved in ML/TF activities. Supervisors can play a role by sharing information and intelligence with law enforcement and prosecutors and also increase awareness and educate our supervised population of the consequences of criminal activities and money laundering breaches.

**Barriers to the risk-based approach**

**Q19. What are the principal barriers to relevant persons in pursuing a risk-based approach?**

77. A risk-based approach involves tailoring the response of relevant persons to fit assessed risks. This approach allows relevant persons to allocate finite resources to effectively mitigate the ML/TF risks they have identified and that are aligned with national priorities.

78. Within this context, the principal barriers to pursuing a risk-based approach for our members and firms are:

- lack of tangible evidence of the regime's effectiveness, leading to a disconnect between the cost of implementation and its benefits. More data on outputs, outcomes and impact is needed to highlight the benefits of the regime – not just case studies;

- lack of continual communication and innovation to stay ahead of risks and criminals. Communications on risk should focus on evolving threats and their impact to avoid relevant persons adopting a risk based approach as a compliance tick-box exercise;

- lack of sufficient detail and targeting of risks in the accountancy sector and sub-sectors so that there is focus on the issues and the minimisation of the negative impacts, including those on resources, time and costs. For example, information on risks included in the NRA is not sufficiently granular. Year on year the accountancy sector has been considered high risk, without any substantial statistical data to support this nor differentiation between those accountants regulated and supervised by PBs and those that are supervised by HMRC; and

- lack of clarity in the regulations and associated guidance regarding the level to which the regulations should be implemented for smaller firms, particular micro-entities. Consideration should also be given to the Better Regulation Framework in relation to proportionality and targeting of measures for very small micro-entity businesses.

79. From a supervision perspective, we consider the lack of sufficient granular information on threat, impact and risk for the different sectors, services and products a barrier to pursuing a risk-based approach to supervision.

80. In spite of previous feedback by the PBs, the NRA continues to amalgamate PBSs and HMRC into the 'accountancy sector' which is not adequate given PBSs are interested in risks for their supervised population. For example, while TCSP are considered to be high risks, the factors which make TCSP high risk for the accountancy sector are not clear and may be due to a combination of factors such as links with PEPs and off-shore trusts which are included in the recent Pandora Papers. Consequently, this has had an impact on effectiveness and efficiency in delivering a risk-based approach.

**Q20. What activity or reform could HMG undertaken to better facilitate a riskbased approach? Would National Strategic Priorities (discussed above) support this?**

81. In order to better facilitate a risk-based approach, we would encourage HMG to:

- review the risk-based approaches in other countries to inform the UK's risk based approach;
- consider the extent to which the NRA of countries should influence a relevant person's firm-wide risk assessment of branches/offices located in another country;
- ensure that there is a clear understanding of the risk-based approach in the public and private sectors and what is expected of the private sector, including its capabilities; and
- facilitate and encourage more proactive and timely sharing of risks and intelligence seen in the accountancy sector from law enforcement and government agencies. This will allow us to use that intelligence to inform our approach to supervision.

82. We, and other PBs, have lobbied and will continue to lobby for greater sharing of information and intelligence through legal gateways from law enforcement and government agencies.

83. The AASG is playing their part by collecting information on the value of the AASG alerts from its supervised population and asking for feedback on these alerts and also potential threats and risks that are not covered by these alerts. This information might be used to inform the AASG risk outlook which provides further guidance and red flag indicators on each of these risk areas that are relevant to the accountancy sector. A similar mechanism should be established to proactively update the UK's National risk assessment of money laundering and terrorist financing (last issued in December 2020) in a more timely fashion.

84. Given that there are too many uncertainties regarding the National Strategic Priorities, we are not in a position to comment on whether this publication would facilitate a risk-based approach.

**Q21. Are there any elements of the MLRs that ought to be prescriptive?**

85. Whilst we consider the flexibility afforded by the regulations is important, we believe that clearer accountability and transparency should be included in the MLRs relating to the role of other stakeholders. Oversight responsibilities and effectiveness assessments for statutory supervisors, similar to OPBAS for PBs, should be clear in the MLRs.

86. The role of the NECC to understand and communicate ML/TF threats should be included in the MLRs and how the threat assessments feedback into the UK National Risk Assessment should be more explicit, together with learnings from PBs and other stakeholders.

**Understanding of risk**

**Q22. Do relevant persons have an adequate understanding of ML/TF risk to pursue a risk-based approach? If not, why?**

87. In general, our supervised population have an adequate understanding of ML risks to pursue a risk-based approach through information available on our website, email communications and training provided. However, not all firms document risk due to time or cost constraints. Information on TF risk is limited since it depends on motivations which are hard to capture.

88. As referred to above, understanding of ML/TF risks can be enhanced by improving granularity of risk by sector, services and in the case of the accountancy sector by those that have oversight by PBs and those that have oversight by HRMC.

**Q23. What are the primary barriers to understanding of ML/TF risk?**

89. The primary barriers to understanding ML/TF risks are that information on ML/TF risks is primarily contained in the NRA which is not updated frequently enough to take into account NECC threat assessments, law enforcement, PBs and relevant person's feedback, and changes in data and trends domestically and internationally. Therefore, the primary barrier to understanding ML/TF risks is that it is based on historic information which is not sufficiently granular for the accountancy sector as referred to above.

90. For relevant persons, primary barriers to understanding ML/TF risks are lack of training if this has not been undertaken.

**Q24. What are the most effective actions that the government can take to improve understanding of ML/TF risk?**

91. We consider the most effective actions to be:

- Improving and facilitating the sharing of good quality risk information between law enforcement and the supervisory authorities, so that the firms can receive clear and concise risk alerts;
- Producing a robust and detailed National Risk Assessment that justifies the risk in each regulated sector using well-researched statistics and data, rather than one-off case studies;
- Case studies relevant to the sector and the impact of the risks associated with ML/TF;
- A clear strategic direction in AML/CTF effort in the UK to focus the resources and efforts of the AML regime in the areas that matter; and
- Driving an increased understanding of the different regulated sectors by both government and law enforcement. We see discrepancies in supervision between the professional body supervisors who take a holistic approach to supervision and include AML alongside their wider understanding of the services provided, the quality of the firm's compliance in other areas, and the skills and experience of the partners and staff. HMRC, on the other hand, only focus on AML matters and do not have the benefit of the wider holistic approach.

92. We believe these actions would help supervisors in their supervisory strategy in establishing if we are capturing or missing those that create most of the risk as well as enabling supervisors to address any misconceptions around the proportionality of the risk-based approach.

**Expectations of supervisors to the risk-based approach**

**Q25. How do supervisors allow for businesses to demonstrate their risk-based approach and take account of the discretion allowed by the MLRs in this regard?**

93. IFA does not allow discretion to our supervised population to demonstrate their risk-based approach, either the whole of the firm risk assessment or client risk assessments since these are requirements of the MLRs.

94. It is not clear what this question is asking. If this question is asking do our supervised population have discretion in the format, methodology and approach to risk-based firm assessments and client risk assessments, then we do allow discretion in these areas.

95. A risk-based approach, whether at a firm or client level (as well as supervisors), involves judgement and discretion by its very nature. One size does not fit all when considering risk. Further clarity on what is meant by this question is needed.

**Q26. Do you have examples of supervisory authorities not taking account of the discretion allowed to relevant persons in the MLRs?**

96. No examples at present.

**Q27. What more could supervisors do to take a more effective risk-based approach to their supervisory work?**

97. We are continually reviewing and updating our risk-based approach in line with the NRA, AASG risk outlook, NECC threat assessments, other publications as well as information and intelligence from the FCA Shared Intelligence System (SIS) and other sources.

98. The AASG collaborates and is continually reviewing its risk-based approach to supervision, which helps to ensure that the same criteria and assessments are considered across the accountancy sector. As part of workshops, we have shared risk-based approaches and best practices. In addition, members of the AASG have also contributed to the FATF risk-based approach for supervisors for the benefit of the wider international community.

99. It would be helpful if OPBAS and/or HM Treasury in their oversight capacity could encourage the sharing of supervisory risk-based approaches across the regulated sector. For example, FCA's risk-based approach may give further insights into the methodology and key trends that come from different sectors that might be relevant to the accountancy sector.

100. Further suggestions for how to improve the risk-based approach is included in the responses to risk in this consultation.

**Q28. Would it improve effectiveness and outcomes for the government and / or supervisors to publish a definition of AML/CTF compliance programme effectiveness? What would the key elements of such a definition include? Specifically, should it include the provision of high value intelligence to law enforcement as an explicit goal?**

101. The IFA has mixed views about whether or not to include a definition of effectiveness for AML/CTF compliance programme. While a definition might be helpful, the focus of a definition of effectiveness should be on the overall AML/CTF regime – not just the compliance programme.

102. Having an effective AML/CTF compliance programme is just one element of an effective AML/CTF regime. We believe effectiveness of the regime should be assessed and evaluated to understand and measure the impact of what the regulations are trying to achieve. A well-developed causal model and logic maps to inform future plans and intervention based on different regulatory models, with short-term outcomes and long-term outcomes is also needed.

103. Supervisors monitor AML/CTF compliance of our supervised population, taking into account the guidance included in the AML Guidance of the Accountancy sector which interprets the regulations and sets clear standards. In addition, HM Treasury has approved the definitions of compliance (fully compliant, generally compliant and non-

compliant) against which supervisors undertake their supervisory activities and report back to HM Treasury in their annual supervisory report.

104. We have continually lobbied for two-way information and intelligence sharing between PBs and law enforcement. We would welcome progress in this area, particularly information and intelligence sharing from law enforcement to PBs. However, we do not believe that these need to be explicitly stated in the regulations since there are already

legal gateways for this to happen in the regulations, as well as secure channels to share information and intelligence.

105. Furthermore, the definition of what is meant by 'high value intelligence' needs further consideration and consultation. It is high value intelligence because of its effectiveness in mitigating ML/TF risks, law enforcement investigations, civil and/or criminal prosecutions or disruption criminal activities?

106. We are concerned that the focus on high value intelligence in this question is associated with the government's and/or NCA's perceptions that the sector does not submit sufficient number of SARs. However, no evidence has been shared with supervisors to support these perceptions. If the regulated accountancy sector overall has an effective AML/CFT compliance regime, then it should follow that the number of SARs submitted are low.

107. We understand that there are challenges for our supervised firms regarding submission of SARs and that quality can be improved. The IFA has been working with the NCA to address concerns around under-reporting through education. It would be helpful to evaluate whether such initiatives and others have mitigated ML/TF risks. We hope that improvements in systems resulting from the SAR Reform programme, will also help improve quality of reporting.

**Q29. What benefits would a definition of compliance programme effectiveness provide in terms of improved outcomes?**

108. We believe a clear definition of effectiveness of the whole AML/CFT regime is beneficial – but not one that just focuses on AML/CFT compliance as included in our response in Q28.

109. However, a definition can only take us so far. What would be significantly more beneficial is a system that articulates and measures clear outputs, outcomes, measurement and impact of what we are trying to achieve across the regulated sector. A system of data capture, reporting and assessment would be far more conclusive about demonstrating effectiveness across the whole regime than a definition of AML/CFT compliance effectiveness.

110. Furthermore, there should be a periodic review of effectiveness since what is effective today may not be effective tomorrow in light of changing domestic and international risks and ML/TF activities.

111. The government should leverage off existing initiatives considered as part of the actions detailed in the Economic Crime Plan 2019-2022 and also consider academic and international developments on the areas of AML/CFT regime effectiveness.

**Application of enhanced due diligence, simplified due diligence and reliance**

**Q30. Are the requirements for applying enhanced due diligence appropriate and proportionate? If not, why?**

112. We consider these requirements are appropriate and proportionate.

**Q31. Are the measures required for enhanced due diligence appropriate and sufficient to counter higher risk of ML/TF? If not, why?**

113. Since the requirements are in line with FATF standards, we are assuming that enhanced due diligence is appropriate and sufficient to counter the higher risk of ML/TF.

114. However, the IFA has had no feedback on this from law enforcement to determine whether enhanced due diligence (EDD) has countered higher risks of ML/TF or that firms failing to undertake EDD has resulted in ML/TF taking place.

**Q32. Are the requirements for choosing to apply simplified due diligence appropriate and proportionate? If not, why?**

115. Our supervised population very rarely applies simplified CDD and will apply normal or standard CDD to all clients except where EDD is required.

116. Under the MLRs, a regulated firm can apply simplified due diligence if it determines that the business relationship or transaction presents a low risk of money laundering. Relevant considerations include risk factors set out in the MLRs, as well as the firm wide-risk assessment and information provided by supervisory bodies. Our firms rarely have clients which may be lower risk such as credit or financial institutions.

**Q33. Are relevant persons able to apply simplified due diligence where appropriate? If not, why? Can you provide examples?**

117. The majority of firms deal with clients where normal due diligence applies. Simplified due diligence tends to be applied when dealing with government departments, local authorities etc, which is rare.

**Q34. Are the requirements for choosing to utilise reliance appropriate and proportionate? If not, why?**

118. It is exceptionally rare that our supervised population chooses to rely on the CDD undertaken by another firm in the regulated sector due to the barriers referred to in Q35. Given the risks involved, choosing not to rely on CDD from others seems appropriate and proportionate.

119. However, HM Treasury may want to consider reviewing this area to encourage more firms in the regulated sector to place reliance on CDD from others in the regulated sector, thereby decreasing the administrative burden. Reviewing other countries requirements and guidance in this area may provide helpful insights.

**Q35. Are relevant persons able to utilise reliance where appropriate? If not, what are the principal barriers and what sort of activities or arrangements is this preventing? Can you provide examples?**

120. While our supervised population is permitted to rely on CDD documentation from others in the regulated sector, they rarely use reliance. The principal barriers are:

- A business relying on a third party in this way must still carry out a risk assessment and perform ongoing monitoring. That means it should still obtain a sufficient quantity and quality of CDD information to enable it to meet its monitoring obligations;
- Firms placing reliance on another regulated sector's CDD should satisfy themselves with the level of CDD being undertaken. Undertaking such due diligence takes time and it is frequently easier to undertake CDD activities instead of placing reliance on another's CDD identification and verification documentation; and
- In addition, the business seeking to rely on a third party remains liable for any CDD failings irrespective of the terms of the CDD agreement.

**Q36. Are there any changes to the MLRs which could mitigate derisking behaviours?**

121. No comments as we don't believe this applies to the accountancy sector.

**How the regulations affect the uptake of new technologies**

**Q37. As currently drafted, do you believe that the MLRs in any way inhibit the adoption of new technologies to tackle economic crime? If yes, what regulations do you think need amending and in what way?**

122. If "new technologies" means "innovative skills, methods, and processes that are used to achieve goals relating to the effective implementation of AML/CFT requirements or innovative ways to use established technology-based processes to comply with AML/CFT obligations", then we do not believe that as currently drafted the MLRs preclude technology from being used to tackle economic crime since they are sufficiently broad.

123. However, what is missing is lack of clarity in the MLRs and in other economic crime legislation regarding the extent to which technology can be used to fully discharge responsibilities and improve the overall effectiveness of the AML/CFT regime which goes beyond regulatory and supervision.

124. The FATF publication Opportunities and Challenges of New Technologies for AML/CFT has very helpful examples of how technology can be used across the AML/CFT regime.

Examples included in this report are:

- digital identity solutions can enable non-face-to-face customer identification, verification and updating of information;

- artificial intelligence (AI) and machine learning (ML) technology-based solutions applied to big data can strengthen ongoing monitoring and reporting of suspicious transactions; and

- leveraging public infrastructure to facilitate CDD procedures, for example, access to passport and driving license registers.

125. The Cutting Red Tape – Review of UK's Anti-Money Laundering and Counter Financing of Terrorism regime issued in March 2017 also has some helpful suggestions by businesses on how to improve the effectiveness of the AML/CFT regime in the area of due diligence. For example, those in the regulated and supervised sector could have access to the Government Digital Service-led Identity Assurance Programme. This service is currently used by the DWP, Insolvency Service, DVLA, HMRC and DEFRA. This type of system is currently used in Denmark, Sweden, Finland and Norway, although these countries also have either government issued ID cards or make their citizens' tax returns public, linking an online ID to their tax number.

**Q38. Do you think the MLRs adequately make provision for the safe and effective use of digital identity technology? If not, what regulations need amending and in what way?**

126. As discussed above this requires further consideration, particularly challenges and opportunities referred to the The FATF publication Opportunities and Challenges of New Technologies for AML/CFT

127. The MLRs need to be more explicit about the safe and effective use of digital identity technology, for example, there is a lack of clarity as to how technology can discharge responsibilities included in the MLRs, for example, digital identity verification for non-face to face clients.

**Q39. More broadly, and potentially beyond the MLRs, what action do you believe the government and industry should each be taking to widen the adoption of new technologies to tackle economic crime?**

128. **The IFA supports the use of new technologies as defined in the FAT publication for increasing the effectiveness of the AML/CFT regime and combatting money laundering, terrorist financing and other economic crimes.**

129. However, there needs to be consultation with technology providers and the regulated sector as to how technology could be used to further enhance the effectiveness of the AML/CFT regime, identify risks more quickly, reduce operating costs and meet regulatory challenges, than non-automated solutions. Furthermore, technology can also be used to facilitate ML/TF, so this should also be considered.

**SARs reporting**

**Q40. Do you think the MLRs support efficient engagement by the regulated sector in the SARs regime, and effective reporting to law enforcement authorities? If no, why?**

130. The regulated sector and supervisors are engaged in the SAR regime and also in the SAR Transformation programme which has been a long time in coming. We hope that improvements in the SAR system will enable effective reporting by law enforcement to the regulated sector, including key trends.

131. Information on the SAR regime and reporting has been focused on improving the quality of SARs, taking into account UK FIU guidance and also encouraging more firms in the regulated sector to submit SARs if they have knowledge or suspicions of ML/TF. However, there has been limited engagement by law enforcement to encourage individuals and firms outside of the regulated sector to submit SARs. These reports may provide valuable intelligence and this type of engagement should also be encouraged, through an awareness and education campaign led by UK FIU, with support of professional bodies and other key stakeholders.

132. It would also be helpful to receive positive feedback to share with the regulated sector. While we appreciate that the quality of SARs might be improved, some of the quality issues are driven by current system limitations rather than a lack of understanding of how to discharge responsibilities in the regulations. Individuals who are trying to do the right thing by submitting SARs should be supported for trying to do the right thing not discouraged because the quality was not up to the required standards.

133. There is a belief amongst our supervised population that SARs disappear into a black hole and are not reviewed/acted upon. It is rare that any of our members have received any feedback from the SARs they have submitted.

134. The IFA has been working with the NCA to request examples anonymised of good and bad quality SARs and DAMLs that are specific to our supervised population, but examples are limited and we have yet to receive anything that is of a level that could provide practical support or guidance to our firms, beyond what is publicly available.

**Q41. What impact would there be from enhancing the role of supervisors to bring the consideration of SARs and assessment of their quality within the supervisor regime?**

135. We believe there would be a positive impact from enhancing the role of supervisors to be able to access, review and provide feedback on SARs to our supervised population, in line with UK FIU guidance.

136. Accessing the content of SARs to identify trends would also inform the sector's risk assessment, firm's risk assessment and supervisors' risk assessments, enhancing the overall effectiveness of the AML/CFT regime.

137. The IFA, along with other supervisors, will be able to adopt an educational approach to reviewing SARs, recommending best practice and providing guidance. However, disciplinary action for submitting low quality SARs is unlikely. Furthermore, as included in our response to the SI 2022 consultation, access to SARs by supervisors will be based on our risk-based approach to supervision.

138. It is important to be clear that having a legal gateway to access SARs of our supervised population does not require supervisors to monitor every SAR by our supervised population, nor does it require supervisors to discipline members for not submitting good quality SARs in line with UK FIU guidance and best practice recommendations for the sector.

**Q42. If you have concerns about enhancing this role, what limitations and mitigations should be put in place?**

139. We have identified the following limitations and considerations that need to be addressed:

- Supervised firms may have concerns in respect of confidentiality of sensitive information and the risk of tipping off. It is important that these concerns are addressed through appropriate mechanisms to protect the confidentiality of important elements so that, for example, it should not possible to identify the reporter or subject of the SAR from documents retained by the supervisor.

- As part of the SAR Reform programme, consideration should be given to whether supervisors can access a view only SAR submission. Not all firms will keep hardcopies of their written submissions, so consideration needs to be given as to how supervisors will access SARs in a secure and confidential way.

- AML reviewers will need to be trained on the process for accessing SARs in a secure and confidential manner, including storage considerations. It may be deemed appropriate that AML reviewers should be NCA vetted to provide additional comfort to NCA and our supervised firms.

- The review should not extend to an assessment of whether there is a ‘suspicion’ or not, as suspicion is subjective.

- Protections should be set for supervisors against subject access requests under data protection legislation as well as maintaining the client’s privilege (where appropriate).

- Any explicit legal requirement should also be accompanied by the provision that SARs reviewed for this purpose would not result in the supervisor re-reporting that same suspicion to the NCA.

- It is also important to recognise that supervisors will not be able to discipline a firm for submitting a ‘poor’ quality SAR, which is not in line with UK FIU guidance. While we would share best practice and increase a firm’s awareness of what is expected, our role in this regard will be educational. If it becomes apparent that an MLRO should have reported knowledge or suspicion of money laundering and didn’t, then it may be possible to take disciplinary action. However, in our experience this would be unlikely since discussions on ‘suspicion’ are based on judgement which is subjective.

**Q43. What else could be done to improve the quality of SARs submitted by reporters?**

140. We are hopeful that the SAR Reform programme will help to improve the quality of SARs, since currently, the design of the system is focused towards sectors that are transaction orientated not client orientated.

141. We are assuming that the definition of a 'good' quality SAR is one that is line with UK FIU guidance. However, this needs to be clarified and confirmed.

142. In order to improve the SAR's submitted, the SAR system needs to:

- be simpler in format and the language and questions should be more relevant to the accountancy sector;
- the questions should have more drop-down boxes e.g. glossary codes and certain questions should be mandatory e.g. declaring the name of the firm's supervisor;
- better links between UK FIU guidance and the SAR system so that if help is needed, guidance is provided to the individual before the SAR is submitted;
- better sector reporting on quality of SARs and feedback on general trends and areas for improvement.

143. The accountancy sector provides guidance to our supervised population to guide them through the SAR process in the form of a template We would encourage the SAR Reform Programme to consider this guidance and, where appropriate, incorporate the guidance as part of the enhanced SAR system in order to enhance the quality of SARs.

**Q44. Should the provision of high value intelligence to law enforcement be made an explicit objective of the regulatory regime and a requirement on firms that they are supervised against? If so, how might this be done in practice?**

144. The consultation does not make it clear what is meant by 'high value intelligence' For example, what is high value intelligence to the IFA may not be high value intelligence to the NCA. This requires further consultation and clarification. Assessing whether information or intelligence is high value will involve an element of subjectivity by different parties, who will be looking at the information/intelligence from different perspectives and criteria.

145. Given the above, we believe that all quality information should be treated as high value and shared with law enforcement and equally, law enforcement, should share information with supervisors.

146. We are concerned that by defining effectiveness by the provision of high-value intelligence, the government is promoting the belief that to be effective, firms should submit SARs. However, if CDD is effective, the firm is less likely to take on clients with high AML risk, acting as a barrier for those clients/businesses from doing business in the UK, and therefore the number of SARs submitted might be lower.

147. An unintended consequence of defining effectiveness of the MLRs by the provision of high-value intelligence may be that firms are driven to do the opposite – they may submit SARs where the bar of suspicion has not been met or where the quality of the

information on the location of the proceeds, or the person benefitting of the proceeds is poor quality, just so that they can show they have submitted SARs.

**Q45. To what extent should supervisors effectively monitor their supervised populations on an on-going basis for meeting the requirements for continued participation in the profession?**

148. This question is not clear.

149. As included in our reports to HM Treasury and our self-regulatory reports, supervisors monitor compliance with MLRs based on their risk-based approach on a continual basis. We have a wide range of enforcement action that we take against members and firms that are deemed to be non-compliant and/or uncooperative. We believe this is an appropriate level of monitoring.

150. Furthermore, we act as gatekeepers to the regulated sector by undertaking fit and proper tests and criminal record checks. However, there is no barrier to entry to the profession as noted in the NRA which increases the risk of the accountancy sector. This is an area that the government should consider as part of its priorities to combat economic crime and alignment with international expectations and standards.

**Gatekeeping tests**

**Q46. Is it effective to have both Regulation 26 and Regulation 58 in place to support supervisors in their gatekeeper function, or would a single test support more effective gatekeeping?**

151. We believe it is ineffective to have both regulation 26 and regulation 58 in place to support our supervisory functions as a gatekeeper. One concise and consistent set of gatekeeper requirements will simplify the regulations and help to ensure a common entry standard across the AML regulated sector and ensure consistency in approach.

**Q47. Are the current requirements for information an effective basis from which to draw gatekeeper judgment, or should different or additional requirements, for all or some sectors, be considered?**

152. We are assuming that this question on requirement for information relates to regulation 58, in particular paragraphs (1) and (4). These require the supervisor to consider the firm's compliance history, the ML/TF risk within the firm, the skills/knowledge/experience of the applicant or BOOMs and whether they act with probity, as well as whether there are any relevant criminal convictions.

153. We agree that these are an effective basis for which to draw gatekeeper judgement but should be widened to reflect that the supervisors also consider other factors in their fit and proper tests, as the call for evidence notes.

154. We monitor whether our supervised population meets our fit and proper requirements on an ongoing basis, through our renewal process, reviews and information and intelligence sharing.

155. As mentioned in our response to Q 46, we would welcome the regulations to be simplified by amalgamating the requirements of regulation 26 and 58.

156. However, it should be noted that the gatekeeper role by supervisors can only go so far. An individual/firm that is not supervised because of regulations 26 and 58, may still continue providing accountancy service to the public under the radar and this is difficult to detect. So, accountants can continue their practice under the radar, without being regulated and supervised. The IFA does police the perimeter by:

- attempting to ensure that all of our members engaged in public practice have supervision; and
- sharing information and intelligence with other professional bodies and public sector supervisors of individuals and firms that we suspect are not supervised.

157. Better infrastructure collaboration between government agencies and the private sector and an educational awareness campaign may also help with policing the perimeter in a more holistic way.

158. While professional bodies supervise their own population, we need a more robust gatekeeper framework to identify those in the regulated sector that are not supervised by including a requirement in the regulations for relevant persons within the scope of the Money Laundering Regulations to be mandated to register with their relevant professional body for AML supervision or a statutory supervisory body, as appropriate.

**Q48. Do the current obligations and powers, for supervisors, and the current set of penalties for non-compliance support an effective gatekeeping system? If no, why?**

159. Yes, we believe that that the current obligations and powers for supervisors and the current set of penalties for non-compliance support an effective gatekeeping system.

160. However, it would be helpful if all supervisors identified non-compliance issues as part of an effective gatekeeping system on the same platform. Currently, HRMC, a supervisor for the accountancy sector, does not use FCA's Shared intelligence System (SIS) to identify non-compliance issues.

161. Furthermore, there are continued barriers to sharing information and intelligence between professional bodies, statutory supervisors and law enforcement agencies. Some barriers are due to legal gateway limitations, for example, S348 FSMA Act referred to in the SI 2022 consultation and others relate to the absence of a common information/intelligence sharing platform that is used and accessed by all key stakeholders.

162. We strongly encourage OPBAS to accelerate its endeavours to facilitate collaboration and information and intelligence sharing between professional bodies, statutory supervisors and law enforcement agencies. While some progress has been made in this area, for example the Accountancy Intelligence Expert Sharing Working Group (IEWSG), a lot more needs to be done, particularly sharing information and intelligence from statutory supervisors and law enforcement agencies to professional bodies. Information and intelligence sharing is a two-way process and is crucial for an effective ML/CF regime.

## Guidance

**Q49. In your view does the current guidance regime support relevant persons in meeting their obligations under the MLRs? If not, why?**

163. We believe that having sector specific guidance that interprets regulations and sets common standards for the sector is essential for an effective AML/CFT regime. However, the current process of approval by HM Treasury is timely. For example, the Anti-Money Laundering Guidance for the Accountancy Sector, issued as draft in September 2020, has not yet been approved by HM Treasury.

164. We believe this approval process not to be sufficiently agile and undermines consistency of interpretation of amendments in the MLRs (which were effective on 1 January 2020), contributing to ineffectiveness in the AML/CFT regime. For example, supervisors would not be in a position to discipline a member or firm based on draft guidance.

**Q50. What barriers are there to guidance being an effective tool for relevant persons?**

165. We believe this approval process with HM Treasury is not sufficiently agile, transparent and timely. This undermines consistency of interpretation of amendments in the MLRs (which were effective on 1 January 2020), contributing to ineffectiveness in the AML/CFT regime. For example, members and firms may interpret the regulations differently to what is in the draft guidance and supervisors would not be in a position to discipline a member or firm based on draft guidance.

166. Delay in approving sector guidance also affects software providers who are reluctant to invest resources and update their systems based on draft guidance.

167. The IFA is not part of the drafting process since this is led by the CCAB. However, via the AASG forum, supervisors input into drafts of the updated guidance. We believe that the process for drafting, consultation and approval should be more transparent, including deadlines. This would help supervisors, our supervised population, IT providers and other stakeholders to plan ahead.

**Q51. What alternatives or ideas would you suggest to improve the guidance drafting and approval processes?**

168. We understand that the main barrier to the process is the time it takes for reviewing and approving the sector guidance. Having transparency on the timetables for drafting and approval would help all key stakeholder involved in the AML/CFT regime as would having key contacts in HM Treasury that are responsible for the review and approval of the guidance from start to completion.

169. As we understand it, HM Treasury is responsible for approving all regulated sector guidance and ensuring that is consistent. The process for this review also needs to be transparent, especially if inconsistencies between guidance need to be resolved. Furthermore, the role of HM Treasury as approval body for the sector guidance needs to be included in the MLRs.

**Structure of the supervisory regime**

**Q52. What are the strengths and weaknesses of the UK supervisory regime, in particular those offered by the structure of statutory and professional body supervisors?**

170. The key strengths of the UK supervisory regime are as follows:

- expertise of PBs and ongoing engagement with our members means that we understand the issues and risks in our supervised sector more than a single supervisor would, that may be too far removed from the sector they are supervising. We also contribute to legislation, regulation and policy development and collaborate with government on various initiatives, further enhancing the AML/CFT regime and the wider economic crime prevention regime; and

- AML supervision is embedded within those institutions that have supervisory or monitoring obligations and powers over their population under other legislation or regulations and, consequently, have the expertise to deliver robust AML supervision and monitoring as well as a sound framework and infrastructure. This reduces regulatory burdens, improves competitiveness and reduces financial impact of the regulatory regime.

171. The key weaknesses of the UK supervisory regime are as follows:

- Since 2018, OPBAS has also added a layer of oversight. Their objective to improve consistency has facilitated an improvement such that the professional body supervisors are working to the same minimum standard as can be seen in the positive, and improved, outcomes described in their most recent report. However, the fact that they do not have oversight over all supervisors, particularly in areas where statutory supervisors/PBSs overlap, is a weakness in the system – supervision would be stronger if OPBAS had oversight powers over all supervisory authorities; and

- While HMRC has issued their own Anti-Money Laundering Supervision annual assessment both with the MLRs and OPBAS Sourcebook, the report is not independent. OPBAS' oversight on the accountancy and professional bodies is independent. Other statutory bodies should also be assessed in an independent manner by an oversight regulator, in line with the MLRs and the OPBAS Sourcebook, to improve transparency of effectiveness across all supervisors.

**Q53. Are there any sectors or business areas which are subject to lower standards of supervision for equivalent risk?**

172. The standards of supervision in different sectors are unknown since there is no independent oversight body that supervises the standards of supervision and effectiveness of supervision in those sectors, nor is there a published report that measures effectiveness.

173. OPBAS' third report now measures effectiveness as well as technical compliance with the MLRs. However, OPBAS' remit is the accountancy and legal professional bodies –

not the statutory supervisors. Therefore, work needs to be undertaken to consider how the UK can have a holistic, comprehensive and independent assessment of standards of supervision and effectiveness across the whole of the regulated sector.

**Q54. Which of the models highlighted, including maintaining the status quo, should the UK consider or discount?**

174. The UK should maintain the status quo. Although there are always areas for improvement as suggested in our response to the SI 2022 consultation and this call for evidence, the FATF Mutual Evaluation Review found that the supervisory system was moderately effective with the main weaknesses being in the delivery of a risk-based approach by all supervisors (except the Gambling Commission).

175. Since then, significant improvements have been implemented, including the work of the AASG on consistency in risk-based approaches and as identified by OPBAS in their reports. All accountancy supervisors have made changes to their risk-based approach and monitoring activity.

176. One of the concerns of the current supervisory regime raised in the Cutting Red Tape consultation in March 2017 was that of supervisory gaps and overlaps. We believe that, by information and intelligence sharing on an ongoing basis, this is no longer an issue.

177. Supervisors have significant skills, knowledge and experience and have invested significant resources in this area. We also provide continuity for the government as staff changes are frequent in government agencies and law enforcement. If the model was changed, an impact assessment on AML/CFT regime effectiveness would have to be considered prior to making such a change. Creating a single supervisor for all the regulated sector may be costly, take several years to be operational and as result might increase the ML/TF risks in the UK.

**Q55. What in your view would be the arguments for and against the consolidation of supervision into fewer supervisor bodies? What factors should be considered in analysing the optimum number of bodies?**

178. There is no domestic or international evidence that provides support for an optimum number of supervisory bodies in the AML/CFT regime. What is important is the effectiveness of supervisors within the overall AML/CFT regime – not the number.

179. The key argument for consolidation of supervision into fewer supervisors would be one supervisor to deal with law enforcement and other key stakeholders instead of several supervisors. OPBASs' remit may change or may no longer be needed if it was felt that only one supervisor was needed for the accountancy and legal sectors.

180. The drawbacks of these proposals are:

- Increased costs of supervision for the regulated sector; and
- Less skills, knowledge and expertise from a diverse group of supervisors who have continual engagement and monitoring with their supervised populations.

**Effectiveness of OPBAS**

**Q56. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of ensuring consistently high standards of AML supervision by the PBSs?**

181. The effectiveness of OPBAS should be measured against its objectives, outputs, outcomes and impact. However, it is difficult to fully measure the effectiveness of OPBAS since accountancy and legal supervisors have a role to play in supporting OPBAS' effectiveness through providing feedback at various workshops hosted by OPBAS, providing feedback to OPBAS' supplementary guidance such as OPBAS Update: Regulation 46A (publication of annual reports) issued in April 2021 and participation and chairing the Accountancy Sector Intelligence Sharing Expert Working Group.

182. The effectiveness of OPBAS should be measured against its key objectives and this assessment should be independent. The main objectives are:

- Raise standards and ensure a consistent approach to AML supervision;
- Provide guidance to professional AML supervisory bodies on how to comply with their obligations in line with the updated money laundering regulations;
- Hold enforcement powers to penalise breaches of regulation made by professional AML supervisory bodies; and
- Facilitate collaboration between supervisors and law enforcement in terms of tackling money laundering and terrorist financing.

183. Maintaining a high standard of AML supervision is directly linked to OPBAS providing PBSs with guidance to follow, sharing best practice and setting transparent and contemporaneous definitions of what is meant by 'high standards' and "effectiveness." OPBAS has issued three reports against its Sourcebook. The Sourcebook as not been updated since it was issued in January 2018. Any 'updates' to the Sourcebook which were required by the amendments to the MLRs effective 1 January 2020, have been issued as 'guidance', for example, OPBAS Update Regulation 46A (Publication of Annual Reports) which seeks to 'aid' supervisors with their annual reports and not to impose 'requirements'. Whether guidance issued by OPBAS is mandatory and affects the outcomes of the OPBAS' published reports is not clear.

184. OPBAS have issued three reports to-date. There is no agreed or transparent timescales for OPBAS to issue their reports. On the other hand, OPBAS appears to require that all supervisors issue their annual supervision reports by 1 November.

185. The third OPBAS report covers effectiveness of supervisors – not just technical compliance with the MLRs. While the OPBAS report states that effectiveness is measured against the FATF standards and the OPBAS Sourcebook, there is a lack of clarity in the report about the different levels of effectiveness. There is also a lack of clarity as to why OPBAS has chosen only to report on effectiveness when the IFA was assessed against the following ratings for each area covered by the OPBAS Sourcebook:

- Effective
- Largely effective
- Partially Effective
- Ineffective

186. There are no parameters or criteria that address these ratings in the OPBAS Sourcebook, which is principle based. Without full transparency in effectiveness ratings, it is difficult for supervisors to improve in order to further minimise ML/TF risks in the regime.

187. Planning ahead for future FATF Mutual Evaluation Reports (MERs), assessments are made against technical compliance ratings (compliant, largely compliant, partially compliant and non-compliant) and effectiveness ratings (high, substantial, moderate or low). It is unclear to the IFA why OPBAS has chosen not to adopt the equivalent FATF MER effectiveness and technical compliance ratings.

188. There is also no benchmarking against supervision by statutory bodies, including HMRC. HMRC last issued its own report in March 2021 and there is no indication that HMRC will be issuing another report based on the above OPBAS effectiveness ratings criteria.

**Q57. What are the key factors that should be considered in assessing the extent to which OPBAS has met its objective of facilitating collaboration and information and intelligence sharing?**

189. OPBAS has an objective to facilitate collaboration between supervisors and law enforcement in terms of tackling money laundering and terrorist financing. A review should be undertaken of the guidance issued by OPBAS and the effectiveness of the work undertaken to facilitate collaboration and information and intelligence sharing.

190. There is often reluctance on the part of OPBAS to give an opinion or acknowledge deficiencies in current guidance or the ability to enforce regulation by a PBS. There has also been limited feedback on examples of best practice which have been seen from the monitoring of all the PBS. Similarly there has been virtually no sharing of best practice with statutory supervisory bodies.

191. PBS's have been good at sharing intelligence between each other and also in reporting SARs etc but this is more through our own efforts rather than OPBAS issuing guidance and opinion on proposed action or in terms of addressing supervision difficulties. Through their supervision across different sectors OPBAS should use this oversight to assist in matching up PBS in terms of size and whether they supervise individuals and or firms.

192. OPBAS identifies the usage of FCA's Shared Intelligence System (SIS) and FIN-NET as best practice in their Sourcebook to help PBs with information and intelligence sharing (both incurring fees to supervisors). To date, we have seen little evidence of the outputs, outcomes and impact of using such systems in mitigating ML/TF risks and/or disrupting/preventing criminal activity. Furthermore, sharing of information within the SIS platform is very much reliant on the other party agreeing to share information with the supervisor.

193. For various reasons such as limited legal gateways or perceptions that the information is not relevant to us as supervisors, information and/or intelligence is not shared. OPBAS should focus their efforts in better understanding the limitations of the best practice systems included in their Sourcebook and remove barriers to information and intelligence sharing by users of these systems. In addition, OPBAS should encourage other key stakeholders such as HMRC which supervises accountants not associated with professional bodies, to input information and intelligence into SIS and share relevant information and intelligence with supervisors.

194. OPBAS should also consider what other systems are available that cannot be accessed by the accountancy and legal sector supervisors. For example, law enforcement databases that are accessed by statutory supervisors.

195. Within the context of information and intelligence sharing, we see OPBAS's role as helping to provide a level playing field for information and intelligence sharing for all supervisors, since we are all committed to mitigating ML/TF risks and fighting economic crime.

**Remit of OPBAS**

**Q58. What if any further powers would assist OPBAS in meeting its objectives?**

196. OPBAS should have oversight powers over all supervisors, particularly where statutory supervisors supervise the same sectors as the PBSs. It is difficult to demonstrate how there can be consistency within the supervision of the accountancy sector, when OPBAS's remit doesn't include HMRC, who are responsible for the supervision of approximately a quarter of the accountancy firms.

197. OPBAS appear to have sufficient powers but there should be greater transparency over how and when OPBAS will use their powers and what events will trigger the use of those powers, particularly in terms of defining timeframes from the OPBAS regulation of 'reasonable period' and 'without delay' .

198. Of greater importance should be a review of the powers of the PBS to enforce regulations relating to supervision. These should be a consistent power across PBS to enforce compliance and monitoring standards within the regulations and clear escalation pathway to criminal prosecution.

**Q59. Would extending OPBAS's remit to include driving consistency across the boundary between PBSs and statutory supervisors (in addition to between PBSs) be proportionate or beneficial to the supervisory regime?**

199. It would be beneficial for OPBAS to oversee all the supervisors, to ensure consistency of standards and effectiveness across the regulated sector. However, for it to do this role it cannot be housed at the FCA, since in effect, this would mean it was regulating and supervising itself.

200. If this was not possible, as a minimum, it would be helpful to understand how this extended remit fits into HMT's oversight role of the statutory supervisors and how HMT measures technical compliance and effectiveness of statutory supervisors.

201. There should also be an appropriate review of the ability to take enforcement action and a review of the collaboration to escalate issues from PBS enforcement to criminal prosecution. On 2 June 2021, the Crown Prosecution Service (CPS) published updated guidance on prosecuting standalone 'failure to disclose' cases under section 330 of the Proceeds of Crime Act 2002 (POCA) but there has been no guidance on how this will be identified and reported by the PBS.

**Supervisory gaps**

**Q60. Are you aware of specific types of businesses who may offer regulated services under the MLRs that do not have a designated supervisor?**

202. As part of our supervisory duties, we police the perimeter to ensure that all our practising members and their firms are supervised as appropriate. If a member engaged in public practice is found to have no supervisor, disciplinary action against the member may be taken but this is unnecessarily difficult due to the lack of clarity in the MLRs regarding registration for supervision by those in the regulated sector as discussed in Q62 below and in our response to the SI 2022 consultation.

**Q61. Would the legal sector benefit from a 'default supervisor', in the same way HMRC acts as the default supervisor for the accountancy sector?**

203. We have no comments on this.

**Q62. How should the government best ensure businesses cannot conduct regulated activity without supervision?**

204. As referred to in our submission to the SI 2022 consultation, HM Treasury should include an explicit requirement in the MLRs that makes it clear that businesses that are within the scope of the MLRS should register with a supervisor. While this is implicit, it needs to be made explicit, to avoid any confusion regarding accountability and responsibilities.

**Contact details**

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