ANTI-MONEY LAUNDERING SUPERVISORY REVIEW: RESPONSE TO THE CONSULTATION ON THE IMPACT AND DRAFTING OF REGULATIONS INTENDED TO IMPROVE OVERSIGHT OF THE ANTI-MONEY LAUNDERING SUPERVISORY REGIME

Submission Date: 16 August 2017

Response by the AAG

Introduction

1. The Accountants Affinity Group (AAG) is a sub committee of the UK Anti Money Laundering Supervisors Forum. The accountancy professional body supervisors listed in Schedule 1 of the Money Laundering Regulations 2017 are represented in the group. This consists of the Association of Accounting Technicians, Association of Chartered Certified Accountants, Association of International Accountants, Association of Taxation Technicians, The Chartered Institute of Management Accountants, Chartered Institute of Taxation, Insolvency Practitioners Association, Institute of Certified Bookkeepers, Institute of Chartered Accountants in England and Wales, Chartered Accountants Ireland, Institute of Chartered Accountants of Scotland, Institute of Financial Accountants and International Association of Bookkeepers.

2. HMRC is also represented at the table but has not been asked to subscribe to this response.

3. The AAG is a forum in which the professional bodies and HMRC work collaboratively (including in association with other government departments/law enforcement) to develop accountancy sector supervisory policy to promote consistency in standards and best practice.

4. The AAG welcomes the opportunity to respond to this consultation. This response has been drafted collaboratively by the members of AAG although individual organisations will also be submitting separate responses and some written representations have already been sent specifically to Minister Stephen Barclay.

General comments

5. We have previously stated in the AAG response to the HM Treasury previous call for further information that we support, both collectively and as individual bodies, the principles of supervisory oversight across all supervisors, as we believe strongly in a consistent, fair, proportionate and risk based supervisory regime which is in the public interest. However, we reiterate that the proposed oversight body has not been designed to achieve these objectives.

6. Of particular concern is the creation of a two-tier approach to supervision as OPBAS is only responsible for Professional Body Supervisors (PBS) and its remit does not include other supervisors such as HMRC (who supervises accountancy service providers that do not belong to professional bodies and which are arguably higher risk as they do not have to meet the strict entry requirements, professional qualifications or ethical regulations of professional body supervisors), the Financial Conduct Authority (FCA) or the Gambling Commission who would all be subject to direct oversight from HM Treasury instead. Such inconsistencies are not in the public interest. It creates greater confusion and fails to meet the objectives of supervision.

7. As with the previous call for further information, the timings for responding to the consultation are extremely tight. In addition, as it is over the summer holiday period, we are concerned that many individuals, businesses and other interested parties will not have the opportunity to respond. Before publication, we had requested that HM Treasury should not do this as it would undermine the due process but this request was ignored.

Impact assessment

8. The AAG would question the contentions claimed in the impact assessment, in particular the following:

    - *"minimising unnecessary burdens on businesses"* – the additional costs that will be imposed on regulated businesses via the PBSs for the costs of OPBAS will not minimise burdens on business but will increase them, in particular for sole practitioners and small businesses.

    - *"The government intends to streamline guidance" and later in the impact assessment it states "ensuring there is one piece of guidance available in each sector, to help strengthen the regime and reduce costs to businesses."* Our supervised businesses are aware of, and have always been advised to follow, the HM Treasury approved CCAB guidance. Therefore, the case for streamlining guidance in our sector has not been made out. As the CCAB guidance states, *"Courts must consider relevant guidance when determining whether an accountant's conduct gives rise to certain offences under either the Proceeds of Crime Act 2002 or the Money Laundering Regulations 2007. It is this guidance which practitioners should consider as authoritative when implementing and complying with anti-money laundering requirements."*

    - We disagree with the declaration in the Impact Assessment that micro entities will not be within scope.

    - *"The government intends to ensure all supervisors provide a consistently high standard of supervision, by providing the FCA with a new oversight role – OPBAS – to strengthen collaboration between supervisors and with law enforcement."* As previously stated (para 6 above), OPBAS does not cover **all** supervisors.

    - The impact assessment is dated 1/1/16 but not signed by the responsible

Minister until 4/6/17. If it was first drafted in January 2016 (or even if this is a typo and it is January 2017) why are we only seeing the impact assessment now when we have previously emphasised the need for an impact assessment to be carried out?

- Only 2 options have been considered in the impact assessment:
  "1. Do nothing. There will be no changes to the supervisory regime.
  2. Legislate to provide FCA with new powers to help, and ensure, professional body AML supervisors comply with their obligations under the MLRs 2017."
  Why were other options not considered such as the contractual supervisory approach in the Isle of Man as opposed to OPBAS being a legislative option?

- In respect of any fee payable by the PBSs to fund OPBAS, the Impact Assessment states '*As this fee is a transfer within the system, it will be included as a cost and a benefit in this Impact Assessment.'* This appears to infer that the operating costs of OPBAS would be wholly offset by cost-savings for the PBSs, which is not the case as full supervisory responsibility will continue with the PBSs whose members will be required to bear the development and ongoing operational costs of OPBAS.

- The impact assessment claims that in the previous call for information *"Most respondents agreed the package proposed would ensure effective oversight whilst minimising unnecessary burdens on professional body AML supervisors."* We would like to see evidence that backs up this claim as not one of the accountancy PBSs agreed with this statement.

- *"The Treasury seeks to engage with supervisors through relevant fora, including the AMLSF, as well as the smaller Affinity Groups….However not all supervisors attend these meetings"*. Again, this is not correct. The AAG has representatives of all the accountancy professional body supervisors. At AAG meetings (and at AMLSF) when HM Treasury have been present, we have repeatedly raised our concerns about the limitations of OPBAS and yet the proposals for OPBAS (as set out in the draft Regulations) have remained the same.

- *"Professional body AML supervisors engaging with OPBAS on a day to day basis"* – this is not a proportionate or risk based approach for something that has no evidential basis and appears to be in contradiction to the more 'light-touch' approach suggested in the FCA OPBAS sourcebook.

- *"There has been extensive consultation with professional body AML supervisors"*. We would refute this statement.

<u>FCA consultation on an OPBAS sourcebook for PBSs</u>

9. We are supposed to consider the FCA consultation on an OPBAS sourcebook for PBSs in conjunction with this response. However the FCA consultation closes on 23 October 2017. It would have been more helpful if both consultation periods had been aligned to the October date.

10. The FCA OPBAS sourcebook consultation includes a very real concern of ours:

"*There is a similar risk the extra costs resulting from the creation of OPBAS (which will be passed on to the membership of the professional bodies through membership fees), as well as the burdens from any new supervisory work performed by professional bodies, will lead some of the membership to either withdraw from the market, or seek to be supervised elsewhere; in the case of accountants, they may choose instead to be overseen by HM Revenue and Customs. If so, the broader public interest served by having those providers of professional services being a member of a profession (e.g. adherence to ethical standards, ongoing training, etc.) would be lost.*"

This risk has not been addressed in either of the HM Treasury and FCA consultations.

Regulatory Policy Committee

11. We are not convinced that the case has been made for OPBAS. It seems too that the Regulatory Policy Committee also had concerns:

"The quality of the assessment would have been improved by including more detailed discussion of the options considered for the creation of OPBAS. The IA should have explained more on the structure of the new institution and the design of the oversight system. The IA should have also explained more clearly why the proposed policy is likely to be the most efficient way of complying with the Directive."

Responses to specific questions

Question 1 - Do the draft regulations deliver the government's intention that OPBAS help, and ensure, PBSs comply with their obligations in the MLRs? In particular, are further legislative amendments required to ensure legal PBSs can raise funding for the OPBAS fee?

12. We do not agree that the draft regulations help PBSs meet their obligations in the MLRs as in all the time we have been submitting annual supervisory reports to HM Treasury, we have at no time been told that we are not meeting our obligations in the MLRs. It is therefore hard to comment on whether the draft regulations "deliver".

13. In addition, the draft regulations do not set out how OPBAS will support the PBSs and instead focus on handling problems. There is also a lack of clarity in regard to how OPBAS will use its powers which creates uncertainty in how performance in our role as PBSs will be assessed.

14. Furthermore, there is no provision or transparency of procedure in the draft regulations for PBSs who wish to resign, they just state that: "if a professional body no longer wishes to fulfil the role of an AML supervisor, or OPBAS recommends one be removed, the Treasury stands ready to amend the list of AML supervisors in the regulations accordingly."

15. We have no further comment to make on whether further legislative amendments are

required to ensure legal PBSs can raise funding for the OPBAS fee as that is not our sector.

Question 6 - Do you expect to increase or decrease resources in your supervisory team to support engagement with OPBAS going forward? If so, please provide estimated average annual costs or savings. Please round your answer to the closest £100.

16. The consultation document requests that PBSs consider the FCA draft guidance in their responses to questions 6 to 8. However, the FCA consultation does not close until 23 October 2017 so it is difficult for PBSs to respond at this stage. In addition, until the structure, costs, etc. of OPBAS have been agreed, we do not know how many PBSs will still be in a position to remain as PBSs and any consequential impact that may have on costs and resources.

Question 7 - Do you expect to invest more, less or the same in your supervisory teams to align your approach with OPBAS's guidance going forward? If more or less, please provide the estimated annual additional cost or saving. Please round your answer to the closest £100.

17. As with our response to Question 6, it is difficult to answer this question at this stage as the FCA consultation period does not close until 23 October 2017.

Question 8 - In addition to the areas identified above, are there any other costs or benefits associated with complying with OPBAS or simplified AML guidance for businesses you would like the government to take into account? If yes, please outline these and provide estimated costs or savings. Please round your answer to the closest £100.

18. Again, please refer to our response to Question 6 above and it not being possible to answer this question until the review of the OPBAS sourcebook is concluded. We are unclear about the reference to 'simplified AML guidance' and would reaffirm our comments above that our supervised businesses have always followed the CCAB guidance approved by HMT.