



Kate Higginson
Financial Crime Policy and Risk Unit
The Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

21 September 2011

Dear Madam,

FSA Consultation Paper 11/12 – Financial crime: a guide for firms.

PricewaterhouseCoopers LLP (“PwC” or “we”) welcomes the opportunity to comment on the FSA’s Consultation Paper 11/12 – Financial crime: a guide for firms (“the Guide”). The Guide will form a valuable part of the general guidance available to firms, assisting them in reducing the risk that they, or their customers, are subjected to financial crime risk.

The Guide will be particularly helpful to smaller firms in establishing and maintaining anti-financial crime controls. The Guide’s content is effectively arranged and structured, covering the key areas of financial crime. Each ‘box’ sets an expectation, then asks the firm/reader pertinent self-assessment questions, allowing them to consider the risks in their business before reading examples of good and poor practices as observed by the FSA. We believe that firms will find the good and poor practices beneficial, and that they will help firms in designing and maintaining their anti-financial crime controls.

Whilst welcoming the Guide, we recommend caution with regards to the interpretation of good practice examples, which may not be the sole, or best way to mitigate a specific financial crime risk. The Guide should recognise that other controls or solutions may be equally valid. Recognising this in the Guide will ensure that it does not remove or narrow the scope for firms to determine their own solutions to effectively counter the financial crime risks they face. Further, there is a risk that the good practice examples are seen as a prescriptive checklist, whereby firms believe they have found a ‘safe harbour’ for regulatory compliance by implementing the practices. We recommend that for the avoidance of doubt, the FSA should state (if it is their intention) that compliance with the guide will not automatically result in all of the FSA’s rules being met.

With regard to poor practice, if specific poor practice examples result in a regulatory failing, this should be clearly stated in the Guide. Making firms aware of such practices will assist the FSA in publicising expected standards.

We would not want the Guide to be perceived as (or evolve in practice as) a mechanism which results in any unnecessary costs being incurred by firms. In introducing the Guide we suggest that the FSA acknowledge that there cannot be a ‘one size fits all’ approach to managing financial crime risk. We believe that Firms are frequently best placed to identify and control the specific financial crime risks they face.

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We have responded to the FSA's specific consultation questions in an appendix to this letter. As a significant portion of the Guide's content is consolidated from material previously published by the FSA, our comments chiefly focus on the content added from the June 2011 thematic reviews ('Bank's management of high money-laundering risk situations' and 'Mortgage fraud against lenders').

We would be happy to discuss our comments further. Please contact either Andrew Clark (+44 (0) 207 804 5761) or Christopher Cowin (+44 (0) 207 212 6185) should you wish to discuss or clarify any matter in the attached response.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Clark', with a long, sweeping flourish extending downwards and to the right.

Andrew Clark
Partner
Forensic Services
PricewaterhouseCoopers LLP



Appendix A – PwC Responses to Consultation Questions in CP 10/20

Q1: Do you support our proposal to publish the Guide? If not, why not?

We support the FSA's proposal to publish a financial crime guide for firms. Publication of the Guide will reinforce the importance of countering the growing threat of financial crime within the financial services industry. We agree that a consolidation of relevant findings from the FSA's thematic reviews and other work on financial crime is sensible. All parties will benefit from having a single and 'current' Guide.

Q2: Do you think the Guide will achieve our publication aims? If not, why not?

The FSA's publication aims are transparency, accessibility and reinforcement. With regard to transparency, the Guide will assist in offering further clarity to firms on the FSA's expectations, including with regard to the systems and controls required to prevent financial crime.

We have no concerns regarding the accessibility of the Guide.

To achieve the FSA's stated aim of reinforcement, the Guide will require open support from its successor regulator, the Financial Conduct Authority. To reinforce the Guide, which has 'general guidance' status under FSMA 2000, the FSA's ongoing supervision work and enforcement proceedings relating to financial crime should, where possible, make reference to the Guide.

Q3: Do you consider that the Guide sets out with sufficient clarity which of its provisions apply to which firms? If not, how could we make it clearer?

The Guide sets out at the beginning of each Chapter the firms to whom the chapter's provisions apply. We consider these statements to be sufficiently clear.

Q4: Is the Guide's structure and the use of self-assessment questions, good and poor practice and cases studies, helpful and clear? How could we make it clearer or more useful?

The Guide is effectively structured and easy to navigate. The self-assessment questions focus the reader's attention to the key considerations, giving them an opportunity to reflect on their own firm, prior to reading examples of good and bad practice observed by the FSA.

The Guide will be subject to regular ongoing review by the FSA. This review should evaluate whether good practice examples referenced from early thematic reviews on financial crime remain current, given the continued evolution of industry standards, legislation and the regulatory environment. We recommend that the FSA state their preferred mechanism through which a 'reviewed Guide' will be delivered (e.g. will a revised Guide be republished or will firms be periodically informed that the Guide remains 'current?'). The FSA may wish to publish their expectations of the frequency to which the Guide will be republished.

Q5: What other comments do you have about the structure of the Guide?

We have no other comments about the structure of the guide.



Q6: What comments do you have on the contents of the Guide?

Please find comments below against the specific chapters of the Guide.

Do you have comments on the specific chapters or the annex of Part 1?

1) Introduction

We have no comments on this chapter of the guide.

2) Financial crime systems and controls

With regard to 'Box 2.1: Governance' we note the use of 'should' and not 'must' (which would infer a legal obligation) with regards to senior management taking clear responsibility for managing financial crime risks. This guidance could be interpreted as contrary to the regulations concerning some financial crime risks, for example money laundering, where SYSC 6.3.8 requires the appointment of a member of senior management to be responsible for establishing and maintaining effective AML systems and controls. We suggest that the FSA consider using stronger language to emphasise the importance of senior management taking responsibility for financial crime systems and controls.

3) Anti-money laundering

The guidance contained within this chapter will be very useful to firms. However it is 'high level' and should be considered in conjunction with the relevant regulations and industry guidance. Whilst this is made clear in the Guide's introductory paragraphs 1.6 and 1.7, we recommend that the FSA considers including similar language, acknowledging industry guidance (notably the JMLSG guidance notes), at the beginning of chapter 3.

In respect of 'Box 3.2: The Money Laundering Reporting Officer (MLRO)', the good practice example relating to the interaction between the senior management and MLRO could be amended as follows, *'The MLRO has, and makes appropriate use of, a direct reporting line to executive management or the board'*.

Box 3.3 discusses a 'firm's assessment of the risks of money laundering'. We would encourage the use of stronger language to emphasise the importance of a customer risk assessment. It is a requirement of the Money Laundering Regulations 2007 (reference (7.-(3)-(a))) to determine the extent of the customer due diligence measures required on a risk sensitive basis. In our view, Box 3.3 does not sufficiently convey that a risk assessment, or 'a risk based approach', is at the centre of effective anti-money laundering controls and know your customer procedures. Effective upfront risk assessment procedures are a pre-condition for effective enhanced due diligence. In our view, the poor practice reference regarding non-risk based procedures in 'Box 3.4 Customer due diligence' (CDD) does not negate the point raised. We would recommend inserting the following good practice example (provided it is consistent with the FSA's observations); *'The firm performed risk assessments of their customer relationships considering a number of factors. The assessments, and the conclusions drawn, were effectively documented and subject to appropriate challenge and review'*.



In respect of Box 3.4, the reference in the poor practice examples to a breach of the relevant Regulation is valuable and underlines the importance of adhering to the guidance. Where possible, if poor practice examples result in a regulatory failing this should be highlighted.

We consider that the usefulness of 'Box 3.7: Handling higher-risk situations - enhanced due diligence (EDD)', would be enhanced by the addition of good and poor practice examples observed by the FSA in respect of EDD procedures applied during non face-to-face CDD.

Chapters 4) to 10)

We have no specific comments from chapter 4 to 10, or on Annex 1.

Q7: Is the inclusion of Part 2 of the Guide useful? What comments do you have on its contents?

Overall, we consider the inclusion of summaries of the FSA thematic reviews conducted on financial crime useful. However, we note that three thematic reviews ('Firms' high-level management of fraud risk', 'Review of private banks' anti-money laundering systems and controls' and 'Review of financial crime controls in offshore centres') amended to Part 2 of the Guide do not contain consolidated examples of good and poor practice. The FSA may wish to dedicate resources to revisit the findings of these thematic reviews to produce consolidated examples. These can then be included in Part 2 of the Guide and would ensure consistency with other FSA thematic reviews.

Q8: Are there topics not covered in the Guide which you would find it useful for us to address?

The Guide does not deal with market misconduct as it is dealt with in the FSA's Market Conduct Sourcebook (MAR). As one of the FSA's objectives in publishing the Guide is to collate existing FSA material, the FSA may wish to include content on market misconduct in the Guide. This need only provide an overview of the risks before referencing the MAR sourcebook and will help ensure that market misconduct isn't missed by firms from the Financial Crime agenda.

Q9: What comments do you have on our assessment of the equality and diversity issues we have identified?

No comments.

Q10: Do you have any comments on this cost benefit analysis?

With regard to the assessment in Annex 1: Cost benefit analysis, 'Part 2: Specific ongoing annual incremental costs from guidance on anti-money laundering' notes that large firms (who responded to the AML review summary) do not anticipate incurring additional costs, covering additional work under BaU arrangements. Alternatively, no additional costs would be incurred as the large firms responded that they already have the processes in place.

While this section of the Guide is presenting the findings of primary research, the universal conclusion drawn in respect of large firms, notably their belief that they already have adequate procedures in place, appears inconsistent with the findings of the thematic review on 'Banks' Management of High



Money Laundering Risk Situations'. The FSA's report observed '*serious weaknesses [identified] in banks' systems and controls... that it is likely that some banks are handling the proceeds of corruption or other financial crime*'. This observation was not restricted to small or medium sized banks. The FSA may wish to review this apparent discrepancy in their cost considerations.