

JMLSG REVISED GUIDANCE

PRESS RELEASE – BACKGROUND BRIEFING

Possible questions

1. *Why publish so much material? Firms always complain about over-regulation, and here you are adding to the pile!*

We have consulted widely on the draft text, and the final publication is pitched at the level the industry needs, which is appropriate for guidance that is flexible.

Overall, the guidance published today runs to no more length than the existing Guidance Notes. Once the new guidance is approved by a Treasury Minister, the existing Guidance Notes will be withdrawn, and so there will be no net increase in amount of ‘regulatory’ material. The guidance is in two parts; very few firms are likely to be affected by more than one or two sections in Part II. The guidance gives firms the opportunity to manage their money laundering/terrorist financing risks in a risk sensitive way, thus enabling the resources employed to be focused on the areas where there is a greater risk, and thus being more effective.

JMLSG believes that firms will welcome this. Moreover, part of the guidance provides an overview of the legislative requirements and half is made up of a series of guidance for specific individual sectors of the industry. Many firms will find, therefore, that they need refer only to a relatively small proportion of the overall guidance.

2. *Why is it necessary to make changes? Isn't life difficult enough as it is? Moreover, haven't you just revised the Guidance Notes?*

JMLSG has responded to demands from firms and from consumers for a proportionate approach to money laundering prevention. The revised guidance offers firms the opportunity to start managing their money laundering/terrorist financing risks in a much more risk-sensitive way. So they can focus the resources employed on the areas of greater risk. JMLSG believes that firms will welcome this. The last revision was in December 2003, and was necessary to reflect the implementation of the Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003.

3. *Aren't all the changes just being made to make life easier for firms?*

Not at all. The changes offer the opportunity for firms to manage their risks better, but should also lead to a significant reduction in the identification requirements placed on the majority of personal customers. For example, in the vast majority of cases it should no longer be necessary for individuals to produce utility bills to prove their address.

4. *Won't the Third ML Directive change all this?*

The Third ML Directive will implement the FATF Forty Recommendations, much of which is already reflected in the UK Regulations, and in good industry practice in the UK. There may be some changes, but most of the requirements of the FATF Forty Recommendations are already required in the UK.

5. *Who was consulted on the new guidance?*

The guidance was offered to anyone to make comment. Comments were received from individuals and companies, from firms within the financial sector, from overseas based commentators, including regulators. More than 100 comment letters were received

6. *Putting the guidance primarily on the web will just make it more difficult for 'ordinary folk' to access it, won't it?*

Not at all. The guidance being on the web will make it more accessible. Most people have internet access (or can get such access at their local library) and so – if they actually want to read it - will be able to access the guidance at home, without having to arrange to buy a copy, which until now has been the only option. And don't forget that for the main users - who are the staff in FSA regulated firms that have to interpret and apply the guidance – it will be far easier to navigate the new guidance, and for them to be kept up to date.

7. *Won't making the full guidance freely available to the public simply be inviting people to find a way round the regulations?*

Anyone can purchase a copy of the present Guidance Notes, so there is no change in its availability to 'outsiders'.

8. *How will personal customers benefit from the new guidance?*

There are several ways in which personal customers will benefit. There will be a widespread reduction in the number of separate documents that an individual will have to produce to identify themselves to the financial services firm. In most cases, a passport or photocard driving licence will do the business. [See paragraph 5.4.21 of Part I.] Where individuals deal with more than one firm in relation to the same transaction, there should generally only be a requirement to provide identity evidence to one firm.

9. *So customers will be able to get a bank account or purchase a financial product by just producing their passport?*

The guidance simplifies the ID requirements, but normal commercial considerations will continue to apply. The guidance relates to the obligation to verify a customer's

identity; this is not the same as qualifying for a bank account or purchasing a financial product. Firms apply other commercial considerations in making such decisions. For example, they will often need to make credit and anti-fraud checks.

10. How does the guidance help special interest groups, to help reduce financial exclusion?

JMLSG has done its utmost to ease access for potentially excluded groups, whilst keeping the right level of vigilance. This is mainly but not exclusively an issue for banks. The guidance suggests typical documents that firms should require in respect of a number of special interest groups (listed in the Annex to Section 1: *Retail banking* in Part II of the guidance). These documents should be readily available to individuals in each category, and so make it easier for them to obtain a Basic Bank Account.

11. How will non- personal customers benefit from the new guidance?

There has been a complete overhaul of the requirements for non-personal customers, in order to avoid trying to fit them into a regime primarily designed for individuals. There is a reduction in the documents required, especially ancillary documents such as Memorandum and Articles of Association, and the identity of many parties not directly related to the identity of the non personal entity will no longer need to be verified. [See paragraphs 5.4.66/92 of Part I.] This should ease bureaucracy for SMEs and for London's wholesale markets.

12. It's the big fish, not the small guys that carry out serious money laundering. How will the guidance make life more difficult for them?

The guidance allows firms to take a risk-based approach to their management of money laundering risk. This means that they will be able to focus their resources on the areas that carry greater risk. A combination of a flexible approach to customer ID, based on an agreed standard level of identification, and ensuring that where appropriate they hold additional information about the customer and monitor his transactions and activity, will deliver a balanced and proportionate response. This will mean that they will naturally focus more on the 'big fish' and less on the small guys.

13. Won't increased use of electronic verification turn firms into 'Big Brothers'? Our personal data won't be safe any more!

The protection of personal data held electronically is subject to detailed requirements under the Data Protection Act, and firms are very careful to meet their obligations under this legislation. Within these constraints, firms have always used electronic verification; the guidance will allow them to make greater use of this means of identification, but always subject to the oversight of the Information Commissioner. Individuals' personal data will remain protected, as it is now.

14. Will the FSA be happy to leave so much discretion in the hands of management? Don't they like all firms to have to do the same things?

The FSA is very supportive of the guidance. Philip Robinson, FSA Sector Leader for Financial Crime, has written to the chairman of the JMLSG expressing his intention that the FSA supervisors will [follow a risk based approach in carrying out their supervisory visits...]

15. Has the FSA forced the industry to make these changes?

FSA is supportive of JMLSG's guidance, and has not sought to 'force' any changes through. Clearly, as they are the regulators, JMLSG sought their views on the draft proposals, but as will be seen from the Progress Report published by the FSA in October 2004 (on their web site) they are fully behind the major changes.

16. Shouldn't the FSA be writing the guidance – after all, they are the regulators?

The way it has been drafted reflects good regulatory practice – the regulator standing back from prescribing detail, but instead setting outcomes for the industry to achieve. The industry would in any event prefer to issue its own guidance, as there is greater ability to amend it to reflect changes in what is a dynamic industry. Rules laid down by the regulator are not easily changed, and firms want to be able to ensure that the guidance reflects the current position within the industry.

17. When will all the new guidance take effect?

The guidance has to be approved by a Treasury Minister. This may take a little time, and it is not possible to indicate definitively when this will happen. Firms will need some time to change their systems to reflect the new approach under the guidance – this may take six months or more. So we are looking at the guidance taking effect around the end of August this year.

Firms will, however, be able to follow the new guidance, once finalised, as soon as they feel they are in a position to.

18. Will firms be forced to comply with the guidance?

There is an expectation in the FSA Rules (SYSC 3.2.6E G) that firms will comply with the guidance – but they are not legally obliged to do so. They are free to follow other procedures, so long as they can demonstrate (to their regulator or to a court) that their procedures offer the same level of compliance with their legal and regulatory obligations as does the guidance.

19. What will happen to them if they don't?

There is the possibility of a regulatory and/or a legal, sanction for non-compliance, unless the firm has appropriate alternative procedures in place. Alternative approaches are permitted, so long as they can demonstrate (to their regulator or to a

court) that their procedures offer the same level of compliance with their legal and regulatory obligations as does the guidance.

20. Why is the UK taking the lead in this?

JMLSG believes that the UK is among the furthest advanced countries in thinking through how to apply a risk-based approach to money laundering prevention. This is a notable example of practitioner involvement in regulation. JMLSG therefore believes it is necessary to take a lead, in order to allow other countries to see and understand our approach. It is hoped that the UK can thereby influence international thinking in this important area.

21. Will the rest of the EU follow our lead? If not, won't this cause difficulties for firms operating across borders?

Given the experience that JMLSG believes the UK can share in this area, there is an opportunity to influence the finalisation of the Third Directive. This will enable the other EU Member States to understand the UK approach. The over-arching legislation is the same for all EU member states – that is, the Second and Third Money Laundering Directives. JMLSG's guidance is consistent with the obligations of the Directives, and so there should be little if any adverse impact on firms operating cross border. We hope that other Member States will share our view on the desirability of involving practitioners.

22. Does JMLSG think that the introduction of an ID card is a good idea?

JMLSG has no collective view on the introduction of an ID card, which is outside its remit. That said, a commonly available document of identity would undoubtedly facilitate the application of identity verification requirements, so long as there was sufficient assurance that such documents could not easily be forged or counterfeited.

23. Surely if a compulsory ID card was introduced, it would solve all the problems without the need for hundreds of pages of guidance?

JMLSG has no collective view on the introduction of an ID card. That said, a commonly available document of identity would undoubtedly facilitate the application of identity verification requirements, so long as there was sufficient assurance that such documents could not easily be forged or counterfeited. In any case, the guidance contains much more information than just ID verification.

24. Will there be a charge for access to the web version of the guidance?

Yes, there will be a charge. While the pdf version of the guidance is free, and therefore available to all, the web-based version will provide easier and quicker access, quicker updating of the guidance and easier cross-referencing.

25. What happens if the guidance is not approved by a Treasury Minister?

We will cross that bridge when we come to it. The Treasury has, however, been fully involved during the consultation process.