

Financial Markets Law Committee (“FMLC”)

Asset Management Scoping Forum

Date: Thursday 22 February 2018

Time: 1.30pm to 3.00pm

Location: Travers Smith LLP, 10 Snow Hill, London EC1A 2AL.



In Attendance:

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| Philip Bartram (Chair) | Travers Smith LLP |
| Gregg Beechey | Fried, Frank, Harris, Shriver & Jacobson (London) LLP |
| Iain Cullen | Simmons & Simmons LLP |
| Christopher Dearie | MJ Hudson |
| Martin Ferreiro Subi | BlackRock |
| David Gasperow | Orbis Investments |
| Jonathan Gilmour | Travers Smith LLP |
| Monica Gogna | Dechert LLP |
| Mark Kalderon | Freshfields Bruckhaus Deringer LLP |
| Kirsten Lapham | Ropes & Gray International LLP |
| Owen Lysak | Clifford Chance LLP |
| Michelle Moran | K&L Gates LLP |
| Neil Robson | Katten Muchin Rosenman UK LLP |
| Martin Sandler | PricewaterhouseCoopers LLP |
| Sarah Smith | Akin Gump LLP |
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| Jennifer Enwezor | FMLC |
| Thomas Willett | FMLC |

Guest Speakers:

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| Ida Levine | Capital International Limited |
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Guest Observers:

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| Clarke Camper | Capital International Limited |
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Registered Charity Number: 1164902.

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Regrets:

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| Matthew Baker | Berwin Leighton Paisner LLP |
| Antony Bryceson | AB Trading Advisors |
| Richard Chapman | AB Trading Advisors |
| Henrietta de Salis | Willkie Farr & Gallagher (UK) LLP |
| Julian Eustace | Schroders Investment Management Ltd |
| Jon May | Marshall Wace LLP |
| Shenell Page | CQS (UK) LLP |
| Martin Parkes | BlackRock |
| Bob Penn | Cleary Gottlieb Steen & Hamilton LLP |
| Selina Sagayam | Gibson, Dunn & Crutcher LLP |
| Palvi Shah | J P Morgan Asset Management |

Agenda:

1. Introduction
2. Administration: a short presentation on the FMLC Radar Function – Revisited (Jennifer Enwezor).
3. Remarks on the asset management industry (Michelle Moran).
4. E.U. Regulation: Third Country perspective (Ida Levine).
5. Unresolved issues under MiFID II (Mark Kalderon).
6. Any other business
 - Customer due diligence under Regulation 28(10) of the Money laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (see the Annex for more details)

Annex

Customer due diligence under Regulation 28(10) of the Money laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

Regulation 28(10) of the MLR 2017 provides that "Where a person ("A") purports to act on behalf of the customer, [a regulated firm] must: (a) verify that A is authorised to act on the customer's behalf; (b) identify A; and (c) verify A's identity...".

It is unclear whether this requires a firm to verify the identity of authorised signatories in every case. The Law Society guidance to firms of solicitors in relation to their own CDD seems to view the requirement as applying to agency/intermediary-type scenarios – i.e. where one person is acting through another, separate person – rather than in situations where an individual represents a body corporate or other legal entity.

The JMLSG guidance does not address Reg 28(10) directly, although JMLSG paras 5.6.39/5.6.40 now say – paraphrasing – that where the customer is acting through an agent/intermediary, the firm must verify both, although it might be able to apply SDD in some cases (e.g. where the intermediary is a regulated firm).

The relevant provision in MLD 4 says " When [identifying the customer], obliged entities shall also verify that any person purporting to act on behalf of the customer is so authorised and identify and verify the identity of that person." It may be possible to conclude that when a firm is dealing directly with a corporate customer, no other person/entity is acting on behalf of that corporate customer – its authorised representatives are internal to the customer rather than external. It does not seem attractive to make a distinction whether as a matter of the Companies Act 2006 (for example) an individual is signing "on behalf of" or "by" the company.