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:
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

Jennifer Enwezor FMLC
Thomas Willett FMLC

Guest Speakers:
Ida Levine Capital International Limited

Guest Observers:
Clarke Camper Capital International Limited
Regrets:
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


3. Remarks on the asset management industry (Michelle Moran).


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.