

Financial Markets Law Committee (“FMLC”)

Asset Management Scoping Forum

Date: Thursday 24 May 2018

Time: 1.30pm to 3.00pm

Location: Clifford Chance LLP, 4 Coleman St, London EC2R 5JJ



In Attendance:

Owen Lysak (Chair)	Clifford Chance LLP
Philip Bartram	Travers Smith LLP
Iain Cullen	Simmons & Simmons LLP
Julian Eustace	Schroders Investment Management Ltd
David Gasperow	Orbis Investments
Monica Gogna	Dechert LLP
Mark Kalderon	Freshfields Bruckhaus Deringer LLP
Jon May	Marshall Wace LLP
Michelle Moran	K&L Gates LLP
Neil Robson	Katten Muchin Rosenman UK LLP
Palvi Shah	J.P. Morgan Asset Management
Ezra Zahabi	Akin Gump LLP
Virgilio Diniz	FMLC
Thomas Willett	FMLC
Regrets:	
Matthew Baker	Bryan Cave Leighton Paisner LLP
Atholl Wilton	CQS (U.K.) LLP

Registered Charity Number: 1164902.

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Agenda:

1. Introduction
2. Administration: the FMLC—a charity (Virgilio Diniz)
3. Financial Conduct Authority (“FCA”) Asset Management Market Study recent [policy statement on part of the package remedies](#) (PS18/8), and a [second consultation paper relating to the rest of the package of remedies](#) (CP18/9) (Monica Gogna)
4. Customer due diligence under Regulation 28(10) of the Money laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (Phil Bartram)¹
5. Delegation under MiFID II (Mark Kalderon)
6. European Commission's proposed directive amending the exiting regimes relating to the cross-border marketing of AIFs and UCITS (the “[Amending Directive](#)”) and a new regulation seeking to standardise national requirements relating to the cross-border distribution of funds within the E.U. (the “[Amending Regulation](#)”) (Owen Lysak)
7. Any other business.²

¹ Please see the Annex for further details.

² The next meeting of the Asset Management Scoping Forum will be held on Thursday 6 September between 1.30pm and 3.00pm.

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.