

## **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)<sup>1</sup>
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.<sup>2</sup>

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<sup>1</sup> Please see the Annex for further details.

<sup>2</sup> 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.