

Financial Services Authority

Money Laundering: The FSA's new role

Policy statement on consultation
and decisions on Rules

January 2001



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This Policy Statement reports on the main issues arising from Consultation Paper 46: Money Laundering: the FSA's new role. It also contains the 'final' Money Laundering sourcebook. The sourcebook has been approved by the Board of the FSA and will be legally made when the FSA assumes its rule-making powers. A few minor amendments may then be necessary to take account of changes in other areas such as Handbook definitions.

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1 Executive summary

- 1.1 In April 2000 we set out our proposed approach to the new money laundering powers we will have when the Financial Services & Markets Act 2000 ('the Act') comes into force.
- 1.2 Well over 100 respondents have commented on these proposals. They have supported our aim and many of the particular proposals. They have also raised various concerns and questions, in particular about the way in which the proposals dealt with:
 - the relationship between the Money Laundering Regulations 1993 and what will be our own Money Laundering Rules;
 - methods of establishing identity;
 - the use of what CP46 calls 'know your business information'; and
 - the statutory provision in s.150 of the Act for private persons to be able to sue for losses resulting from Rule breaches.
- 1.3 This paper sets out our decisions to:
 - add to our Rules guidance on the Guidance Notes issued by the Joint Money Laundering Steering Group;
 - omit most of the detail we had proposed on identification methods;
 - change the Rules on the use of 'know your business information';
 - keep the statutory position under s.150; and
 - make various other changes
- 1.4 A complete copy of the amended Money Laundering Rules is attached. The FSA Board expects to have legal power to 'make' these Rules in or about March 2001 and that the government will then bring them into effect together with the other main provisions of the Act.

2 Main features of consultation exercise and FSA decisions on Rules

The new law

- 2.1 The Financial Services & Markets Act 2000 gives us a ‘reduction of financial crime’ objective and explicit powers in relation to money laundering for the first time. These are the power to prosecute for breaches of the Money Laundering Regulations 1993 and the power to make and enforce regulatory Rules on money laundering.

Our proposals in CP46

- 2.2 In April 2000 we published Consultation Paper 46. This described our approach to our new role and included our proposed Money Laundering Rules.
- 2.3 CP46 placed our role in the context of major international efforts against money laundering and of an existing criminal law regime for UK financial institutions, especially the Money Laundering Regulations 1993.
- 2.4 CP46 said that we would best add value through a regulatory focus on systems and controls: the proposed Rules should be ‘parallel to, but separate from’ the 1993 Regulations. However, there would be some new Rules proposed for the role of the Money Laundering Reporting Officer (‘MLRO’), for the use of ‘Know Your Business information’ and of ‘national and international findings’. In CP46 we also explained that we were minded to leave in place, in relation to our Money Laundering Rules, the right under s.150 of the Act for private persons to sue for losses resulting from a breach of our Rules.

Responses to CP46

- 2.5 We have received over 130 written responses to CP46. Respondents have also raised queries and made comments in other ways, in particular at a one-day ‘workshop’ conference. Most responses were from regulated firms and their trade associations.

- 2.6 There was widespread support for the ultimate objective of the reduction of financial crime. Industry respondents considered it important that their customers should be aware of the value of the anti-money laundering regime, especially the need for identification requirements, in pursuing this objective.
- 2.7 There was also significant support for our fundamental aim of seeking to use our new powers in such way as will best complement and add value to the ongoing regime of the criminal law and the 1993 Regulations.
- 2.8 But there were concerns that, in some ways, the Rules proposed in CP46 would not achieve that aim, in particular:
- the two regimes of the 1993 Regulations, the FSA Rules and the relationship between them;
 - detailed methods for identifying customers;
 - the Rules proposed for use of P‘know your business information’; and
 - the proposal to leave in place the s.150 right for private persons to sue for losses resulting from Rule breaches.

There were also comments and queries on other matters.

Our decisions

- 2.9 We have considered these responses and other developments relevant to our role against money laundering which have been taking place since the publication of CP46. These include:
- the start of work on our own Money Laundering Theme Project announced in the New Regulator for the New Millennium published in January 2000;
 - the publication by the multi-national Financial Action Task Force (and subsequent endorsement by HMG) of findings in relation to certain territories and jurisdictions;
 - the announcement of further UK government policy on money laundering in the Report from the Performance and Innovation Unit ‘Recovering the Proceeds of Crime’;
 - further steps towards a Second European Directive on Money Laundering; and
 - the announcement by certain major international banking groups, in co-operation with Transparency International, of guidelines (‘the Wolfsberg Principles’). These will be applied on a global basis to private banking relationships and will call for ‘heightened scrutiny’ in dealing with public officials and politically exposed persons.

2.10 Our decisions in the light of all the above are:

- to proceed generally with the approach set out in CP46
- to change certain proposed Rules and Guidance to address as far as possible concerns about the two regimes and the Rules for customer identification: –
 - by withdrawing most of the detail set out in CP46 about methods of customer-identification
 - by introducing explicit reference to the Guidance Notes issued by the Joint Money Laundering Steering Group
- to change (and make less burdensome) the use of ‘know your business information’
- to leave (as proposed in CP46) s.150 applicable to our Money Laundering Rules
- to make other changes (including clarifications about the territorial application of the Rules and about the ability of the Money Laundering Reporting Officer to delegate tasks).

2.11 Some of the changes from the proposals that were put forward in CP46 are not significant. The other changes, even though significant, will give rise to no significant costs compared with the position if those particular Rules were not made. We have therefore not revised the cost-benefit analysis that we published in CP46.

Amended Rules and commencement

2.12 The remainder of this Policy Statement deals in more detail with the CP46 proposals, responses and our decisions. Annex A is a copy of the amended Rules.

2.13 The provisions of the Act have not been brought into effect yet and bringing the Money Laundering Rules into force will be a two-stage process. The first stage depends upon secondary legislation under the Act to give us the power to ‘make’ these Rules. We will then have to make formal use of that power: we expect this to happen in a matter of months from now, probably in March. (There may be incidental improvements to be made at that stage, to achieve final consistency, for example of definitions, across the whole FSA Handbook and with any other legislative developments). The second stage will be for the Rules themselves to be brought into force: we expect this to happen at the same time as the main provisions of the Act are commenced, i.e. at the date commonly called ‘N2’.

3 Proposals, responses and decisions in more detail

Application and purpose

Relationship with the criminal law regime under the Money Laundering Regulations 1993

- 3.1 In CP46 we described our ‘parallel, but separate’ approach to the relationship between the Money Laundering Regulations 1993 and our Money Laundering Rules. We recognised, and wished to see continue, the important role played by the Guidance Notes issued by the Joint Money Laundering Steering Group. The status of these in relation to the 1993 Regulations would be damaged if we were to make our Rules serve both as Rules under the Act and as guidance on the 1993 Regulations. So, the Rules proposed in CP46 contained an explicit statement (at 1.2.4.G) that our Sourcebook was ‘not relevant regulatory or supervisory guidance for the purposes of regulation 5(3) of the Money Laundering Regulations 1993’.
- 3.2 Many respondents were concerned that this did not give enough certainty about compliance: they said that they considered there remained risks of us possibly taking regulatory proceedings for non-compliance with the Rules, even if the firm was in compliance with the requirements on the same topic of the Regulations and JMLSG Guidance Notes. These concerns were made particularly strongly in relation to the methods to be used to establish customer or client identification – considerable detail about which is set out in the JMLSG Guidance Notes and detail about which, though less extensive, was in the CP46 proposed Rules package.
- 3.3 We have carefully considered these concerns and we still believe that we are right to aim for a ‘parallel, but separate’ relationship between the (criminal law) 1993 Regulations and our own (regulatory) Rules. However, we believe we can, and should, make some significant changes to alleviate the concerns. We can do this by introducing an explicit reference to the JMLSG Guidance Notes, and removing a large part of what CP46 had proposed on methods to establish identity from our own Rules.

Differences in application between the scope of the 1993 Regulations and the potential scope of our Rules

- 3.4 In CP46 we explained that the 1993 Regulations and the Act have slightly different scopes on activities to which they apply. For example, the carrying on of general insurance business comes under the Act, but not under the 1993 Regulations; the reverse is true of bureaux de change. In CP46 we also explained that although we cannot extend our Rules to cover bureaux, we have a discretion so that we can tailor the use of the Rules, not applying them to activities outside the 1993 Regulations, such as general insurance – and that was what was proposed. We asked a specific question in CP46 about respondents' views on this.
- 3.5 Some respondents disagreed with the CP46 approach: they wanted our regime to be applied to bureaux and money transmission activities and they did not want any cut-back in the scope of the Rules. They also considered that there was value in the simplicity of a wholly uniform approach across all FSA-regulated business and that the importance of the fight against money laundering should influence us against any disapplication. Other respondents, in a majority, agreed with the approach set out in CP46.
- 3.6 We have no power to apply our Rules to businesses to which the Act does not apply. We consider that we should make no change in principle to our CP46 approach for regulated businesses, in particular the disapplication in relation to general insurance. There have been some other changes to take account of some specific comments.

Territorial application

- 3.7 Responses to CP46 expressed concern that either we were unclear on our intent about the territorial scope of our Money Laundering Rules or we were seeking to apply them on a worldwide basis which would be far too burdensome.
- 3.8 The Rules, now changed, make clear that the strict application of the Rules is limited to the United Kingdom (Rule 1.1.5R). However, a firm we authorise may be able to exercise control over business carried on outside the United Kingdom (whether in a branch or in a subsidiary or fellow-subsubsidiary company). In such cases we will still look into the way in which such control is exercised in the prevention and detection of money laundering in the non-UK business. This is because of any reputational, managerial, financial or other exposure which can be relevant to our functions in the UK and regulated business.

Identification of the client

'Know Your Customer' requirements in other FSA Rules

- 3.9 In CP46 we pointed out that we might be able to link the requirement to identify clients for money laundering purposes to, or merge it with, the requirement to 'Know Your Customer' which is set out elsewhere in our Handbook (in particular in relation to the provision of investment advisory and management services). However, given the differences in purpose and in procedures, we were minded not to create links or rationalise this area, and asked respondents to CP46 whether they agreed with that.
- 3.10 A significant majority of respondents did agree with CP46 on this. Those that did not had different reasons for their disagreement, mainly the perceived simplicity of having a single 'Know Your Customer' ('KYC') Rule for the several purposes in question.
- 3.11 We consider that the purposes are distinct (and note that there are major sectors of regulated activity where the non-money laundering 'Know Your Customer' Rule does not apply). So, the Rules now attached follow CP46 in this matter – and now use the term 'client' rather than 'customer' which helps mark the distinction of the two different 'KYC' Rules.

Identification methods

- 3.12 The framework of the proposed Identification Rule in CP46 was (i) to require identification; (ii) except in defined circumstances; and (iii) to set detailed identification methods for use in certain circumstances.
- 3.13 Almost all respondents agreed with the basic requirement for identification (with a few responses sceptical about the ability of any identity checks to stop or detect a well-organised criminal using forged or fake documents). But a large number of respondents were concerned with the CP46 proposals about detailed identification methods. Some concerns were that the proposals were too rigid and prescriptive, whereas others were that the procedures proposed in relation to the financially excluded were too permissive and would be abused. But the over-riding message of the concerns was that, by including in our Rules the proposed amount and nature of the detail about identification methods, we were creating confusion and risk as to the respective roles of our Rules and of the JMLSG Guidance Notes – which was contrary to a stated aim of CP46.
- 3.14 We have considered these responses with care and have decided to keep the basic framework of a Rule to identify, with stated exceptions, and with identification methods as an adjunct to the Rule. However, we believe that we can, and should, introduce our new Rules without the detail on identification methods proposed in CP46 (except for the continuing need to give guidance to avoid any inappropriately rigid application of the main Rule for the

financially excluded). A key factor in our willingness to do this is the existence of the Joint Money Laundering Steering Group and its up-dates to the Guidance Notes; these contain considerable detail about identification methods covering a variety of circumstances. We believe that this revised approach will be both the best solution to concerns about the architecture of the Rules/Regulations relationship and will allow, so far as is possible within the law, flexibility in particular specialist businesses or circumstances. The basic Rule, like the 1993 Regulations, will still state that all firms must ascertain client identity (other than in stated exceptions) but the revised proposal will avoid the implication that one method or set of methods is the only appropriate one in all cases. To take some particular cases raised in consultation responses, the new approach will allow ‘service companies’ to continue present best practice, as can name-passing brokers active in the inter-professional markets. It also will allow mortgage providers who carry out business through intermediaries, not themselves FSA regulated or subject to the Regulations, to use these intermediaries to collect identification information and evidence (as long as the provider has always taken proper responsibility to supervise the arrangement and to bring it within the scope of the arrangements applicable to its own MLRO).

When identification is not provided

- 3.15 CP46 proposed a Rule that states that business must be terminated if a firm has commenced business and the client then fails to produce identification evidence. Some respondents were concerned that the Rule as worded would not allow for the legal complications which can arise particularly where a firm has made a report to the National Criminal Intelligence Service (NCIS). We wish to avoid our Rule possibly adding to such complications without compensating benefit and have now amended the Rule.

Proper use of existing business information and Reporting

- 3.16 CP46 proposed a Rule to ensure that firms made effective use of ‘know your business information,’ i.e. information about the financial circumstances or transactions of a customer or a person on whose behalf a firm is acting. Such information was to be available to those staff who dealt with the customer or their managers. The CP asked respondents whether they agreed with this approach.
- 3.17 Respondents raised a number of concerns although often supporting the aim of this proposal (to improve the effectiveness of detecting and reporting suspicions). The main concern was about high compliance costs, with little demonstrable benefit other than for anti-money laundering purposes. There was also concern that it would be difficult to keep client confidentiality and that there was the potential for conflict between these proposals and other requirements on firms. This included such matters as the need to have

‘Chinese Walls’ preventing information being passed improperly from one business sector to another in a firm.

- 3.18 We accept that the proposals in CP46 should not be implemented in that form or at the present time. We now believe that our underlying aim will at present be best met by including a more limited requirement in the Rule about Reporting. This means that the MLRO must now have the ability to obtain any information that he judges relevant to considering an internal report on suspicion of or actual money laundering. So, the MLRO will have a full picture available when deciding whether to make an external report to the NCIS.

Using national and international findings on material deficiencies

- 3.19 CP46 proposed a Rule stating that a firm must make proper use of findings by the UK government or other appropriate international bodies, of anti-money laundering deficiencies in any particular state or jurisdiction. Respondents were asked to comment on this proposal.
- 3.20 Responses were substantially in favour of this proposal – with some requests for re-assurance that we will keep our part of the proposed arrangements, namely publication of a list of such findings. Some respondents also asked for more guidance about what ‘proper use’ should amount to, including in relation to existing customers.
- 3.21 In the light of these responses we are proceeding with this Rule as proposed. We plan to publish the relevant list – and to do so mainly or wholly through our website. We consider that CP46 already gave as much explanation of ‘proper use’ as can be given at present (and note that this includes uses which apply to existing as well as to new customers). Some key considerations about ‘proper use’ are always likely to be particular to individual circumstances; but, while working on our current Money Laundering Theme Project, we will bear in mind the need to develop further guidance or other expression of best practice in this area.

Awareness of, and training for, staff

- 3.22 CP46 set out what we expected relevant firms to do in relation to awareness of, and training for, staff. It made clear that staff who handle, or are managerially responsible for the handling of, transactions which may involve money laundering must be aware of their responsibilities. They must also be aware of the identity of the MLRO, the law relating to money laundering and the effect of any breaches of that law and that all relevant staff must have appropriate training at least every 2 years.

- 3.23 Respondents were generally supportive of these proposals, with some queries on the need for relevant staff to have training every 2 years. Some respondents argued that this was too prescriptive and it would be better to relate frequency of training to perceived risk from money laundering, whilst an almost equal number were arguing that we were being too flexible. There was also some concern that raising awareness of money laundering might have a negative effect in the fight against crime – in effect by educating criminals how to avoid the controls against them.
- 3.24 Having considered these responses, we are satisfied that our proposals in CP46 were appropriate.

Money Laundering Reporting Officer and other arrangements

- 3.25 The proposed Money Laundering Sourcebook, as drafted in CP46, dealt with the role of the Money Laundering Reporting Officer within Chapter 2 and Chapter 8. Chapter 2 stated that a relevant firm must appoint an MLRO and appoint another, if the position falls vacant. Chapter 8, in its first two sections, stated that the MLRO must be an Approved Person with enough seniority and resources and be based in the United Kingdom. It went on to make clear that the MLRO was to be responsible for:
- receiving internal reports;
 - making external reports to NCIS;
 - obtaining and using international findings;
 - ensuring the adequacy of arrangements made for awareness and training; and
 - making an annual report to their firm’s managers (who must consider it and take any appropriate action).
- 3.26 These proposals were broadly supported by respondents. The enhanced role of the MLRO was particularly welcomed. Two main concerns however arose from these chapters, firstly that as drafted in CP46 the Rules would not allow an MLRO to delegate any of his functions. This would have the unfortunate effect of ensuring that an MLRO in a large organisation would have sole responsibility for considering and dealing with all internal reports of suspicious transactions, which in certain cases might amount to an un-manageable number. Secondly, there was concern that for those institutions that had a group structure the CP46 proposals would mean the appointment of many MLRO’s where in the past there had been one ‘group MLRO’ ensuring consistency and common standards across the group.

- 3.27 Issues were also raised that the MLRO might be too senior to deal with the day-to-day reporting responsibilities set out in the Rules, and that in any event it was unclear exactly what level of seniority the MLRO should be. Some respondents were also unclear as to whether the MLRO would be held personally responsible if he had done everything under his control to prevent money laundering, but nevertheless it became clear that money laundering had taken place.
- 3.28 We have made a number of amendments. For the sake of clarity, much of what had been in Chapter 2 is now in Chapter 7 (formerly Chapter 8) and a number of changes have been made to reflect the concerns raised by respondents. Chapter 7 now makes clear that a relevant firm ‘may wish to permit the MLRO to delegate such [anti-money laundering] duties within the relevant firm. Where anti-money laundering tasks are delegated by a relevant firm’s MLRO, the FSA will expect the MLRO to take ultimate managerial responsibility for ensuring that the duties imposed on the MLRO by this sourcebook are complied with’. To satisfy the concerns about group arrangements the Chapter makes clear that the MLRO may be appointed for the whole group or firm. Additionally, the Rules make clear that though the MLRO must be employed by a firm in the group, he does not have to be employed by the firm of which he is the MLRO (see 7.1.6R).
- 3.29 We were not persuaded that the issue of seniority would benefit from more detailed explanation: firms should themselves have some freedom to decide the exact level of seniority appropriate for their MLRO, providing that it is a senior person.
- 3.30 The concerns about the extent of the MLRO’s liability are essentially a matter for the Approved Persons regime (on which we have consulted separately). However, in the context of the Money Laundering Rules, we draw attention to the emphasis on systems and controls. This emphasis is matched by our other statements on our risk-based approach to regulation and about the fact that there can be no absolute guarantees that there will never be a problem. If the MLRO can prove compliance with the Rules, this should be a strong argument against criticism for some single instance of money laundering escaping the protections against money laundering which the Rules require.

Sole traders and professional firms

- 3.31 There were no comments on the details of these Rules, so there are no substantive changes. The opportunity has been taken to make some minor changes to ensure clarity.

Public awareness

- 3.32 In CP46 we referred to the regulatory objective of public awareness set out for us in the Act. We explained its possible relevance to money laundering and asked for respondents' views.
- 3.33 Industry respondents felt strongly that it was important to raise public awareness, particularly on the customer identification requirements. On the other hand our Consumer Panel urged that there are other, higher priorities for raising public awareness (particularly on making investment decisions). We will consider further whether there is a real conflict between these two positions, and will discuss the matter further with the Panel and with industry representatives.

Statutory right of action

- 3.34 In CP46 we said that we were minded not to use a discretion available to us under the Act, namely to disapply from the Money Laundering Rules the statutory right for private persons to sue for losses resulting from a breach by a firm of these Rules.
- 3.35 Most industry respondents disagreed with this approach. Their concerns related mainly to arguments about litigation against those with a 'deep pocket' regardless of merit. They also mentioned the perceived unfairness or exposure to claims from persons who would not themselves have been, or not necessarily have been, clients or customers of the firm against whom the claim was made. A smaller number of respondents agreed with the approach set out in CP46 – for reasons which included the belief that this approach would be a powerful incentive for firms to ensure that they comply with the Rules.
- 3.36 In the light of these responses, we have re-considered with care the issues attaching to this topic. We recognise the concerns expressed, but continue to attach a greater weight to what we consider the proper influence on this issue of the regulatory objectives and the incentive to compliance which accompany s.150. So we are proceeding as explained in CP46 and the Rules now attached do not disapply s.150 of the Act.

Revised text of Money Laundering Rules as amended



Chapter 1.

Money Laundering - Application and Purpose



1.1 Application

- 1.1.1** **R**_{1/1} (1) This sourcebook applies to every *relevant firm* (see ML 1.1.2R) with respect to its *relevant regulated activities* (see ML 1.1.4R), but there are special provisions in ML 8.1R and ML 8.2R for *sole traders* with no *employees* and members of a profession which is supervised and regulated by a designated *professional body* .
- (2) In the application of this sourcebook to a *relevant firm* , some provisions also relate to its *MLRO* in his capacity as an *approved person* (see ML 7.1).

Who?

- 1.1.2** **R**_{1/1} (1) In this sourcebook, ” *relevant firm* ” means every *firm* , except:
- (a) a *firm* whose only *regulated activities* are those specified in ML 1.1.4R;
 - (b) a *UCITS qualifier*
- (2) An *incoming firm* is a *relevant firm* but only to the extent that it is conducting activities from an establishment in the *United Kingdom* .

- 1.1.3** **G**_{1/1} The scope of this sourcebook is very wide. It includes all *firms* except those within the limited exception for *firms* concerned only with certain insurance activities and *UCITS qualifiers* (see ML 1.1.2R). In this respect, the chapter follows article 1 of the *Money Laundering Directive* (No. 91/308/EEC). The scope extends to *incoming firms* (such as branches of institutions established elsewhere in the *EEA*), except those operating on a services basis only. This is because the Directive is designed to apply on a ” *Host State* ” basis.

What?

- 1.1.4** **R**_{1/1} In this sourcebook, ” *relevant regulated activities* ” means any *regulated activities* apart from:
- (1) *general insurance business* ;
 - (2) *long-term insurance business* which is outside *the first life directive* (and is not otherwise a *relevant regulated activity*);
 - (3) business relating to contracts which are within the *Regulated Activities Order* only because they fall within paragraph (e) of the definition of ” *contract of insurance* ” in article 3 of that *Order* (see Glossary); and

-
- (4) (a) arranging, by the Society incorporated by the Lloyd's Act 1871 by the name of Lloyd's, of deals in contracts of general insurance written at Lloyd's; or
- (b) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyds.

Where?

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This sourcebook applies only in relation to activities carried on from an establishment in the *United Kingdom* .



1.2 Purpose

- 1.2.1**  1/1 The purpose of this sourcebook is to require *relevant firms* to have effective anti-*money laundering* systems and controls, in order to reduce the opportunities for *money laundering* in relation to *relevant firms* . It is also to require *relevant firms* to ensure that *approved persons* exercise appropriate responsibilities in relation to these anti- *money laundering* systems and controls .
- 1.2.2**  1/1 Section 2 of the *Act* sets out the *regulatory objectives* of promoting market confidence and public awareness, protecting *consumers* and reducing *financial crime* . The reduction of *financial crime* objective is the most important to this sourcebook. One aspect of the reduction of *financial crime* objective is the risk of the businesses of *relevant firms* being used in connection with offences which involve handling the proceeds of crime. It follows that an effective and proportionate regulatory regime is important in reducing the extent to which it is possible for the businesses carried on by *relevant firms* to be used for *money laundering* . These *rules* and compliance with them will also help *the FSA* to meet the objective of maintaining market confidence, by reducing the risks posed to the financial community by *money laundering* . As to the public awareness objective, this sourcebook is designed to assist *relevant firms* and, through them, the public at large, to be better informed about the safeguards for the *financial system* provided by effective anti- *money laundering* systems and controls. *Consumers* are better protected if *relevant firms* are able to protect themselves against criminal activity and to record the steps they have taken for that purpose.
- 1.2.3**  1/1 This sourcebook provides support, in relation to *money laundering* , for certain other parts of the Handbook, mainly:
- (1) the *Principles* , especially *Principle 3*;
 - (2) the *Principles* and *Code of Practice for Approved Persons* (APER), in particular Statements of *Principle 2* and *7*;
 - (3) Senior management arrangements, systems and controls (SYSC), in particular SYSC3; and
 - (4) the Training and Competence sourcebook.
- 1.2.4**  1/1 This sourcebook relates to regulatory requirements, as opposed to requirements imposed by the criminal law. It is therefore not relevant regulatory or supervisory *guidance* for the purposes of regulation 5(3) of the *Money Laundering Regulations 1993*.



Chapter 2.

General money laundering duties





2.1 Duty to have arrangements and to appoint a Money Laundering Reporting Officer

- 2.1.1** **R**_{1/1} A *relevant firm* must set up and operate arrangements, including the appointment of a *Money Laundering Reporting Officer (MLRO)* in accordance with the duty in ML 7, which are designed to ensure that it, and any *appointed persons* that act on its behalf, are able to comply, and do comply, with the requirements set out in the remainder of this sourcebook.
- 2.1.2** **G**_{1/1} The duties of the *MLRO* are set out in full in ML 7. The *MLRO* is responsible for the oversight of the *relevant firm's* anti- *money laundering* activities and is the key *person* in the *relevant firm's* implementation of anti- *money laundering* strategies and *policies* .
- 2.1.3** **G**_{1/1} Where a *relevant firm* permits or requires an *appointed representative* to carry on particular *relevant regulated activities* on its behalf, the *relevant firm's* duty to comply with this sourcebook and the *MLRO* 's duties set out in ML7 also apply to the Activities of those *appointed representatives* .



Chapter 3.

Identification of the client



3.1 The duty

3.1.1

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The purpose of this chapter is to ensure that *relevant firms* carry out the identification of *clients*. The chapter also makes clear that *relevant firms* must not, in general, carry out *relevant regulated activities*, or agree to do so, for a *client* or potential *client* unless the *relevant firm* has taken reasonable steps to check that *client's* identity. In this sourcebook " *client* " is defined differently from elsewhere in the handbook and *relevant firms* should take care to ensure that they use the correct definition. There are special provisions in this chapter for cases where the *person* with whom the *relevant firm* has contact is acting for another. Broadly, the *relevant firm* has to enquire into the identity of both *persons*, unless a relevant exemption enables it to focus solely on the *person* it is actually in contact with.

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" *Transaction* " in this sourcebook, includes the giving of advice, and thus has a wide meaning throughout this sourcebook. Certain sorts of *transaction* are exempted from these requirements. These include cases where the *transaction* is of relatively small value or the *person* has been vouched for by another *person* who can be relied on to have carried out these checks himself. But the various exemptions from the requirement are all subject to the overriding condition that there is nothing in place to put the *relevant firm* on enquiry ("knowledge or suspicion") in the *money laundering* context.

3.1.3

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- (1) A *relevant firm* must take reasonable steps to find out who its *client* is by obtaining sufficient evidence of the identity of any *client* who comes into contact with the *relevant firm* to be able to show that the *client* is who he claims to be.
- (2) Where the *client* with whom a *relevant firm* has contact is, or appears to be, acting on behalf of another, the obligation in (1) is to obtain sufficient evidence of both their identities.
- (3) This *rule* is subject to the exceptions in ML 3.2.

3.1.4

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In assessing a *relevant firm's* compliance with its duty to identify a *client* in accordance with ML 3.1.3 R, the *FSA* will have regard to the *relevant firm's* compliance with the Joint Money Laundering Steering Group's Guidance Notes for the Financial Sector and with the *guidance* on financial exclusion in ML 3.1.5G.

Financial exclusion

3.1.5

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The *guidance* in ML 3.1.5G to ML 3.1.7G aims to help *relevant firms* ensure that where people cannot reasonably be expected to produce detailed evidence of identity, they are not denied access to financial services. Although a *relevant firm* must always take reasonable steps to check who its *client* is, *relevant firms* will sometimes be approached by *clients* who are at a disadvantage, or who otherwise cannot reasonably be expected to produce detailed evidence that helps to confirm identity. An example could be where a *person* does not have a passport or driving licence, and whose name does not appear on utility bills.

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- 3.1.6** **G**_{1/1} Where a *relevant firm* has reasonable grounds to conclude that an individual *client* is not able to produce the detailed evidence of his identity and cannot reasonably be expected to do so, the *relevant firm* may accept as identification evidence a letter, or statement from a *person* in a position of responsibility who knows the *client*, that tends to show that the *client* is who he says he is, and to confirm his permanent address if he has one.
- 3.1.7** **G**_{1/1} Examples of *persons* in a position of responsibility include solicitors, doctors, ministers of religion, teachers, hostel managers and social workers.
- 3.1.8** **R**_{1/1} (1) A *relevant firm* must comply with the obligation in ML 3.1.3R(1) as soon as reasonably practicable after it has contact with a *client* with a view to:
- (a) agreeing with the *client* to carry out an initial *transaction* ; or
 - (b) reaching an understanding (whether binding or not) with the *client* that it may carry out future transactions.
- (2) If the *client* does not supply evidence of identity within the time scale in (1), the *relevant firm* must:
- (a) discontinue any *regulated activity* it is conducting for him; and
 - (b) bring to an end any understanding it has reached with him;
- unless in either case the *relevant firm* has informed the *National Criminal Intelligence Service* (*NCIS*).
- 3.1.9** **R**_{1/1} Nothing in ML 3.1.8(2) requires a *relevant firm* to continue with a *transaction* which conflicts with its obligations, if any, in relation to rights of a third party.

3.2 The exceptions

3.2.1

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- (1) This section sets out circumstances in which:
 - (a) the obligation in ML 3.1.3R(1) need not be complied with; or
 - (b) the *relevant firm* is entitled to regard the evidence it has as sufficient evidence;but none of the *rules* in this section applies if the *relevant firm* knows or suspects, in accordance with (2), that the *client* or the *person* on whose behalf he is or appears to be acting is engaged in *money laundering* .
- (2) The *relevant firm* is taken to have the knowledge or suspicion referred to in (1) if any member of the staff handling the *transaction* or potential *transaction* or managerially responsible for it has the knowledge or suspicion.

3.2.2

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- The obligation in ML 3.1.3R(1) does not apply if:
- (1) the *client* is also a *credit institution* or financial institution covered by the *Money Laundering Directive* ;
 - (2) the *transaction* is:
 - (a) a one-off *transaction* with a value of less than euro 15,000; or
 - (b) is one of a number of *transactions* which are related and, when taken together, have a value of less than euro 15,000;
 - (3) with a view to carrying out a one-off *transaction* , the *client* is introduced to the *relevant firm* by a *person* who has given the *relevant firm* a written assurance that in all such cases he obtains and records identification evidence, and:
 - (a) the *person* who has given the written assurance is covered in the manner described in (1); or
 - (b) the *person* is subject to regulatory oversight exercised by a relevant *overseas regulatory authority* (see ML 3.2.7R), and to legislation at least equivalent to that required by the *Money Laundering Directive* ;
 - (4) the proceeds of a one-off transaction;
 - (a) are to be payable to the *client* but are then to be invested on his behalf;
 - (b) are to be the subject of a record; and

- (c) can thereafter only be reinvested on his behalf or paid directly to him;
- (5) when the *transaction* concerns a *long-term insurance contract* :
 - (a) taken out in connection with a *pension scheme* relating to the *client's* employment or occupation, if the *policy* contains no surrender clause and cannot be used as *security* for a loan; or
 - (b) where the *premium* is a single payment of no more than euro 2,500; or
 - (c) where the *premium* payments do not exceed euro 1,000 in any *calendar year* .

3.2.3

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A *relevant firm* is expected to take reasonable steps to determine whether or not the *client* falls within the exemptions in ML 3.2.2R(1) and ML 3.2.2R (3)(b).

3.2.4

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A *relevant firm* may regard evidence as sufficient evidence for the purposes of ML 3.1.3R if it establishes that:

- (1) the relevant payment for the *transaction* was made or is to be made from the *client's* account held at an institution which is:
 - (a) a *relevant firm* with *permission* to take *deposits* ; or
 - (b) an *incoming relevant firm* which is a *credit institution* ; or
 - (c) a *credit institution* ;
- (2) the payment has been or will be sent or confirmed by post or electronically;
- (3) it was or is reasonable for the payment to be sent or confirmed in that way; and
- (4) the payment is not made to open an account from which onward payment may be made to someone other than the *client* .

3.2.5

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A *relevant firm* may regard evidence as sufficient for the purposes of ML 3.1.3R if it establishes that the *client* :

- (1) is bound by this sourcebook or by the *Money Laundering Regulations 1993* or is otherwise covered by the *Money Laundering Directive* ; or
- (2) is acting on behalf of another person and has given a written assurance that he has obtained and recorded evidence of the identity of the person on whose behalf he is acting and is subject to regulatory oversight exercised by a relevant *overseas regulatory authority* (see ML 3.2.7R), and to legislation at least equivalent to that required by that Directive.

3.2.6

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A *relevant firm* is expected to take reasonable steps to determine whether or not the *client* falls within the exemption in ML 3.2.5(2).

3.2.7

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1/1

An *overseas regulatory authority* is relevant for the purposes of ML 3.2.2R(3)(b) and ML 3.2.5R(2) if it falls within section 82 of the *Companies Act 1989* (Request for *assistance* by *overseas regulatory authority*), in so far as it exercises the kind of *regulatory functions* described in that section.



Chapter 4.

Reporting





4.1 Internal reporting

4.1.1

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This section deals with the reporting to the *firm's MLRO* of knowledge or suspicions within the *relevant firm* about *money laundering* .

4.1.2

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- (1) A *relevant firm* must take reasonable steps to ensure that any member of staff who handles, or is managerially responsible for handling, *transactions* which may involve *money laundering* makes a report promptly to the *MLRO* if he knows or suspects that a client, or the *person* on whose behalf the *client* is acting, is engaged in *money laundering* .
- (2) The steps to be taken under (1) include arrangements for disciplining any member of staff who fails, without reasonable excuse, to make a report of the kind envisaged in this section.

4.1.3

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A *relevant firm* may wish to set up internal systems that allow its staff to consult with their line manager before sending a report to the *MLRO* . Where a *relevant firm* sets up such systems it should ensure that they are not used to prevent reports reaching the *MLRO* whenever staff have stated that they have knowledge or suspicion that a *transaction* may involve *money laundering* .



4.2 MLRO access to know your business information

4.2.1

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- (1) A *relevant firm* must take reasonable steps to give its *MLRO* , or any *person* to whom the *MLRO*'s duties have been delegated, access to any *know your business information* it has.
- (2) *Know your business information* in (1) is information about:
 - (a) the financial circumstances of a *client* or any *person* on whose behalf the *client* has been acting or is acting; and
 - (b) the features of the *transactions* which the *relevant firm* has entered into with or for the *client* (or that *person*).

4.2.2

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In order to do his job properly, the *MLRO* has to decide whether to make a report to *NCIS* . In most cases before taking the decision to make a report, the *MLRO* is likely to need access to a *relevant firm's know your business information* . This is information in the *relevant firm's* possession about the financial circumstances of a *client* , or the *person* on whose behalf he is acting, and about any significant features of the *transactions* in which either of them has been involved.

4.2.3

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A *relevant firm* is not required to increase the amount of information it gathers and keeps about its *clients* in the normal course of its business. Rather, a *relevant firm* should use its existing *client* information effectively by making such information readily available to its *MLRO* .

4.3 External reporting

- 4.3.1** **G**
1/1 The purpose of this section is to ensure that reports made to the *MLRO* are considered and that, where appropriate, a report is made available to *NCIS* . The duty to make external reports is one of the functions that some *groups* or larger *relevant firms* may decide can be delegated by their *MLRO* to suitably qualified staff, as described in ML 7.1.3G.
- 4.3.2** **R**
1/1 A *relevant firm* must take reasonable steps to ensure that any report required by ML 4.1 is considered by the *MLRO* , or his duly authorised delegate, and that if, having considered the report and any relevant *know your business information* to which he has sought access, the *MLRO* , or his duly authorised delegate, suspects that a *person* has been engaged in *money laundering* , he reports promptly to *NCIS* .
- 4.3.3** **E**
1/1 (1) To take reasonable steps as required by ML 4.3.2R the *relevant firm* should:
- (a) require the *MLRO* to consider a report under ML 4.1 in the light of all relevant information accessible to or reasonably obtainable by the *MLRO* ;
 - (b) permit the *MLRO* to have access to any information, including *know your business information* , in the *relevant firm's* possession which could be relevant; and
 - (c) ensure that where the *MLRO* , or his duly authorised delegate, suspects that a *person* has been engaged in *money laundering* he makes a report which is not subject to the consent or approval of any other *person* .
- (2) Contravention of (1) may be relied on as tending to establish contravention of ML 4.3.2R.
- (3) Compliance with (1) may be relied on as tending to establish compliance with ML 4.3.2R.
- 4.3.4** **R**
1/1 A *sole trader* with no *employees* apart from himself who knows or suspects that a *client* of his, or the *person* on whose behalf the *client* is acting, is or has been engaged in *money laundering* must make a report promptly to *NCIS* .



Chapter 5.

Using national and international findings on material deficiencies



5.1 Government and Financial Action Task Force findings

5.1.1

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The purpose of this chapter is to enable government and *Financial Action Task Force* findings of inadequacy, concerning the approach to *money laundering* of individual countries or jurisdictions, to be brought to bear on *relevant firms'* decisions and arrangements.

5.1.2

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(1) A *relevant firm* must take reasonable steps whenever this *rule* applies to ensure that it:

- (a) obtains; and
- (b) makes proper use of

any government or *Financial Action Task Force* findings of the kind referred to in ML 5.1.3R.

(2) "Proper use" in (1) includes:

- (a) applying the information in the circumstances envisaged by ML 3.2.2R(3)(b) (introduction of *client* for isolated *transaction*) or ML 3.2.5R(2) (introduction by *client* of a *person* on whose behalf he is acting);
- (b) applying the information whenever first obtained to *know your business information*;
- (c) disseminating the information in the course of dealing with awareness and training under ML 6.

5.1.3

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The findings in ML 5.1.2R(1) are any published notices:

(1) which are issued:

- (a) by the government of the *United Kingdom* , or any government department in the *United Kingdom* ; or
- (b) by *Financial Action Task Force* ; and

(2) which contain a finding or other conclusion on the part of the government or a government department or *Financial Action Task Force* :

- (a) that it has examined the arrangements for restraining *money laundering* in a particular State or jurisdiction other than the *United Kingdom* ; and
- (b) that it has found those arrangements to be materially deficient in comparison with one or more of the relevant, internationally

accepted, standards, including any recommendations published by the *Financial Action Task Force* , required of or recommended to States and jurisdictions.

5.1.4

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In order to assist *relevant firms* the FSA will, from time to time, publish any government or *Financial Action Task Force* findings, of the kind referred to in ML5.1.3 R, on the FSA website. All *relevant firms* should check this information regularly to ensure that they keep up to date with current findings.



Chapter 6.

Awareness of and training for staff





6.1 Purpose

6.1.1

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The purpose of this section is to ensure that staff in *relevant firms* are:

- (1) made aware of; and
- (2) given regular training about;

what is expected of them in relation to prevention of *money laundering* , and what the consequences are for the *relevant firm* and for them if they fall short of that expectation.

6.2 Awareness

6.2.1

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A *relevant firm* must take reasonable steps to ensure that staff who handle, or are managerially responsible for the handling of, *transactions* which may involve *money laundering* are aware of:

- (1) their responsibilities under the *relevant firm's* arrangements made under this sourcebook, including those for obtaining sufficient evidence of identity, recognising and reporting knowledge or suspicion of *money laundering* and use of findings of material deficiencies;
- (2) the identity and responsibilities of the *MLRO* ;
- (3) the law relating to *money laundering* , including *the Money Laundering Regulations 1993* and this sourcebook; and
- (4) the potential effect, on the *relevant firm* , on its *employees* and its *clients* , of any breach of that law.

6.2.2

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(1) A *relevant firm* should provide information, whether recorded in writing or otherwise, which:

- (a) covers the matters in ML 6.2.1R;
 - (b) is brought to the attention of any member of staff who starts to work in any capacity within a *relevant firm* which is *covered* by this sourcebook; and
 - (c) remains available to that *person* so long as he works for that *relevant firm* in that capacity.
- (2) Contravention of (1) may be relied on as tending to establish contravention of ML 6.2.1R.
- (3) Compliance with (1) may be relied on as tending to establish compliance with ML 6.2.1R.

6.2.3

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Staff need to have an awareness of anti- *money laundering* legislation in the *United Kingdom* , including a clear understanding of their own potential criminal liability.

6.2.4

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Staff are likely to need information about the ways in which their *clients* ' involvement in *money laundering* may affect bank and other accounts and other assets, in particular if a *relevant firm* decides it is unable to process *transactions* , because of the risk of committing a *money laundering offence* . They are also likely to need information about the ways in which the *relevant firm* may itself be at risk if (without the consent of *NCIS*) it processes *transactions* which involve the proceeds of crime.

6.3 Training

6.3.1



A *relevant firm* must take reasonable care to provide appropriate anti-*money laundering* training for its staff who handle, or are managerially responsible for the handling of, *transactions* which may involve *money laundering*.

6.3.2



- (1) In taking reasonable care for the purposes of ML 6.3.1R the *relevant firm* should provide training which:
 - (a) deals with the law on *money laundering*, and the responsibilities of staff under the *relevant firm's* arrangements;
 - (b) is applicable to all staff who handle, or are managerially responsible for the handling of, *transactions* which may involve *money laundering* (see ML6.2.1R)
 - (c) takes place with sufficient frequency to ensure that within any period of 24 months it is given to substantially all of the staff referred to in (b).
- (2) Contravention of (1) may be relied on as tending to establish contravention with ML 6.3.1R.
- (3) Compliance with (1) may be relied on as tending to establish compliance of ML 6.3.1R.

6.3.3



These requirements do not preclude a rolling programme of training, under which training on different subjects takes place on different dates.



Chapter 7.

The Money Laundering Reporting Officer and other arrangements

7.1 The Money Laundering Reporting Officer

- 7.1.1** **G**_{1/1} A *relevant firm* has to appoint an individual as its *MLRO* (see ML 2.1.1R). Under section 58(3), (4) and (5) of the *Act* the function of acting as the *MLRO* has been specified as a *controlled function* (see SUP 10.3.4R). As a consequence, any individual invited to exercise that function must be individually approved by the *FSA*, on the application of the *relevant firm*. The job of the *MLRO* is to act as the focal point within the *relevant firm* for the oversight of all activity relating to *anti-money laundering*. He needs to be senior, to be free to act on his own authority and to be informed of any relevant knowledge or suspicion in the *relevant firm*. In turn he has to pass on issues to *NCIS* as he thinks appropriate. He can be expected to liaise with *NCIS* on any question whether to proceed with a *transaction* in the circumstances.
- 7.1.2** **G**_{1/1} Where a *relevant firm* is part of a *group* it may choose to appoint as its *MLRO* an individual who performs that function for another *relevant firm* within the *group*.
- 7.1.3** **G**_{1/1} If a *relevant firm* that is a member of a *group* chooses this approach, it may wish to permit the *MLRO* to delegate *anti-money laundering* duties to other suitably qualified individuals within the *relevant firm*. Similarly some *relevant firms*, particularly those with a number of branches or offices in different locations, may wish to permit the *MLRO* to delegate such duties within the *relevant firm*. Where *anti-money laundering* tasks are delegated by a *relevant firm's MLRO*, the *FSA* will expect the *MLRO* to take ultimate managerial responsibility for ensuring that the duties imposed on the *MLRO* by this sourcebook are complied with. The responsibilities to be discharged by the *MLRO* are set out in ML 7.1.11R.
- 7.1.4** **G**_{1/1} Where convenient, a *relevant firm* may decide that the same *person* can carry out the responsibilities of the *MLRO* and of the "appropriate *person*" under the *Money Laundering Regulations 1993*. "Appropriate *person*", under those Regulations, means a *person* appointed to handle the internal and external reporting required by the Regulations (see Regulation 14).
- 7.1.5** **R**_{1/1} A *relevant firm* must appoint an individual as its *MLRO* and operate arrangements that are designed to ensure that it and the *MLRO* comply with the relevant obligations of this chapter.
- 7.1.6** **R**_{1/1} When a *relevant firm* appoints an individual to be its *MLRO*, it must choose someone who is *employed* within the *relevant firm*, or within another *relevant firm* in the same *group*, whether as part of its governing body, management or staff.
- 7.1.7** **R**_{1/1} So that he can carry out his *controlled function* effectively, a *relevant firm* must ensure that its *MLRO* :
- (1) has a sufficient level of seniority within the *relevant firm*; and
 - (2) has sufficient resources, including sufficient time and (if necessary) support staff.

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- 7.1.8** **G**_{1/1} "Sufficient resources" should include arrangements to apply in any temporary absence of the *MLRO* , who should take reasonable steps to ensure the adequacy of such arrangements (see SUP 10.3.4R).
- 7.1.9** **R**_{1/1} A *relevant firm* must ensure that its *MLRO* is able to:
- (1) monitor the day-to-day operation of its anti- *money laundering policies* ; and
 - (2) respond promptly to any reasonable request for information made by *the FSA* .
- 7.1.10** **E**_{1/1} (1) A *relevant firm* should ensure that its *MLRO* is based in the *United Kingdom* .
- (2) Contravention of (1) may be relied on as tending to establish contravention of ML 7.1.9R
- 7.1.11** **R**_{1/1} A *relevant firm* must make its *MLRO* responsible for:
- (1) receiving internal reports under ML 4.1;
 - (2) taking reasonable steps to access any relevant *know your business information*;
 - (3) making external reports to *NCIS* under ML 4.2;
 - (4) obtaining and using national and international findings under ML 5;
 - (5) taking reasonable steps to establish and maintain adequate arrangements for awareness and training (whether by himself or someone else) under ML 6; and
 - (6) making *annual reports* to the *relevant firm's managers* under ML 7.2.
- 7.1.12** **G**_{1/1} APER 4.7.2E and APER 4.7.9E, make provisions about the conduct of the *MLRO* , to help determine whether the *MLRO* 's conduct complies with Statement of *Principle 7* concerning the conduct expected of the *MLRO* as an *approved person* .
- 7.1.13** **R**_{1/1} If the position of *MLRO* falls vacant, the *relevant firm* must appoint another individual as its *MLRO* .
- 7.1.14** **G**_{1/1} The obligation on a *relevant firm* to appoint an *MLRO* is in ML 2.1. That provision is limited to *relevant firms* and does not apply:
- (1) if the *relevant firm* is a *sole trader* with no *employees* other than himself; or
 - (2) if the *relevant firm* is an *incoming firm* which is only providing services (as opposed to operating through an established *branch*) in the *United Kingdom* .
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7.2 Compliance monitoring

7.2.1



SYSC 3.2.6R requires a *relevant firm* to take reasonable care to establish and maintain appropriate systems and *controls* for compliance with its regulatory obligations and to counter the risk that it might be used to further *financial crime*. This section applies to *relevant firms* and amplifies this requirement.

7.2.2



- (1) A *relevant firm* should establish and maintain arrangements under SYSC 3.2.6R which include requirements that:
 - (a) at least once in each *calendar year*, the *relevant firm* commission a report from its *MLRO* which:
 - (i) assesses the *relevant firm's* compliance with this sourcebook;
 - (ii) indicates, in particular, the way in which new findings under ML 5 have been used during the year; and
 - (iii) gives the number of reports made in accordance with ML 4.1 by staff of the *relevant firm*, dealing separately, if appropriate, with different parts of the *relevant firm's* business;
 - (b) the *relevant firm's* senior management consider the report; and
 - (c) they take any necessary action to remedy deficiencies identified by the report.
- (2) Contravention of (1) may be relied on as tending to establish contravention of SYSC 3.2.6R.

7.2.3



Figures for internal reports should be broken down, if appropriate, in the *MLRO's* report. The purpose of the report is to enable a *relevant firm's* senior management to assess whether internal reports are being made whenever required by ML 4.1, and that an overall figure which seems satisfactory does not conceal inadequate reporting in a particular part of the *relevant firm's* business. *Relevant firms* will need to use their judgement how the *MLRO* should be required to break down the figures in order to achieve this aim.

7.3 Record keeping arrangements

7.3.1

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SYSC 3.2.20R requires a *relevant firm* to take reasonable care to make and keep adequate records (including accounting records) which are appropriate to the scale, nature and complexity of its business. This section contains *rules* amplifying this requirement.

7.3.2

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(1) A *relevant firm* must make and keep, for the periods specified in (2), the following records:

- (a) in relation to evidence of identity:
 - (i) a copy of the evidence of identity obtained under ML 3; or
 - (ii) a record of where a copy of the evidence of identity can be obtained; or
 - (iii) when it is not reasonably practicable to comply with (i) or (ii), a record of how the details of the evidence of identity can be obtained; and

when it has concluded to treat a *client* as financially excluded (ML 3.1.5G to ML 3.1.7G Financial exclusion), a record of the reasons for doing so;

- (b) a record containing details of every *transaction* carried out by the *relevant firm* with or for the *client* in the course of *regulated activity* ;
- (c) when a *relevant firm's client* has become *insolvent* , and it has taken steps to recover all or part of a debt owed to it by the *client* , a record of the grounds and those steps;
- (d) records of action taken under ML 4.1 (Internal reporting) and ML 4.3 (External reporting); and
- (e) when an *MLRO* has considered information or other matter concerning knowledge or suspicion that another *person* has engaged in *money laundering* , but has not made a report to *NCIS* under ML 4.3, a record of that information or other matter.

(2) The specified periods are:

- (a) in relation to evidence of identity, five years from the end of the *relevant firm's* relationship with the *client* ;
- (b) in relation to *transactions* within (1)(b), five years from the date when the *transaction* was completed;
- (c) in relation to (1)(c), five years from the date of the insolvency; and

(d) in any other case, five years from the obtaining of the information or the creation of the record.

7.3.3

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For the purposes of ML 7.3 ' *transaction* ' does not include advice given to a *client* unless such advice is followed by a *transaction* with monetary value.

7.3.4

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Records kept under SYSC 3.2.20R should include the dates when anti- *money laundering* training was given, the nature of the training, and the names of the staff who received training; and (in relation to anti- *money laundering* monitoring) reports by the *MLRO* made in accordance with ML 4.3, and records of consideration of those reports and of any action taken as a consequence.



Chapter 8.

Sole traders and professional firms

8.1 Application to sole traders

8.1.1 **R** The only provisions of this sourcebook which apply to a *sole trader* with no *employees* apart from himself are those specified in ML8.1.2.
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8.1.2 **R** Table Application to certain *sole traders* (see ML8.1.1R)
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Chapter	Subject matter	Parts applicable to a sole trader with no employees apart from himself	
ML1	Application and purpose	The whole chapter	
ML2	The general money laundering duties	The whole chapter	
ML3	Identification of the client	The whole chapter	
ML4	Reporting	Only ML 4.3.4R applies	
ML5	Findings of deficiencies	The whole chapter	
ML6	Awareness and training	The whole chapter except ML 6.2.1(2)R	
ML7	The MLRO and other arrangements	Only	
		ML 7.2	ML 7.3
		Except 7.2.2E(1)(a) and (b) and (2)	Except 7.3.2E(1)(d) and (e)
ML8	Sole traders and professional firms	The whole chapter	



8.2 Application to firms which are regulated by a designated professional body

8.2.1

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In its application to a *relevant firm* which is supervised and regulated by a designated *professional body* , this sourcebook applies:

- (1) to the *relevant firm* in respect of its *relevant regulated activities* , but
- (2) not in respect of those activities which would have been *exempt regulated activities* , if the *relevant firm* had not been an *authorised person*.

Application

Schedule of transitional provisions

- ML 2.1.1R 1 R (1)** Transitional 1R(2) applies where, immediately before the commencement day, there is in a relevant firm an individual who was appointed by the relevant firm before that date to act for it in connection with its responsibilities in relation to money laundering.
- ML 7.1.5R (2)** If, on the commencement date, the individual in Transitional 1R(1):
- (a)** is an approved person in relation to the controlled function of acting as an MLRO; or
 - (b)** is the subject of an application by the relevant firm for approval under Part V of the Act (Performance of regulated activities);
- nothing in ML 2.1.1R or ML 7.1.5R requires the relevant firm to reappoint that individual as its MLRO.
- ML 3 2 R** Where, immediately before the commencement day, a relevant firm already has an established client relationship with any person, nothing in ML 3 requires the relevant firm to establish the identity of that client.

DEFINITIONS

<i>Act</i>	Financial Services and Markets Act 2000.
<i>approved person</i>	a person in relation to whom the FSA has given its approval under section 59 of the Act (Approval for particular arrangements) for the performance of a controlled function.
<i>authorised person</i>	<p>(as defined in section 31 of the Act (Authorised persons)), one of the following persons authorised for the purposes of the Act:</p> <p>(a) a person who has a Part IV permission to carry on one or more regulated activities;</p> <p>(b) an EEA firm qualifying for authorisation under Schedule 3 to the Act (EEA Passport Rights);</p> <p>(c) a Treaty firm qualifying for authorisation under Schedule 4 to the Act (Treaty Rights);</p> <p>(d) a person who is otherwise authorised by a provision of, or made under, the Act.</p>
<i>contract of insurance</i>	<p>as described in article 3(1) of the Regulated Activities Order (Interpretation:general), any contract of insurance which is a contract of long-term insurance or a contract of general insurance, including:</p> <p>(a) a fidelity bond, a performance bond, an administration bond, a bail bond, a customs bond, or any similar contract of guarantee;</p> <p>(b) tontines;</p> <p>(c) capital redemption contracts;</p> <p>(d) contracts to pay annuities on human life;</p> <p>(e) any contract in accordance with which benefits are provided:</p> <p style="padding-left: 40px;">(i) for the relief or maintenance of any person during sickness or when in distressed circumstances; or</p> <p style="padding-left: 40px;">(ii) to meet the funeral expenses of any person;</p> <p>(f) contracts of a kind referred to in article 1(3) of the First Life Insurance Directive (Social insurance);</p> <p>but does not include a funeral plan contract (or a contract which would be a funeral plan contract but for the exclusion in article 5(6).</p> <p>In this definition, “annuities to human life” does not include superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been</p>

	engaged, in any particular profession, trade or employment, or of the dependants of such persons.
<i>controlled function</i>	a function related to the carrying on of a regulated activity by a firm which is specified under section 59 of the Act (Approval for particular arrangements), in the Table of Controlled Functions at SUP 10.4.5.
<i>client</i>	in relation to a <i>relevant firm</i> any person engaged in, or who has had contact with the <i>relevant firm</i> with a view to engaging in, any <i>transaction</i> with that <i>relevant firm</i> - (1) on his own behalf; or (2) as agent for or on behalf of another.
<i>credit institution</i>	an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account, and which is authorised as a credit institution for the purposes of the Banking Consolidation Directive.
<i>EEA State</i>	a State which is a contracting party to the agreement on the European Economic Area (EEA) signed at Oporto on 2 May 1992, as it has effect for the time being, which are at 30 September: Austria, Belgium, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom.
<i>employee</i>	(1) (for all purposes except those in (2)) an individual who is employed or appointed by a firm in connection with the firm's business, whether under a contract of service or for services or otherwise, but excluding an appointed representative of the firm. (2) (for the purposes of : (a) COB 7.14 (Personal account dealing); (b) the Training and Competence sourcebook (TC); and (c) SUP 12 (Appointed representatives)); an individual: (i) within (1); or (ii) who is: (A) an appointed representative of the firm; or (B) employed or appointed by an appointed representative of the firm, whether under a contract of service or for services or otherwise, in connection with the business of the appointed representative for which the

	firm has accepted responsibility.
<i>exempt regulated activity</i>	Regulated activities which may, as a result of Part XX of the <i>Act</i> , be carried on by members of a profession which is supervised and regulated by a designated professional body without breaching the general prohibition.
<i>Financial Action Task Force</i>	The Financial Action Task Force on Money Laundering (FATF) is an inter-governmental body which develops and promotes policies, both nationally and internationally, to combat money laundering
<i>FSA</i>	the Financial Services Authority.
<i>firm</i>	an <i>authorised person</i>
<i>First Life Directive</i>	the Council Directive of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance (No 79/267/EEC).
<i>general insurance business</i>	the business of effecting or carrying out general insurance contracts.
<i>incoming firm</i>	in accordance with section 193(1) of the Act: an incoming EEA firm or an incoming Treaty firm.
<i>insolvent</i>	as in regulation 13 of the <i>Money Laundering Regulations 1993</i> .
<i>know your business information</i>	information as described in ML 4.2.1R
<i>long-term insurance business</i>	the business of effecting or carrying out long-term insurance contracts.
<i>MLRO</i>	<i>Money Laundering Reporting Officer</i> .
<i>money laundering</i>	any act which constitutes an offence under- (1) section 93A, 93B or 93C of the Criminal Justice Act 1988 (which relate to the handling etc. of proceeds of certain criminal conduct) and for the purposes of the Money Laundering Sourcebook the definition of criminal conduct in section 93A(7) is to be read as – “(7) In this Part of this Act “criminal conduct” means- (a) conduct which constitutes an offence to which this Part of this Act applies; or

	<p>(b) conduct which –</p> <p>(i) would constitute such an offence if it had occurred in England and Wales or (as the case may be) Scotland; and</p> <p>(ii) contravenes the law of the country in which it occurred”.</p> <p>(2) section 49, 50 or 51 of the Drug Trafficking Act 1994 (which relate to the handling etc of the proceeds of drug trafficking);</p> <p>(3) section 42A or 43 of the Criminal Justice (Scotland) Act 1987 (which relate to the handling etc of proceeds of drug trafficking);</p> <p>(4) section 11 of the Prevention of Terrorism (Temporary Provisions) Act 1989 (which relates to financial assistance for terrorism);</p> <p>(5) section 14 of the Criminal Justice (International Co-operation) Act 1990 (concealing or transferring proceeds of drug trafficking);</p> <p>(6) Article 29 or 30 of the Criminal Justice (Confiscation) (Northern Ireland) Order 1990 (which relate to the handling etc of proceeds of drug trafficking);</p> <p>(7) Section 53 or 54 of the Northern Ireland (Emergency Provisions) Act 1991 (which relate to the handling etc of proceeds of terrorist-related activities); or</p> <p>(8) Any provision, whenever made, which has effect in Northern Ireland and corresponds to any of the provisions mentioned in sub-paragraph (2) or (7) above;</p> <p>or, in any case of an act done otherwise than in England and Wales, Scotland or, as the case may be, Northern Ireland, would constitute such an offence under any of 2 to 8 above if done in England and Wales, Scotland or Northern Ireland.</p>
<p><i>Money Laundering Directive</i></p>	<p>Council Directive on the prevention of the use of the financial system for the purpose of money laundering (No. 91/308/EEC).</p>

<i>Money Laundering Regulations 1993</i>	Money Laundering Regulations 1993 (SI 1993/1933).
<i>Money Laundering Reporting Officer</i>	see ML 7.1.
<i>NCIS</i>	National Criminal Intelligence Service.
<i>pension scheme</i>	a right to benefits resulting from contributions made to a pension contract or pension policy;
<i>premium</i>	<p>(1) (in relation to a long term insurance contract, one of the payments under a long term insurance contract:</p> <p>(a) (i) which are payable on dates that are certain or ascertainable at the time the contract is made; and</p> <p>(ii) which are payable over a period that exceeds one year in length; and</p> <p>(iii) assuming the policy evidencing the contract is not surrendered or otherwise terminated before the premiums fall due, will fall due on those dates without either party to the contract exercising any option under the contract; or</p> <p>(b) of which the first payment is an obligation under the contract, and subsequent payments, calculated according to an agreed formula, are payable over a period which exceeds one year in length under a collateral written arrangement with the insurer or friendly society.</p> <p>(2) (in relation to an option), the total amount which the purchaser of the option is, or may be, required to pay in consideration for the right to exercise the option.</p>
<i>Regulated Activities Order</i>	the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S.I.* No.*).
<i>regulated activity</i>	<p>any of the following activities specified in Part II of the Regulated Activities Order which is carried on by way of business:</p> <p>(a) accepting deposits (article 5);</p> <p>(b) effecting a contract of insurance (article 9(1));</p> <p>(c) carrying out a contract of insurance (article 9(2));</p> <p>(d) dealing in investments as principal (article 12);</p> <p>(e) dealing in investments as agent (article 19);</p> <p>(f) managing investments (article 33);</p>

	<p>(g) making arrangements for deals in investments (article 22(2));</p> <p>(h) safeguarding and administering investments (article 36);</p> <p>(i) sending dematerialised instructions (article 42);</p> <p>(j) establishing, operating or winding up a collective investment scheme (article 48(1)); for the purposes of the permission regime; this is sub-divided into:</p> <ul style="list-style-type: none"> (i) establishing, operating or winding up a regulated collective investment scheme; (ii) establishing, operating or winding up an unregulated Collective Investment scheme; <p>(k) acting as trustee of an authorised unit trust scheme (article 48(2));</p> <p>(l) acting as the depositary or sole director of an open-ended investment company (article 48(3));</p> <p>(m) advising on investments (article 49); for the purposes of the permission regime, this is sub-divided into:</p> <ul style="list-style-type: none"> (i) advising on investments (except on pension transfer and pension opt outs); (ii) advice on pension transfers and opt outs; <p>(n) advice on syndicate participation at Lloyd's (article 52);</p> <p>(o) Lloyd's managing agents (article 53);</p> <p>(p) arranging deals in contracts of insurance written at Lloyd's (article 54);</p> <p>(q) entering as provider into a funeral plan contract (article 55);</p> <p>(r) agreeing to carry on the above activities, other than (a), (b), (l), (m) or (n) (article 59).</p>
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<i>relevant firm</i>	a firm of the kind described in section ML 1.1.2R.
<i>relevant regulated activities</i>	activities of the kind described in section ML 1.1.4R
<i>sole trader</i>	an individual who is a firm
<i>transaction</i>	includes the giving of <i>advice</i> and any other business or service which is within the scope of a <i>regulated activity</i> .

Respondents to CP46

Aberdeen Asset Management plc
American Financial Services Association
American Life Insurance Company
Arthur Andersen
Association of British Credit Unions Limited
Association of British Insurers
Association of Independent Financial Advisers
Association of Solicitor Investment Managers
Association of Unit Trusts and Investment Funds
Auto Home Insurance ltd
Axa Sun Life Services plc
Bank of Scotland
Barclays PLC
Beckett Financial Services Limited
Bovill Gunn Limited
Brewin Dolphin Securities ltd
Britannia Building Society
Britannic Asset Management Limited
British Bankers Association
Brown Shipley & Co. ltd
C. Hoare & Co.
CIFAS
Commercial, General and Norwich Union plc
Commonwealth Bank of Australia

Credit Suisse First Boston
Credit Suisse Private Banking
Cripps Harris Hall
Deloitte & Touche
Deutsche Bank AG London
DLA
Dolphin Securities
Ernst & Young
Euro Life Assurance Company Limited
Experian Ltd
Family Assurance Friendly Society Group
Fidelity Investments Services Limited
Finance and Leasing Association
Financial Services Authority – Consumer Panel
Financial Services Authority – Small Business Practitioner Panel
Ford Credit Europe
Foreign & Colonial Management Limited
Friends' Provident Life Office
Fund Managers' Association
Garban-Intercapital Group
Gulf International Bank
Halifax plc
Hamburgische Landesbank (UK) branch
HSBC Holdings plc
IFA Direct
Institute of Actuaries
INVESCO Asset Management Limited
Investment and Life Assurance Group – Regulations Committee
Killick & Co
KPMG
Legal & General Assurance Society
Liverpool Victoria Friendly Society Limited
Lloyd's
Lloyds TSB Bank plc
London Investment Banking Association

London Society of Chartered Accountants
Marks & Spencer Financial Services Limited
Marsh Financial Services Ltd
MBNA International Bank Limited
MISYS – IFA Services plc
Morgan Stanley & Co International Limited
Mr Barry Stuart Epstein
Ms Julie A. Allcock
National Association of Citizens Advice Bureau
Nationwide Building Society
NCL Investments Limited
NFU Mutual Insurance Society Limited
Northern Counties Housing Association Limited
Northern Rock plc
Norwich and Peterborough Building Society
Office of Fair Trading – Competition Policy Division
PainWebber International (UK) Ltd
Perpetual Investment Management Services Limited
Police Mutual Assurance Society Limited
Prebon Marshall Yamane (UK) Limited
PricewaterhouseCoopers
Prudential – Group Security
Prudential Banking plc
Quilter & Co Ltd
Registry of Friendly Societies
Reuters
Royal & Sun Alliance
Ruffer Bank plc
Schroder Solomon Smith Barney
Scottish Provident UK
Securities Institute
Share People Limited
Skipton Building Society
Sogemin Metals Limited
Sun Bank plc

Swiss Life (UK) Marketing Group
TD Waterhouse Investor Service (Europe) Ltd
Teachers Building Society
The Abbey National Group
The Association of Friendly Societies
The Association of Private Client Investment Managers and Stockbrokers
The Building Societies Association
The Co-operative Bank Financial Advisers Limited
The Equitable Life Assurance Society
The Futures and Options Association
The Institute of Chartered Accountants in England and Wales – Joint
Investment Business Committee
The Institute of Chartered Accountants in England and Wales – Business Law
Committee
The Joint Money Laundering Steering Group
The Law Society - Investment Business Executive
The Royal Bank of Scotland plc
The Share Centre ltd
The Society for Advanced Legal Studies – Anti-corruption Working Group
The Standard Life Assurance Company
The Wholesale Markets Brokers' Association
The Woolwich
Towers Perrin
Tradition (UK) Limited
Travers Smith Braithwaite
Tullett & Tokyo Liberty plc
Tunbridge Wells Equitable
UBS Warburg – financial services group of UBS AG
United Friendly Group plc
Unum Limited
Virgin Direct Personal Financial Services plc
Wainwright Training Management
Ward Evans Financial Services Limited
Zurich Financial Services Limited