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Our Ref: CP46 Money Laundering revised.doc

Dear Mr London

CP46: Money Laundering: the FSA's new role

This letter is in response to Consultation Paper 46 on the proposed FSA requirements on money laundering.

The consumer interest in the draft requirements is in securing fair and reasonable treatment for consumers, reasonable access to financial products and services, ensuring that the requirements do not impose burdens disproportionate to their effectiveness and that they do not impact disproportionately on consumers who are very unlikely to be laundering money.

Identification requirements

The FS Consumer Panel recognises that it is in consumers interests that money laundering be properly contained. It also recognises that many of the identification requirements set out in CP 46 stem from the Money Laundering Regulations 1993 and the Guidance Notes of the Joint Money Laundering Steering (JMLSG)*, and that this CP is not the appropriate forum for debating those requirements.

Nevertheless, we consider it essential that any regime for firms to combat money laundering takes into account the likely effects of that regime on consumers and on competition and the extent to which any adverse effects are justified or could be ameliorated.

* The JMLSG comprises a wide range of financial sector trade associations, and its Guidance Notes for the financial sector are issued on behalf of those trade associations and with the support of the financial sector regulators.

There is good cause to be concerned about the requirements as set out in CP 46:

- In an environment where there is no State requirement to have identity papers it is questionable whether it is fair and reasonable treatment to require consumers – particularly in relation to small value transactions - to produce identification evidence that goes beyond that required by the 1993 regulations.
- It is likely that consumers will be discouraged from buying financial products because of the onerous identification requirements – this is particularly likely to be the case with more vulnerable consumers (not all of whom might fit the ‘financially excluded’ definition) including poorer, more timid, less experienced and older consumers and those who are for example in local authority housing or are students.
- It is likely that the additional bureaucracy involved in the identification requirements will discourage consumers from shopping around and/or switching between providers and therefore from buying products and services of an appropriate price and quality.
- It is likely that, as at present, interpretation by firms of the requirements will differ widely and the ‘lighter option’ proposed by the CP under the financial exclusion heading might not be offered in practice.

Taking these important implications into account, the FS Consumer Panel strongly urges the FSA to work with the JMLSG, Government and prosecuting authorities to reassess the regime for deterring and identifying money laundering. We note that the FSA is committed to a review of money laundering as one of the ‘theme’ projects described in its publication *A New Regulator for the New Millennium*. We urge the FSA to use this opportunity to:

- Identify those requirements in the JMLSG guidance notes and proposed in CP46 that are in addition to those contained in the 1993 regulations and assess the proportionality of each additional requirement taking into account each of the factors set out in our second paragraph.
- Reassess the extra requirements for transactions effected by remote means and the extent to which it can be demonstrated that money launderers can be more effectively identified face to face. The extra requirements for remote transactions have significant competition implications because much shopping around is, in practice, likely to happen by remote means and the extra requirements are a disincentive. Furthermore, this disincentive is likely to be felt by an increasing number of people as banks and building societies step up branch closures – with a particularly high impact on housebound and disabled consumers. We recognise that of course any such reassessment will need to take account of proposed amendments to the 1991 Money Laundering Directive and the draft second Directive.

We note that the FSA assumes that financially excluded people will not be dealing remotely and that therefore the relaxations proposed for financially excluded consumers will only apply in face-to-face circumstances. The FSA is wrong to make this assumption. Financially excluded consumers can use public telephones, and in any case OFTEL have recently announced that access to fixed line or mobile phones is effectively close to universal (over 97% of the UK population).

- Consider adopting a risk-based and therefore proportionate approach to the supervision and enforcement of money laundering breaches where the value of transactions is small, and the risk of money laundering low.
- Remove the distinction that applies to financially excluded consumers, since this is inappropriate (there is no exact correlation between financial exclusion and inability to produce the higher levels of identification evidence) and likely to be unworkable in practice. A better approach would be to require the best identification that any person can provide subject to the minimum criterion that it be 'reasonably capable of establishing that the applicant is the person he claims to be', perhaps with more onerous requirements for certain products/values.
- Once the new regime is in place, assess how it is being interpreted by firms, and in particular assess the extent to which firms are taking advantage of any relaxations in the requirements to accommodate those who, for legitimate reasons, are unable to provide the higher standards of identification evidence.

We note the suggestion that the FSA might consider in future introducing pre-qualification requirements (paragraph 4.17). This would bring additional barriers to shopping around and we would be seeking very strong evidence of the need to do this.

Other issues

Record keeping. The requirements on record keeping could be considered disproportionate in comparison to the lesser requirements being proposed for documents such as fact-finds related to non-life products, and are certainly inconsistent.

Civil action. The proposals on civil action are welcome and we note that there may be circumstances where this is the only source of protection available to consumers who have lost out through no fault of their own.

Consumer education. We can see no justification for prioritising consumer education on money laundering while there is still so much to do on more immediately critical learning needs such as awareness of the FSA, understanding of risk, understanding of the protections afforded – and not afforded – by regulation, to name but a few.

We would be grateful if you could let us know in due course how you intend to take account of our comments.

Yours sincerely

A handwritten signature in black ink that reads "Barbara Saunders". The signature is written in a cursive style with a small flourish at the end.

Barbara Saunders
Chair
FS Consumer Panel