bvca The voice of long-term investment

1st Floor North, Brettenham House
Lancaster Place, London WC2E 7EN
T: +44 (0)20 7420 1800
F: +44 (0)20 7420 1801
E: bvca@bvca.co.uk
www.bvca.co.uk

The Money Laundering Review
Room 3/15, HM Treasury
1 Horse Guards Road
London SW1A 2HQ

MLR.review@hmtreasury.gsi.gov.uk
By email only

30 August 2011

Dear Sirs

Industry Response to HMT's Consultation on the Money Laundering Regulations 2007 (the "Consultation")

This response to HMT's Consultation on the Money Laundering Regulations is made by the British Private Equity and Venture Capital Association ("BVCA"). The BVCA represents the overwhelming majority of UK-based private equity and venture capital firms.

In order to focus our response appropriately we have considered only those parts of the Consultation which we think raise issues relevant to private equity and venture capital firms.

Written Procedures

The Consultation asks (on page 16) whether a statutory requirement should be introduced to compel regulated businesses to have written anti-money laundering policies and procedures or whether supervisors should be given the power to require some or all businesses to adopt written policies and procedures. We see no need for any such requirement to be imposed. Whilst many regulated firms already maintain written policies and procedures for the purpose of good internal governance, an obligation to do so would impact on the risk-based and flexible approach that the Money Laundering Regulations 2007 (the "**Regulations**") otherwise promote. As far as authorised firms are concerned the FSA already has extensive rule making powers in relation to the prevention of financial crime, so in any event we see no need for the Regulations to duplicate this.

The BVCA's response to the consultation questions is set out below:

1. **Should the existing criminal sanctions be wholly or partly repealed?**

We support the complete abolition of criminal sanctions under the Regulations. Concerns about potential criminal liability lead firms to take a formulaic approach to anti-money laundering procedures rather than considering the most appropriate method under a risk-based approach. Firms are aware of their obligations under the Money Laundering Regulations (and associated anti-terrorist and anti-financial crime legislation) and potential civil, financial and reputational consequences provide

sufficient deterrent – we do not consider that the risk of criminal liability adds to this. In addition the Proceeds of Crime Act creates criminal offences both in relation to the fulfilment of reporting obligations and for firms which become involved (albeit inadvertently) in money laundering, the existence of these offences creates a further incentive on firms to have adequate procedures.

2. **Should new powers be granted to supervisors allowing them to order or require actions by businesses to mitigate the potential negative impacts from the loss of criminal sanctions?**

As noted above, our response to the consultation is based on the potential impact of the proposed reforms on the private equity and venture capital industry. The vast majority of private equity and venture capital firms in the UK are regulated by the FSA. The FSA already has substantial powers to order or require firms to carry-out certain actions in relation to anti-money laundering and it also has significant enforcement powers in case of breach. Whilst we do not propose to comment on the scope of supervising powers held by other regulatory bodies, there is no argument that the FSA requires further powers.

3. **Do you agree that the current distinction between Parts 1 and 2 of Schedule 3, e.g. for reliance purposes, should now be removed?**

We agree that Parts 1 and 2 of Schedule 3 should now be merged.

4. **Should a debt purchaser be able to rely on CDD previously performed by the seller in this situation?**

Yes. It is extremely difficult (if not impossible) for a debt purchaser to conduct fresh customer due diligence on an established debt portfolio. The requirements of the Money Laundering Regulations should have been adequately complied with when the individual loans were first made. If there are defects these should be the responsibility of the originator.

5. **Should there be a general de-minimis exclusion for very small businesses (for example those with below €15,000 VAT-exclusive turnover per annum), or a reduction in the requirements placed on such businesses?**

We support the de-minimis exclusion. The Venture Capital industry invests in, and supports, small businesses and as such we support proposals that remove administrative burdens that have little or no tangible benefit. Often disproportionate levels of administration can impact on the day-to-day running of small businesses and in certain circumstances on profitability and growth. Given that very small businesses are at a lower risk of being used to launder money, we support the introduction of an exemption for these businesses.

6. **Do you agree that non-lending credit institutions should be exempt from the Regulations?**

Yes, we consider such firms should be exempt from the Regulations. Generally, subscriptions for such services as outlined in the Consultation involve only modest sums of money and the risk that they could be used to launder money is, accordingly, very low.

7. **Do you agree UK estate agents who arrange for the sale and purchase of overseas property by their clients should be regulated?**

Whilst we acknowledge that the sale and purchase of real estate assets in the UK and abroad can be used as a means to launder money, we are also aware that foreign real estate transactions frequently involve a notary or other professional based in the offshore jurisdiction. We consider that this is a mitigant to the risk of money laundering and should be taken into account accordingly.

8. **Do you agree that "safe custody services" should be more clearly defined, and if so, how?**

We have no issues with the FSA definition which we suggest could appropriately be used.

9. **Do you agree that all previous criminal conduct should be considered under the fit and proper test for MSB's?**

All convictions containing an element of dishonesty that are not covered by the Rehabilitation of Offences Act 1974 should be considered. There seems little logic in including, for example, minor motoring offences or disorderly conduct offences in the evaluation of a person's fitness and propriety.

10. **Do you agree a right of appeal should be introduced for decisions under the fit and proper test by HMRC?**

Yes. As a matter of general principle a person should have a right to an appropriate appeal against a decision by a government body as to their fitness and propriety. Accordingly we support the proposal to create a specific right of appeal for firms subject to the fit and proper test conducted by HMRC.

11. **Should supervisors be given new powers to impose penalties for the unreasonable failure to allow a supervisor to enter their businesses premises?**

As we noted at (2) above, the FSA has significant and far-reaching powers to impose obligations and take enforcement action against FSA regulated firms. These powers cover all aspects of regulated firms' compliance obligations including their obligations relating to anti-financial crime and money laundering. Therefore, the FSA does not require any additional supervisory powers. However, we do support proposals which allow other supervisors to increase their powers to enforce anti-financial crime legislation.

12. **Should there be penalties for the unreasonable failure to provide information?**

Please refer to our response at 11 above.

13. **Should supervisors be given additional powers to enforce the payment of fees or charges payable under a supervisory arrangement, for example by ensuring all supervisors have powers to de-register a business where there is sustained non-payment?**

Please refer to our response at 11 above.

14. **Should supervisors be given strengthened powers to de-register a business, where a registration has been obtained by other than bona fide means, or no longer serves the public interest?**

Please refer to our response at 11 above.

15. **Should supervisors have clear powers to make enquiries of persons who reasonably appear to be relevant persons?**

Please refer to our response at 11 above.

16. **Should the ability of supervisors to exchange information with each other for the purposes of discharging their AML supervisory functions be strengthened, if necessary by the creation of new 'gateways' to allow for the exchange of information?**

Where this is thought necessary, although the FSA is likely to already have adequate gateways.

17. **Should HMRC or other supervisors have powers to limit or prescribe the language used by regulated businesses to describe their relationship with their AML supervisor (for example to make it clear that supervision applies only to money laundering compliance)?**

Yes - there is a danger that firms which are regulated may use the fact of their regulation to imply a level of official or governmental authority which they do not in fact have.

We would be delighted to discuss any of these issues with you.

Yours faithfully

pp Kay Lyon

Margaret Chamberlain
Chair – BVCA Regulatory Committee