A1.04: MONEY LAUNDERING

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Nature of Money Laundering

- Money laundering is concerned with attempts by criminals to disguise the origins of money derived from criminal activities, so that it can appear legitimate

- Following the passing of the Proceeds of Crime Act 2002, money laundering covers all criminal activities, not just those related to drugs and terrorism (which were previously all that was covered)

- Tax evasion is also covered

- The three recognised stages of the money laundering process are Placement, Layering and Integration

- Placement is putting money into financial products or instruments, including life policies (which could be single or regular premium policies), pension arrangements, unit trusts, travellers cheques, deposits etc

- Layering is creating a series of transactions so that the original source of funds is obscured and difficult to trace

- Integration is converting the proceeds of money laundering into a legitimate form

- Launderers accept that there are costs, particularly in multiple transactions, but this is acceptable to them as the price of legitimising the money

- Sometimes a sign that could give rise to a suspicion of money laundering may be a client being unconcerned about surrender penalties

Role of Joint Money Laundering Steering Group

- The Joint Money Laundering Steering Group (JMLSG) is made up of a number of trade associations in the financial services industry

- It publishes guidance on the interpretation of the money laundering regulations for the use of firms in the industry

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Appointment of Money Laundering Reporting Officer (MLRO)

- Every authorised firm must appoint a Money Laundering Reporting Officer (MLRO)
- The MLRO is a controlled function (it is amongst the ‘required functions’) and the individual must be an FSA approved person
- Often the Compliance Officer acts as MLRO, but this is not a requirement

Role of MLRO

- The MLRO is the person to whom advisers and other members of staff report any suspicions they may have regarding money laundering
- It is the MLRO who determines what, if anything, should then be done
- For example, this would include whether a report should be made to the Serious Organised Crime Agency (SOCA)

Requirements for MLRO

- The MLRO must have the necessary authority and resources to carry out the role
- If the MLRO is not himself a principal or senior manager, there must be a principal or senior manager who is ultimately responsible for the firm’s anti-money laundering procedures
- The MLRO of a firm must prepare a report at least annually for the senior management of the firm, giving details of reports made by staff and assessing the compliance of the firm with the money laundering requirements
- If the report highlights any problem areas, then the firm would need to take action to deal with them
- The MLRO must be empowered to make decisions on relevant matters, in particular whether to make a report to the SOCA, without having to seek approval from anyone else
- There are no formal examination or other requirements for an MLRO, but a firm will want to appoint an individual with suitable experience
- As mentioned above the MLRO is a controlled function and the individual must be an FSA approved person

Money Laundering Procedures

- The FSA no longer sets out detailed requirements regarding anti-money laundering
- Instead, firms are expected to develop their own procedures, based on the needs of their own business
- These should be prepared using a risk-based approach in the context of the firm concerned
- The procedures must be followed by everyone working for the firm, including advisers, whether employed or self-employed

Application of money laundering rules

- Money laundering rules apply to all relevant businesses, including insurers, banks, building societies, financial advisers, accountants and tax advisers
- Businesses such as casinos, bookmakers and money changing services are also included
- Cash deals in excess of €15,000 are also covered
- Strictly, evidence of identity is not needed in the case of long term insurance with a single premium of no more than €2,500 or regular premiums not exceeding €1,000 pa
• This exemption can cover small cases, for example, savings by means of a friendly society exempt policy, where the premiums are necessarily below this level

• Firms may however set a lower threshold, or always insist on evidence

Record-keeping

• Evidence of identification of clients must be retained for a minimum of five years after the end of the business relationship with the customer

• Note that this is considerably longer in most cases than a period measured from the date the evidence is obtained

• For example, in the case of an endowment policy, this means five years after the policy pays out, not merely five years after it is arranged

• Evidence of transactions must be retained for at least five years after the transaction was executed and must be in a form which would be admissible in court

Obligations of firms and advisers

• Firms should take a risk-based approach to their anti-money laundering (AML) procedures

• This means that they should decide their approach within the context of their business and the profile of their clients

• Advisers and other staff must report to the MLRO if they have any suspicion of money laundering – proof is not required

• It is an offence not to report suspicions, and severe penalties (including a prison term) can result

• It is also an offence not to report where the circumstances are such that the adviser or staff member should have had suspicions

• It is therefore wise to make a report where there is any doubt and the individual’s obligation is met by the report to the MLRO

• The MLRO should be in a better position to judge whether the matter should be taken further because of the accumulated experience they gather

Interaction with duty of confidentiality

• The adviser or staff member is protected from any action if they make a report (including action by the client on grounds of breach of confidentiality) etc by the legislation

Training requirements

• Firms must ensure that all staff are trained on money laundering requirements

• In the past, there has been a requirement for training to take place at least every two years, but it is now left to firms to decide what is necessary

• Training should include recognising potential money laundering indicators and details of the firm’s responsibilities under the money laundering regulations

• They must also be aware of the identity of the MLRO and the need to report suspicions to the MLRO

• Any member of staff who may come into contact with money laundering should be given specific training in relation to their role – this includes administrative staff as well as advisory staff
Tipping off

- It is also an offence to ‘tip off’ a client who is under suspicion of money laundering (ie inform a client that they are under suspicion)
- The existence of a report to the MLRO, or any further enquiries being made etc should not be revealed under any circumstances
- As mentioned above, the adviser or staff member is protected from any action if they make a report (including action by the client on grounds of breach of confidentiality) etc by the legislation
- Sometimes the completion of business may be delayed by the need for money laundering investigation, but the reason for the delay still must not be revealed

Client identification procedures

- Firms will specify their own procedures for confirming the identity and address of clients, but these are underpinned by the guidance given by the Joint Money Laundering Steering Group and the FSA
- For example, many firms require identification procedures to be followed even if the value of a transaction does not exceed the thresholds given above
- Both the identity and the address of clients must be verified, and a separate document must be used for each
- It is now also required to verify date of birth
- Where a transaction is undertaken on the instruction of one person (A) on behalf of another (B), for example under the terms of a trust or power of attorney, the requirements apply in relation to both parties (ie both A and B)
- Business introduced by an intermediary can be accepted based on the assurance of the intermediary that identity checks have been successfully carried out
- Examples of documents acceptable for verification of identity include a current passport, a national identity card including a photograph, a UK driving licence, firearms certificate, HMRC (HM Revenue & Customs) tax notification
- Address can be verified by, for example, a home visit, a search of the electoral register, a recent utility bill or council tax demand, UK driving licence, mortgage statement
- These lists are not exhaustive, though this is also an area where individual firms often have specific requirements
- Note that mobile phone bills are not generally acceptable because billing arrangements can be quite fluid
- Similarly, items which are not from an official body, for example, personal correspondence etc are not acceptable
- In some cases, it may be impossible for a client to prove identity in the normal way, perhaps because they have no passport or driving licence and are not responsible for any utility bills
- In these cases, to avoid the risk of ‘financial exclusion’ the FSA Rules permit acceptance of a letter from a person in a position of responsibility such as a doctor, solicitor etc

Serious Organised Crime Agency (SOCA)

- SOCA, which is sponsored by the Home Office, though operationally independent, has taken the place of the National Criminal Intelligence Service (NCIS) in 2006
• It is responsible for dealing with financial information concerning suspected proceeds of crime in order to counteract money laundering

• The MLRO must report suspicions to SOCA where he believes there to be a potential money laundering activity

Absorption of Assets Recovery Agency (ARA) into SOCA

• It is a government objective to ensure that it should be possible to recover assets gained as a result of criminal activities

• The Assets Recovery Agency (ARA) was established under the Proceeds of Crime Act 2002 in order to attempt to recover from criminals any assets which represented the proceeds of crime

• It had powers to obtain information for example regarding investments, and could apply for a court order to sell the criminal’s assets

• From 1 April 2008, the ARA was absorbed into SOCA, which is now responsible for the recovery from criminals of the proceeds of crime

Recovery Powers of SOCA

• SOCA has also gained the asset recovery powers previously used by ARA (and at the same time, the same powers were also extended to the Revenue and Customs Prosecutions Office, Crown Prosecution Service, Serious Fraud Office and Public Prosecutor Northern Ireland

Financial Sanctions requirements

• The Financial Sanctions requirements impose additional obligations on firms and are separate from the money laundering requirements

• They form part of the government’s approach to preventing and suppressing the financing of terrorism and terrorist acts

• Under the requirements, HM Treasury maintains a list of individuals and entities who are subject to financial sanctions orders

• The list is the UK Consolidated Financial Sanctions List and the listed individuals and entities are known as targets

• Targets may be based in the UK, EU or anywhere else in the world

• Firms must not carry out transactions with targets

• Financial transactions are affected irrespective of their size and there is no minimum financial limit

• No authorised firms are exempted from the requirements, irrespective of the types of business transacted, or whether or not they hold client money

• In some cases, the financial sanctions order will prohibit any firm from providing any financial services to the target

• This will always be the case if the target is on the list of prescribed persons under the Terrorism Order

• The requirements are enforced by HM Treasury, but the FSA has provided firms with guidance

• This suggests that firms should check existing clients against the list and should check all new clients before providing any services or undertaking transactions

• If a client is found to be on the list, the firm must cease providing any services and must report the matter to the Asset Freezing Unit, which is part of HM Treasury
• If an approved person is found to be in breach of the financial sanctions regulations, he or she may be subject to a fine and/or imprisonment