

**THE MONEY LAUNDERING SOURCEBOOK
(AMENDMENT NO 2) INSTRUMENT 2004**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 138 (General rule-making power);
 - (2) section 146 (Money laundering rules);
 - (3) section 149 (Evidential provisions);
 - (4) section 156 (General supplementary powers); and
 - (5) section 157(1) (Guidance).
- B. The rule-making powers listed above are specified for the purposes of section 153(2) of the Act (Rule-making instruments).

Commencement

- C. This instrument comes into force on 1 March 2004.

Amendments to the Money Laundering sourcebook

- D. The Money Laundering sourcebook is amended in accordance with Annex A to this instrument.

Miscellaneous amendments

- E. SYSC, APER, CRED and the Glossary are amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Money Laundering Sourcebook (Amendment No 2) Instrument 2004.

By Order of the Board
19 February 2004

Annex A

Amendments to the Money Laundering sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text.

1.1.3 G 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 as amended by No 2001/97/EEC). The scope extends to *incoming firms* (such as branches of institutions established elsewhere in the *EEA*), except those providing only *cross border services* in the *United Kingdom*. This is because the Directive is designed to apply on a “*Host State*” basis. *ML* does not apply with respect to the *unregulated activities* of a *firm*, for example *money service business*.

...

1.2.4 G 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 53(3) of the *Money Laundering Regulations* or section 330(8) of the *Proceeds of Crime Act 2002*.

1.2.5 G In assessing a *relevant firm’s* compliance with the requirements of this sourcebook, the *FSA* will have regard to the relevant provisions of the *Joint Money Laundering Steering Group’s Guidance Notes for the Financial Sector*.

...

3.1.3 R ...

(2A) If the *client*, or the *person* on whose behalf he is acting, engages in *money service business* and is registered with the Commissioners of the Customs and Excise, sufficient evidence of identity must include the registered number, within the meaning given by regulation 4(3) 9(2) of the *Money Laundering Regulations 2001*, of the *client* or the *person* on whose behalf he is acting.

...

3.1.4 G ~~In assessing a *relevant firm’s* compliance, with its duty to identify a *client* in accordance with *ML 3.1.3R*, 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*. [deleted]~~

...

- 3.2.1 R (1) This section sets out circumstances in which:
- (a) the duty in *ML 3.1.3R(1)* (Identification of the client: the duty) need not be complied with; or
 - (b) ~~the relevant firm is entitled to regard the evidence it has as sufficient evidence.~~ the *relevant firm* is required to take reasonable steps to establish the identity of a *person* for whom the *client* is acting.

...

- 3.2.2 R The duty in *ML 3.1.3R(1)* (Identification of the client: the duty) does not apply if:

- (1) the *client* is also:
 - (a) a credit institution or financial institution covered by the Money Laundering Directive; or
 - (b) an authorised professional firm; or
 - (c) is regulated by an overseas regulatory authority (see *ML 3.2.7R*) and is based or incorporated in a country (other than an *EEA State*) whose law contains comparable provisions to those contained in the *Money Laundering Directive*; or
- ...
- (3) with a view to carrying out a one-off *transaction*, the *client* (other than a *money service operator*) 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 a credit institution or financial institution covered by the Money Laundering Directive, or an authorised professional firm, or an entity undertaking comparable activities in an *EEA State*; 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*~~ regulated by an overseas regulatory authority (see *ML 3.2.7R*) and is based or incorporated in a country (other than an *EEA State*) whose law contains comparable provisions to those contained in the *Money Laundering Directive*; or

...

...

~~When evidence of identity may be regarded as sufficient~~

- 3.2.4 R ~~A *relevant firm* may regard evidence as sufficient evidence for the purposes of ML 3.1.3R (Identification of the client: the duty) 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 accept *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*. [deleted]~~

Where the client is acting for another person

- 3.2.5 R ~~A *relevant firm* may regard evidence as sufficient for the purposes of ML 3.1.3 R (Identification of the client: the duty) if it establishes that the *client* (other than a *money service operator*):~~
- ~~(1) — is bound by this sourcebook or by the *Money Laundering Regulations* 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 3.2.7 R) and to legislation at least equivalent to that required by the *Money Laundering Directive*. Where the *client* acts, or appears to act, other than in the circumstances covered by ML 3.2.2R(1) and (3) for another *person*, the *relevant firm* must take reasonable steps for the purpose of establishing the identity of that *person*.~~

- 3.2.6 G ~~A *relevant firm* is expected to take reasonable steps to determine whether or not the *client* falls within the exemption in ML 3.2.5R(2). [deleted]~~

...

- 4.1.1 G This section deals with the reporting to the *firm's MLRO* or a *person authorised by the Director General of NCIS* of knowledge or suspicions within the *relevant firm* about *money laundering*.

- 4.1.2 R (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* or a *person* authorised by the Director General of *NCIS*, within the same *firm* or group, if he:
- (a) knows or suspects; or
 - (b) has reasonable grounds to know or suspect;

that a *client*, or the *person* on whose behalf the *client* is acting, *person* is engaged in *money laundering*.

...

- 4.1.4 R (1) The duty in ML 4.1.2R (Internal reporting) does not apply where the *relevant firm* is a professional legal adviser and the knowledge or suspicion or the reasonable grounds for knowing or suspecting are based on information or other matter which came to it in privileged circumstances.
- (2) Information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to the adviser:
- (a) by (or by a representative of) its client in connection with the giving by the adviser of legal advice to the client; or
 - (b) by (or by a representative of) a *person* seeking legal advice from the adviser; or
 - (c) by a *person* in connection with legal proceedings or contemplated legal proceedings.
- (3) The privileged circumstances in (2) do not apply to information or other matter which is communicated or given with a view to furthering a criminal purpose or in contravention of a provision of the *regulatory system*.
- (4) "Professional legal adviser" includes any *person* in whose hands information or other matter may come in privileged circumstances.

...

- 4.3.2 R (1) A *relevant firm* must take reasonable steps to ensure that any report required by ML 4.1.2R(1) (Internal reporting), other than a report made to a *person* authorised by the Director General of *NCIS*, 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:

(4a) knows or suspects; or

(2b) has reasonable grounds to know or suspect;

that a *person* has been engaged in *money laundering*, he reports promptly to *NCIS*.

(2) In reporting to *NCIS*, an *MLRO*, or his duly authorised delegate, must have regard to any order under section 339 of the Proceeds of Crime Act 2002 prescribing the form and manner in which a disclosure must be made to *NCIS* and to any guidance issued by *NCIS* on the form and manner of reporting.

...

5.1.4 G In order to assist *relevant firms*, the Joint Money Laundering Steering Group (JMLSG) publishes government, government department, or *Financial Action Task Force* findings of the kind referred to in *ML 5.1.3R*. This information can be found on the JMLSG's website (www.jmlsg.org.uk) or accessed indirectly via the *FSA*'s website (www.fsa.gov.uk) or, in the case of *Financial Action Task Force* findings only, via the *Financial Action Task Force's* website (www.fatf-gafi.org). ~~the *FSA* will, from time to time, publish any government, government department or *Financial Action Task Force* findings, of the kind referred to in *ML 5.1.3 R*, on the *FSA* website (www.fsa.gov.uk).~~ All *relevant firms* should check this information regularly to ensure that they keep up to date with current findings.

...

6.2.1 R 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:

...

(2) the identity and responsibilities of the *MLRO* or a *person* authorised by the Director General of *NCIS*;

...

(4) the potential effect, on the *relevant firm*, ~~on~~ its *employees* and its *clients*, of any breach of that law.

...

~~MLRO as "appropriate person"~~ "nominated officer" under Money Laundering Regulations

7.1.4 G If convenient, a *relevant firm* may decide that the same *person* can carry out the responsibilities of the *MLRO* and of the ~~"appropriate person"~~ "nominated officer" under the *Money Laundering Regulations*.

~~“Appropriate person” “Nominated officer”, under those Regulations, means a person appointed to handle the internal and external reporting required by the Regulations (see Regulation 14) has the meaning given by Regulation 7.~~

...

7.1.11 R A *relevant firm* must make its *MLRO* responsible for:

...

(3) making external reports to *NCIS* under ~~ML 4.2~~ 4.3 (External reporting);

...

...

7.2.1 G *SYSC 3.2.6R* (Compliance) 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 amplifies ~~this requirement, particular aspects of the rule in SYSC. It does not, however, limit the application of the rule, the effect of which is that, where financial crime is concerned, firms must also comply with other Handbook requirements (in particular, ML) and their legal obligations under the Money Laundering Regulations and the Proceeds of Crime Act 2002.~~

...

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

...

(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; [deleted]~~

...

(2) The specified periods are:

...

(b) in relation to *transactions* within (1)(b), five years from the date when the *transaction* was completed; and

(c) ~~in relation to (1)(c), five years from the date of the insolvency; and [deleted]~~

...

...

Annex B

Amendments to SYSC, APER, CRED and the Glossary

In this Annex, underlining indicates new text and striking through indicates deleted text.

Senior management arrangements, Systems and Controls (SYSC)

- 3.2.7 G (3) The ~~FSA's~~ detailed requirements for systems and controls with respect to ~~money laundering~~ are set out in the ~~Money Laundering sourcebook (ML)~~ In applying SYSC 3.2.6R, where *financial crime* is concerned, *firms* must also comply with other *Handbook* requirements (in particular, *ML*) and their legal obligations under the *Money Laundering Regulations* and the *Proceeds of Crime Act 2002*.

Statements of Principle and Code of Practice for Approved Persons (APER)

- 4.7.9 E In the case of the *Money Laundering Reporting Officer*, failing to discharge the responsibilities imposed on him in accordance with chapter ~~8~~7 of the *Money Laundering sourcebook (ML)* falls within *APER* 4.7.2E.

Credit Unions sourcebook (CRED)

- 12.3.6 G *ML* 3.2 sets out a number of exceptions to the requirement upon *firms* to establish the identity of the *client*. These exceptions apply in principle to *credit unions*, ~~but the only one which is likely to be relevant to the *credit union* context is that described in *ML* 3.2.4R. That *rule* establishes that the identification requirements need not apply if the source of funding of a *transaction* is an account held by a *client* with a *firm* which itself is subject to the requirements laid down in *ML*. In the *credit union* context this, for example, would mean that funds arriving in a member's account which originated from an account held with a *bank* or *building society* need not be subject to the *customer* identification requirements set out in *ML* 3.1.3R. However, none of these exceptions applies if the *firm* has reasonable cause to knows or suspects that the *client* is engaged in *money laundering*.~~

...

- 12.4.1 G *Firms* should take reasonable steps to ensure that, when any report of *money laundering* is suspected, a report is swiftly made to the *MLRO* reported to the *MLRO* is swiftly consulted. Having ~~consulted~~ considered the information available, if the *MLRO* suspects a *person* has been engaged in *money laundering*, he should report promptly to the National Criminal Intelligence Service (*NCIS*).

...

- 12.5.1 G *ML* 5.1.2R requires *relevant firms* to take reasonable steps to ensure that they obtain and make proper use of any government or *Financial Action*

Task Force findings. In order to assist *relevant firms*, the Joint Money Laundering Steering Group (JMLSG) publishes government, government department or *Financial Action Task Force* findings, of the kind referred to in *ML 5.1.3R*. This information can be found on the JMLSG's website (www.jmlsg.org.uk) or accessed indirectly via the *FSA*'s website (www.fsa.gov.uk) or, in the case of *Financial Action Task Force* findings only, via the *Financial Action Task Force's* website (www.fatf-gafi.org). All *relevant firms* should check this information regularly to ensure that they keep up to date with current findings. This information will be published on the *FSA* website. *Firms* are required to access this information.

Glossary of definitions

Amend the following definitions as shown

money laundering

~~an offence which involves the concealment, acquisition or use of criminal property or facilitating its concealment, acquisition or use, as defined for the time being in:~~

~~a) section 327 (Concealing etc), 328 (Arrangements) or 329 (Acquisition, use and possession) of the Proceeds of Crime Act 2002;~~

~~b) section 18 (Money laundering) of the Terrorism Act 2000.~~

any act which:

a) constitutes an offence under section 18 (Money laundering) of the Terrorism Act 2000; or

b) constitutes an offence under section 327 (Concealing etc), section 328 (Arrangements) or section 329 (Acquisition, use and possession) of the Proceeds of Crime Act 2002; or

c) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (b); or

d) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (b); or

e) would constitute an offence specified in paragraph (b), (c) or (d) if done in the *United Kingdom*.

Money Laundering Directive the Council Directive of 10 June 1991 on the prevention of the use of the financial system for the purpose of money laundering (91/308/EEC) as amended by the Council Directive of 4 December 2001 (2001/97/EEC).

Money Laundering Regulations the Money Laundering Regulations ~~1993 (SI 1993/1933)~~ 2003 (SI 2003/3075)
(See *ML*).

~~*Money Laundering Regulations 2001*~~ the Money Laundering Regulations 2001 (SI ~~2001/3641~~) [deleted]