



**The Proceeds of Crime Act 2002
Obligations to Report Money Laundering: The
Consent Regime**

Consultation Document 2007

**A response by
The Futures and Options Association
&
The London Investment Banking Association**

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1. Introduction

- 1.1 The Futures and Options Association (FOA) is the industry association for 170 international firms and institutions which engage in the carrying on of derivatives business, particularly in relation to exchange-traded transactions, and whose membership includes banks, brokerage houses and other financial institutions, commodity trade houses, power and energy companies, exchanges and clearing houses, as well as a number of firms and organisations supplying services into the futures and options sector.
- 1.2 The London Investment Banking Association (LIBA) is the principal trade association in the United Kingdom for firms active in the investment banking and securities industry. The Association represents the interests of its Members on all aspects of their business – both international and domestic – and promotes their views to the authorities in the United Kingdom, the European Union and elsewhere.
- 1.3 We are pleased to have an opportunity to respond to the Home Office's consultation document (conduc): *The Proceeds of Crime Act 2002 Obligations to Report Money Laundering: The Consent Regime*. We are aware that the issues raised in this consultation have been discussed with the industry but, since we do not believe that representatives from the wholesale markets have been involved in these discussions, the FOA and LIBA are particularly pleased to have an opportunity to comment on the Home Office's proposals and to present a wholesale market, rather than retail banking, perspective on the issues arising. We are also keen to remain involved in any future work on the solutions.
- 1.4 Our responses to the specific consultation questions in Chapter 5 (*Options on the Way Forward*) of the conduc are set out in Section 3 of this response (see below). We would, however, start by making a number of high-level comments and general observations, which we hope will prove helpful.

2. High Level Comments

The current regime: the issues

- 2.1 Our members are broadly in favour of a consent-style regime because of the scope it provides for a "safe harbour" for firms. That said, whilst we naturally support fully the work of law enforcement and the fight against financial crime, we believe that it is appropriate to question the value of the current regime and, in particular, whether it is efficient and effective from law enforcement's perspective. As the Home Office is aware, aspects of the current consent regime create significant issues for firms and their nominated officers. Whilst members acknowledge that some of the practical difficulties firms faced when the consent regime was originally introduced have been reduced through the Serious and Organised Crime Agency's (SOCA's) efforts to focus resource on managing the current regime more effectively, nevertheless still presents firms in the wholesale sector with particular challenges, many of which are sector specific and different to those faced by retail firms.
- 2.2 The conduc focuses on the issue of fungibility and on individual transactions/events, rather than on the problems caused by the wide definition of "criminal property in section 340 of the Proceeds of Crime Act 2002 (PoCA), the difficulties of applying the PoCA regime to on-going client

relationships and the uncertainties with respect to whether a firm or its nominated officer might, in dealing with that client, inadvertently commit an assisting (e.g. the transferring criminal property) or tipping-off offence. The condoc does not, therefore, give the same degree of attention to the other main areas of concern to firms operating in the fast-moving wholesale markets: namely the impact of suspicion on a firm's relationship with its client, the ongoing management of that client's affairs and the mitigation of legal risks to the firm and its nominated officer. We also believe there is insufficient reference to the issue of constructive trust and this too can lead to confusion and incorrect conclusions, such as that victims of crime may lose money or assets whilst offenders continue to retain the benefit of them. Firms should be clearly informed that consent is solely related to PoCA and in no way expunges any fiduciary duty that they may have to third parties.

- 2.3 Whilst many firms now receive consent from SOCA in an average time period of 2.6 days, as opposed to the notice period of "seven working days" in section 336(7) of PoCA, the speed and global nature of the wholesale markets and the sophistication of most wholesale clients create particular difficulties. If a transaction does not settle, how many plausible excuses can a firm give before a well-informed client - about whose activities a Suspicious Activity Report (SAR) has been filed - becomes suspicious? How should firms explain the position to clients without tipping off (particularly where consent is refused)? Should a firm make inaccurate statement to a client intentionally, to avoid tipping them off? If not, what standard form of wording should be used when dealing with clients? It is important that the totality of client relationship issues - and not just the issue of fungibility - is addressed in any reform of the consent regime.
- 2.4 Members believe that one of the biggest challenges that wholesale firms face is, having made a report and sought consent, the unpleasant situation of not being able to act upon their clients' instructions but being unable to advise why this is the case. We were, therefore, pleased to note from paragraph 4.5 of the condoc that "*SOCA is working with the regulated sector to agree a form of wording that can be used with clients*" as a standard wording, provided its use is optional rather than mandatory, could assist in reducing the tensions that inevitably build up between the client and the firm in these circumstances. FOA and LIBA, therefore, request inclusion in these discussions to represent the interests of wholesale firms.
- 2.5 We are encouraged that counsel's opinion was sought on whether a nominated officer that fails to comply with a customer's instructions to complete a transaction could commit an offence of tipping off. Unfortunately, though, the defence in section 333 PoCA, which was stated in the condoc as being available "*if tipping off inadvertently occurs*", was repealed on 26th December 2007 and has not been replaced. We believe that a similar defence should be reinstated.
- 2.6 Members were surprised by the statement in paragraph 5.2 of the condoc that: "*There is limited evidence that the current regime is broken, even though the regulated sector are understandably concerned about some of the pressures it puts on them. Reporters, law enforcement and prosecutors have adopted a pragmatic approach to the reporting and consent regimes, although the view of the regulated sector is that such an approach is unsustainable as it leaves their position vulnerable*". Whilst we believe that the current regime is not irretrievably broken, we also believe there is ample evidence that the current system does not work effectively for firms or as efficiently as it could for law enforcement and we do not agree that law

enforcement always take a pragmatic view. Members have also told us that their attempts to obtain pragmatic agreements from SOCA on specific SARs have, on occasions, been met with silence and that they have had to take decisions – with personal legal consequences - with such silence being taken as tacit approval.

The current regime: the issue of fungibility

- 2.7 As discussed above, one of the difficulties with the current regime for many firms is the issue of fungibility, i.e. once a SAR has been filed members believe that the entire contents of the client's account are tainted and thus feel obliged to disclose and seek consent for every outward transaction. Members have commented that, in the majority of cases, the process of requesting consent for routine payments - in respect of which the firms have no specific suspicions/concerns - adds no value for the firms and we question whether it does so for SOCA.
- 2.8 Paragraph 4.11 of the condoc states that: *“It could be argued that once an individual account has attracted suspicion, all subsequent transactions on this account become tainted and therefore require a Suspicious Activity Report to be made to SOCA.”* In the wholesale markets, firms are as likely to become suspicious of their clients' activities through external sources such as press reports, as they are through identifying a suspicious transaction. If a firm learns through reliable sources that its client is under investigation, for example, for tax evasion, then consideration must be given to whether this constitutes sufficient grounds for suspicion. Often the transactions undertaken by the client will not be a material factor in the decision as the principles of a suspicious *activity* reporting regime are followed rather than one of suspicious transaction reporting. In addition, as wholesale firms may only have limited visibility of a client's affairs - for example, because the client uses a number of executing brokers or clearing brokers and receipts may be from global wire transfers rather than salary payments – it is unlikely that they will be able to distinguish funds derived from a legitimate source from the funds that give rise to the source of the suspicion. It is, therefore, inevitable that a suspicion will taint the client relationship and all the client funds. The condoc, however, focuses on reporting of suspicious transactions not suspicious activity. Members are concerned that this change of emphasis, which we assume would require amendment to Section 7 of PoCA, is not desirable, as there is a fine line between transactions and activities and it is not possible to divorce the former from the latter.
- 2.9 We note that paragraph 4.18 of the condoc states: *“There does not appear to be any evidence in practice of banks feeling forced either to freeze entire accounts or to bombard SOCA with reports on every single transaction in suspect accounts”.* We were surprised by this statement, as many members – albeit not high volume retail banks - do feel obliged to seek consent on every transaction for the reasons discussed above. In one instance, a member firm submitted in excess of forty SARs on the same client in the past twelve months. SOCA liaised directly with the nominated officer and whilst they expressed a keen interest in the transactions and the activity, which they agreed was clearly suspicious, but there was no nexus to a predicate offence in the UK and therefore there was no prospect of UK law enforcement conducting an investigation. SOCA stated that they would liaise with overseas counterparts. They were not able to give consent to carry future transactions that were yet to be initiated and thus in compliance with PoCA it was necessary for the nominated officer to continue to submit SARs and request consent to commit a prohibited act time and time again. The multiple SARs

added no value to the intelligence and were in fact a resource drain on both the member firm and SOCA.

- 2.10 We were interested to note from the condoc that the Regulated Sector may have misinterpreted the concept of fungibility and that there may be no requirements for firms to act as described above. Whilst the condoc provides a helpful interpretation of PoCA, it acknowledges that the legal strength of that interpretation has not been tested. Given the personal liability placed on nominated officers for failing to report, more certainty would be required to resolve the issue.
- 2.11 We believe, therefore, that Option 1 alone is not a viable option: as the condoc itself recognises, the: *“main disadvantage is that it still leaves the law rather unclear in the interim, and definitive legal ruling when it comes may not support the approach.”*

The proposed Pre-Event Notification

- 2.12 In general, our members were unsure how the proposed pre-event notification (PEN) would work in practice. Would this allow firms to proceed in all cases (and, if so, after what (if any) interval) or would there be different categories? What would the criteria be in deciding whether to file a notification or ask for consent? If there is any element of uncertainty or heightened risk to the firm or nominated officer, a cautious approach is likely to be adopted by many firms, which will simply maintain the status quo.
- 2.13 Paragraph 5.14, which explains Option 2 further, goes on to say: *“Instead of having to find reasons to prevent a transaction taking place while waiting for SOCA to respond to the consent request, the banks would be in the much more comfortable position of only having to freeze when they undertook to do so voluntarily. They might take such a decision on the basis of their judgement on the likelihood of law enforcement interest, or possible concern of a specific predicate offence, factoring in their risk based approach”*. This assessment would be entirely subjective and would expose the institution to having to justify its approach in retrospect. Additionally, the concept of ‘voluntarily’ freezing an account could in many instances, create additional problems for nominated officers. Currently, if a nominated officer come into conflict with the business in relation to a suspicious transactions, the business is likely to demand to see the law or regulation concerned. If, however, the nominated officer has decided to freeze an account voluntarily, their judgment may be called into question if there are commercial pressures to complete a transaction and maintaining the client relationship.
- 2.14 Paragraphs 5.11-5.12 of the condoc state: *“Using this method there would be no obligation to freeze any transaction while awaiting consent. However, the reporter would maintain the option of voluntarily freezing account activity for up to 7 days to see if SOCA/ Law Enforcement wishes to intervene. This period would be extendable by a maximum of 31 days. These time periods mirror the moratorium in the current system. Such a voluntary freezing by the institution would trigger a statutory protection for the reporter from being sued by the subject or any other related party for breach of mandate”*. Again, this would add a significant amount of subjectivity to the assessment. Bearing in mind the penalties of not doing so, many members have asked why a firm would not voluntarily freeze an account or on what grounds it might wish to do so for a period of less than 7 days. Whilst members support the concepts in Option 2, as articulated currently, many members do not feel that Option 2 is viable.

- 2.15 In sum, as discussed in more detail in section 3, we believe that a new option which combines Option 3 and Option 1 and possibly concepts from Option 2 to enhance the current regime, would focus the resources of firms and law enforcement on activities and transactions that are inherently suspicious and reduce uncertainty and legal risk to firms and their nominated officers, whilst retaining the safeguards from the current approach. Our alternative approach is discussed in response to Q7.

3. Responses to Home Office questions

Q1. *In the light of your experience and the discussion in this paper, do you believe the consent regime as it stands is workable?*

Many of our members believe that the current regime is now workable, but not without creating a considerable degree of legal and regulatory uncertainty for regulated firms and their nominated officers and an unnecessarily high administrative burden which, arguably, exceeds, in many respects, the benefits that can be gained. In particular, as discussed above, the lack of certainty surrounding the issue of fungibility, whether/when a firm may inadvertently assist or tip off a money launderer and the impact of the consent regime on client relationships, places a high a burden on the Regulated Sector. To put it another way, although many members do not believe that the consent regime is irretrievably broken, they question whether, given its costs (to both the Regulated Sector and SOCA), it is delivering equivalent value to law enforcement. Members are, in particular, concerned that the current regime is not focusing the finite resources of firms and SOCA in the areas of greatest risk and may not be meeting the needs of law enforcement in the most effective manner. We believe, therefore, that the Home Office should follow the Financial Services Authority's lead (c.f. the work led by Philip Robinson in 2004 on "*Identity: diffusing the issue*") and engage a true cross-section of stakeholders (including representatives from all industry sectors and law enforcement) to discuss how the regime could be improved and what amendments are needed to PoCA to bring about these necessary improvements.

The "workability" of the current consent regime is also directly correlated to the resources invested in it by SOCA. If we were to have a period of investment failing to match the rate of SARs, we would see the period of time taken to gain consent rising again from the current level of 2.6 days. Should this happen, firms will inevitably experience more difficulties, as discussed above, managing the client relationship and avoiding tipping off.

In our opinion, if the consent regime is to be retained, it is important that SOCA has sufficient flexibility with respect to the scope of the consent it can give. We were, therefore, encouraged by paragraph 2.5 of the condoc, which states that: "*SOCA's approach to the issue (supported in discussion with leading counsel) is that a single consent may be given to the execution of a number of transactions over a period of time as part of a course of conduct...*" We also believe that SOCA should have the ability to give consent to firms to continue with a client relationship *per se*. Such a broadly framed consent could be subject to safeguards such as monthly reporting from the firm and limitations in scope (e.g. "unless, ...funds are to be transferred outside the UK Regulated Sector"). It would also add value to any consent regime if SOCA were to set a response target of 24 hours. This would make the intercept regime almost transparent, which would in itself mitigate some of

the industries fears of implied delays through prevarication over clients' payments. In particular, in the current environment, avoidance of the risk that a firm might be subject to negative publicity as a result of apparent "failure" to settle a transaction, would be welcomed.

In sum, whilst the current regime is workable, the workability comes at a level of cost and risk to firms and their nominated officers that is, arguably, higher than the value obtained by law enforcement: action, therefore, needs to be taken to resolve the serious difficulties the current consent regime creates for the regulated sector. This is particularly true for nominated officers, who are at personal risk of criminal proceedings if, with the benefit of hindsight, their actions and judgments are found wanting. We believe that PoCA should also be amended to, amongst other things, ensure that action is only taken against individual nominated officers if they are negligent (including recklessly negligent) and/or complicit and to reinstate/provide new tipping-off and assisting defences (see para 2.5 and our response to Q6).

Q2. Do you believe the additional measures proposed in option 1 can strengthen confidence in the existing regime?

The additional measures, whilst being helpful would, therefore, still leave too much uncertainty over the reporting obligations for the Regulated sector. The measures would not, in particular, assist firms when they are waiting for consent. Whilst the average response time from SOCA is now 2.6 days (as opposed to the notice period of "seven working days" in section 336(7) of PoCA), in the wholesale markets it is common-place for transactions to be settled, or payments to be required, the same day. In addition, the additional measures proposed would not resolve the issue of tipping off, where a customer, about whose activities a SAR has been filed, is waiting for a transaction to be processed, and, being familiar with industry practice, contacts the firm repeatedly - either by phone or in person - to find out the reasons for the delay. Even if consent is granted, firms are still unable to explain to their clients that they were waiting for consent, thus damaging client relationships. It is, therefore, important that should this option be pursued by the Home Office, the measures also seek to resolve uncertainties or difficulties arising in the context of the client relationship and the PoCA assisting and tipping off offences and do not focus solely on fungibility.

It may be that some of the uncertainty in the current regime could be resolved by court cases. However, only if relevant ones are brought and, as discussed above, at too great a cost to the individual nominated officers and firms being used as "test cases." The interests of law enforcement and the industry may not always be coincident: for example, it might not be in the interests of the law enforcement agencies to bring a case, which may be "not proven" where an opinion on an issue would be beneficial to the industry. Also, key points would need to be enshrined in "guidance" that has a clearly defined evidential footing, to avoid the risk of retrospective amendment or retraction.

In sum, we do not believe in making badly drafted legislation work by being pragmatic, at the risk of placing firms and their nominated officers in jeopardy. One man's pragmatism can be interpreted by another man in too many different ways and member firms do not want their actions to be second guessed with the benefit of hindsight. That said, members believe that PoCA should be amended so the current consent regime is clarified and enhanced, rather than changed substantially or completely.

Q3. Do you believe Option 2 provides a viable alternative to the current consent regime?

Opinions on this question were mixed.

The case for Option 2

Some members believe that Option 2 is a sensible, risk-based, approach that offers more clarity and enables nominated officers to anticipate problems with potential future transactions and 'head them off at the pass'. These members believe that in submitting a PEN, the nominated officer can include sufficient detail of the known parties to an account or transaction to enable SOCA to conduct research and ascertain whether or not they have an active ongoing interest in the party or parties or whether they want to initiate such an interest. This approach also recognises that, similar to firms, SOCA has finite resources to fight money laundering and they cannot be all things to all suspicions at all times: they too have to focus and these members believe that PENs are likely to present them with a greater opportunity to do so. One effect of Option 2, though, is likely to be a reduction in SARs together with a natural reduction in the administration requirements. A single PEN could save multiple SARs: for example, in the last twelve months, one member has submitted in excess of 40 SARs, the majority of which were for consent on the same client.

Furthermore, Option 2 was seen as creating a further mechanism by which the industry can manage the competing requirements of its clients and the law enforcement agencies. This gives added flexibility, although SOCA and other agencies must recognise that the ability of firms to choose an alternative approach may in any individual circumstance lead to missed opportunities, and equally that they are not able to apply the benefit of hindsight in questioning any firm's individual decision on which notification route to follow. Otherwise firms will be dissuaded from taking the Pre Event Notification option.

The case against Option 2

Other members are concerned that, as discussed in section 2 above, Option 2, as set out in the condoc, makes the assessment of a SAR too subjective and places most of the burden on the Regulated Sector, which could then be subjected to retrospective scrutiny. As a result, they do not believe that Option 2 is a workable solution per se, although aspects of the option could be used to enhance the current regime.

Whilst a broader consent provision, as discussed in paragraph 5.4 of the condoc would be very helpful, Option 2, as presented currently, would place the onus on the firm to determine whether or not it should freeze an account (albeit under protection under law in doing so).

Paragraph 5.14 states that: *"Instead of having to find reasons to prevent a transaction taking place while waiting for SOCA to respond to the consent request, the banks would be in the much more comfortable position of only having to freeze when they undertook to do so voluntarily. They might take such a decision on the basis of their judgement on the likelihood of law enforcement interest, or possible concern of a specific predicate offence, factoring in their risk based approach"*.

Whilst this is described as an advantage to Option 2, we believe that it highlights a number of issues. Firstly, whilst firms, such as retail banks, which submit a high volume of SARs, may have the experience to decide whether or not to freeze an account, many firms in the wholesale market, particular smaller firms, may find the exercise of judgment problematic. The only decision a firm should have to take is whether or not there are reasonable grounds for a suspicion, not the degree of the suspicion or how it will be viewed by law enforcement.

Linked to the above, firms do not have a law enforcement role per se and should not be required to make a “judgement on the likelihood of law enforcement interest” when they have little substantive knowledge of law enforcement’s likely interest in potentially freezing an account. This is particularly important given that law enforcement will, naturally, have access to information that might make a suspicion a firm believes will be of very little interest, of extremely high intelligence value.

The current consent regime requires firms to freeze accounts post submission of a SAR: whilst this can give rise to the issues of fungibility handling, it does give nominated officers a clear framework in which to operate. These members believe that if: (a) a more realistic response time is enshrined in the SOCA service standards (which is more sensitive to market settlement times); (b) SOCA can, as outlined in paragraph 5.4 of the condoc, give firms a single consent to cover a number of transactions or an ongoing client relationship and has flexibility over how such consent is expressed; and (c) a SAR could include additional information and a request for a more broadly framed consent from SOCA (a SAR+), the current regime could be improved rather than changed.

Members are also concerned that Option 2 might reduce law enforcement’s ability to pro-actively seize funds, as it will rely on firms voluntarily freezing funds. Pressure on nominated officers to act on a client’s instruction or to avoid the risk of inadvertently tipping off the client, may result in a PEN being submitted and funds being allowed to move, thus undermining the aim of allowing law enforcement the opportunity of seizing the proceeds of criminal acts or preventing the disbursements of terrorist financing. Whilst it could be argued that if a firm is certain that a transaction is of a highly suspicious nature then it should freeze the transaction and make an excuse to the client for the delay that would avoid the client being tipped off, the counter argument could be that some forms of money laundering may not appear “highly suspicious” at the time (or at least not to a firm).

In sum, if, following this consultation, the Home Office is minded to pursue this option, the industry and all other stakeholders need to be engaged in a period of detailed discussion, particularly with respect to how this option would be implemented and operate in practice and how the concerns of firms could be resolved.

Q4. *Is it your view that it is worth continuing with the current consent regime as an option if the Pre Event Notification system and the new restraint power are introduced?*

As discussed above, our members are broadly in favour of a consent-style regime because of the scope it provides for a "safe harbour" for firms. That said, again the views of our members on this question were mixed.

Some members believe that the current consent regime was not worth continuing. Their argument is that SARs require time, commitment and effort and when no benefit derives from SARs, there is a waste of resources that could be and indeed should be focussed elsewhere. They believe that PENs will free up time, time that can be used on addressing other money laundering risks within firms. As to the freezing of accounts these members would point to the fact that consent is to commit a prohibited act – it does not deal with issues of constructive trust and fiduciary obligations.

Other members believe that, even if PENs are introduced, there will be circumstances where the current system may be more appropriate. For example, if an account that has previously been beyond reproach enters into a highly suspicious transaction, the firm is unlikely to have made a "defensive" PEN and has no option but to revert to the current consent system.

In sum, as discussed, we believe that the current regime should be enhanced rather than discontinued.

Q5. *Do you have specific views on the new powers suggested in option 2?*

The majority of our members have no issues with the proposal that a senior law enforcement officer can use his/her powers to freeze an account and thereafter follow this with a court order.

A minority, however, believe that the transfer of powers from the judiciary to law enforcement officers (albeit in the very short term) is not something that should be approved on principle, even if it offered expediency to the law enforcement agencies. If the judiciary cannot deliver a court order in an acceptable time (as can be done in other areas of the law) then it was felt that investment should be made in that system.

Q6. *Do you believe Option 3 provides a viable refinement to Options 1 and 2 as regards resolving difficulties around the operation of the consent regime?*

Legislative changes under Option 3 could, if broader than those articulated in the condoc, implement the changes which, as discussed above, we believe are necessary to PoCA and allow firms to seek consent for the continued operation of an account when making the initial SAR but monitoring the account to determine whether subsequent transactions should be regarded as suspicious and therefore reportable. Using Option 3 - in particular to clarify the legal position of firms with respect to the offences of assisting and tipping off providing a new defence where a firm has reported its concerns and there is no evidence of actual assistance or wilful blindness - would give increased legal certainty to the industry and the capability for stronger defenses and better controls. Option 3 would, therefore, help to reduce the elements of distrust and thus reticence to report that may exist in the current arrangements due to the absence of defining case law.

Some firms, however, are concerned that if a nominated officer fails to identify a transaction and/or facts and, therefore, does not include them in the "reasonable picture" of the criminal activity, law enforcement agencies may bring action against that officer or firm.

In sum, whilst we believe that Option 3 is a viable refinement but, to address all the Regulated Sector's major concerns with the consent regime – rather than just fungibility, we believe that a new, broader, option is needed. In response to Q7, we propose an alternative approach that, amongst other things, provides for a more flexible consent regime and/or incorporates the PEN and other elements from Option 2. We believe that such a solution is likely to provide the most pragmatic, efficient and valuable system for the Regulated Sector and law enforcement alike. It will allow firms to maintain an acceptable level of service to their client, for most transactions, whilst providing SOCA with important intelligence and the ability to step in, where there is suspicious activity or a suspicious transaction, and seize the assets concerned.

Q7. Do you have any alternative approaches, which you think might contribute to resolving any problems?

Our alternative approach would be to improve the current consent regime, largely through legislative changes, by clarifying areas of uncertainty in PoCA, removing unduly burdensome requirements and building on the options discussed in the condoc; thereby enabling a more efficient and efficient use of (firms' and law enforcements') resources. We also believe that this option would better reflect the partnership approach to financial crime by reducing the risks faced by the Regulated Sector as they endeavor to fulfill their role and - by moving away from defensive reporting - improve the value of reports to law enforcement.

This alternative option, which should aim to address all the major concerns of stakeholders, would require a number of amendments to PoCA: for example to:

- (a) clarify the legal position of firms with respect to the offences of assisting and tipping off and provide a new defence where a firm has reported its concerns and there is no evidence of actual assistance or wilful blindness;
- (b) notwithstanding paragraph 5.4 of the condoc, ensure that SOCA has sufficient flexibility with respect to the scope of their consent (for example, to give consent to firms to continue with a client relationship as well as execute a number of transactions and to include safeguards such as monthly reporting from the firm and limitations to scope e.g. "unless the funds are to be transferred outside the UK Regulated Sector");
- (c) reduce the period for consent from SOCA from 7 days to, ideally, 24 hours; and
- (d) introduce an optional SAR+ (which could be specified as a SAR with additional information to request, and enable SOCA to give, a more broadly framed consent).

Under this alternative approach, a firm would be able to submit a standard SAR, for example, if the person giving rise to the suspicion is not a customer or a SAR+ if, for example, there is an ongoing customer relationship a firm wishes to continue. The provisions could specify that submission of a SAR+, whilst allowing a firm to continue its client relationship, would not override the obligation to submit SARs or SAR+s, should new or materially different suspicions arise or if the assets are being transferred outside the Regulated Sector. SOCA could also build up intelligence by requesting regular reports from firms; a SAR+ approach (rather than seeking consent for each

transaction) is also less likely to put a money launderer on notice that they are under suspicion/investigation.

We believe that this option would remove the subjective element of Option 2, which is causing concern to many firms i.e. whether or not to submit a SAR. By building on the current regime, compulsory freezing of an account (with protection for the firm under law) could be retained, albeit for a limited period, to allow law enforcement an opportunity to take immediate action if considered appropriate.

If, however, the Home Office decides to introduce a notifications regime, we believe that the contents of a PEN could be incorporated in the SAR+. To resolve the issues discussed earlier, however, an account could still be frozen post submission of the SAR+ but unfrozen automatically (say within 24 hours) if SOCA have not notified the firm otherwise.

In conclusion, the FOA and LIBA would welcome an opportunity to explore this alternative approach with the Home Office in more detail.