CONSULTATION

AFG'S RESPONSE

REVISED GUIDELINES ON ML/TF RISK FACTORS

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afg

association française de la gestion financière

The Association Française de la Gestion financière (AFG) represents and promotes the interests of third-party portfolio management professionals. It brings together all asset management players from the discretionary and collective portfolio management segments. These companies manage at end 2019 more than €4,000 billions in assets, i.e. a quarter of continental Europe's assets under management.

The AFG's remit:

- Representing the business, financial and corporate interests of members, the entities that they manage (collective investment schemes) and their customers. As a talking partner of the public authorities of France and the European Union, the AFG makes an active contribution to new regulations,
- Informing and supporting its members; the AFG provides members with support on legal, tax, accounting and technical matters,
- Leading debate and discussion within the industry on rules of conduct, the protection and economic role of investment, corporate governance, investor representation, performance measurement, changes in management techniques, research, training, etc.
- Promoting the French asset management industry to investors, issuers, politicians and the media in France and abroad. The AFG represents the French industry – a world leader – in European and international bodies. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA), of PensionsEurope and of the International Investment Funds Association (IIFA).

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AFG response to the EBA consultation on Draft Guidelines under Articles 17 and 18(4) of Directive (EU) 2015/849 on customer due diligence and the factors credit and financial institutions should consider when assessing the ML and TF risk associated with individual business relationships and occasional transactions

The Association Française de la Gestion financière (AFG) is grateful to have the opportunity to answer to the ESMA, EBA and EIOPA's consultation on the money laundering and terrorist financing risk.
Consequently to the risk-based approach established by the directive for fund managers in the EU, it is essential to leave them the possibility to implement a tailored system, proportional to their activities and their organization, enabling them to establish their own control methods.

Guideline 15: Sectoral guideline for investment firms

15-3 c) As the unusual aspects of mirror trades or transactions are difficult to assess, we suggest to delete « That appear unusual ».

15-3 d) All structured products should not be considered as a factor of increasing risk.

15-4 We suggest changing this point to:

« The following factors may contribute to reducing risk:

a) The product, service or entity is subject to mandatory transparency and/or disclosure requirements.

b) The regulated services »

15-5 It is essential to keep the risk-based approach which enables to focus on the most important risks

15-5 b) iii. The fact that the customer is regulated decreases the risks, but being unregulated does not involve a specific risk increase

15-5 b) v. We suggest removing “holds another prominent position”, as it is impossible to check

15-5 c) We suggest removing “pharmaceuticals and healthcare”.

15-6 We suggest adding to the list: “d) listed companies in an EEA jurisdiction”.

15-7 c) We suggest removing this point from 15-7 and adding it instead to the chapter dedicated to assets.

15-9 This point should remove the mention of MiFiD and EMIR, as it can be confusing. Investment firms always use all information available.

15-10 As suggest on point 15-9, this point refers to MIFID and it can be confusing. We suggest removing this point.

15-11 a) We suggest removing this point.

Guideline 16: Sectoral guideline for providers of investment funds

16-3 b) We suggest removing real estate funds, as many of them have a high number of investors.

16-3 c) We suggest removing this point, as we believe money launderers most likely focus on short-term investments.

16-4 b) We suggest removing the mention to guidelines 8 and 14, which do not apply to funds and fund managers.

16-5 b) We suggest adding “as long as the recommended minimum investment duration is not short-term. The fund managers are focused on medium and long term, except monetary funds, which are conducting investments within a day.”

16-5 c) The fund managers do not always know when customers are going to buy or subscribe to the fund. We suggest removing this point.

16-7 b) We would suggest precising what the terms encompass.

16-9 We suggest adding “c) the listed companies”.

16-10 a) As only distributors can monitor transactions resulting from complex distribution channels, we would like to change the terms, to highlight their responsibility.

16-11 a) We suggest changing this point to:

"The fund admits only a designated type of low-risk investor, such as regulated firms investing as a principal (e.g. life companies), corporate pension schemes or listed companies."

16-12 a) We suggest changing this point to:

"The customers' or beneficial owners' funds have been located in jurisdictions associated with higher ML/TF risk, in particular those associated with higher levels of predicate offences to money laundering."

16-20

We would like to focus on the point suggesting for the fund or fund manager to "take risk- sensitive measures to identify, and verify the identity of, the investors underlying the financial intermediary, as these investors could be beneficial owners of the funds invested through the intermediary." Where the intermediary is an AMLD regulated entity, i.e. an obliged entity under AMLD and supervised by a national competent authority, it is already required to perform their due diligence process on its customers. Requiring asset managers to perform diligence duties on the intermediaries' customers would imply that regulators consider that intermediaries are underperforming when it comes to their own diligence duties and asset managers are asked to take over this responsibility. At the same time, such a duplicative process for the same underlying investor will unnecessarily increase the burden for all financial institutions involved and distract all important resources from other higher risk areas.

Furthermore, if a retail fund is market through intermediaries, the probability of having an investor who owns 25% or more of the fund is zero.

An investor can only be beneficial owner of the funds if invest through a dedicated fund. In this case, asset managers don't go through distributors to market this fund.

We suggest changing this point to:

"In the situations described in guideline 16.14(c), where the financial intermediary is the fund or fund manager's customer, the fund or fund manager should apply risk-sensitive CDD measures to the financial intermediary. To the extent permitted by national law, in low-risk situations, funds or fund managers may apply SDD measures similar to those described in Title I of these guidelines, subject to the following conditions:

a) The financial intermediary is subject to AML/CFT obligations in an EEA jurisdiction or in a third country that has AML/CFT requirements that are not less robust than those required by Directive (EU) 2015/849.

b) The financial intermediary is effectively supervised for compliance with these requirements.
c) The fund or fund manager has taken risk-sensitive steps to be satisfied that the ML/TF risk associated with the business relationship is low, based on, inter alia, the fund or fund manager's assessment of the financial intermediary's business, the types of clients the intermediary's business serves and the jurisdictions the intermediary's business is exposed to.
d) The fund or fund manager has taken risk-sensitive steps to be satisfied that the intermediary applies robust and risk-sensitive CDD measures to its own customers and its customers' beneficial owners. As part of this, the fund or fund manager should take risk-sensitive measures to assess the adequacy of the intermediary's CDD policies and procedures, for example by referring to publicly available information about the intermediary's compliance record or liaising directly with the intermediary.
e) The fund or fund manager has taken risk-sensitive steps to be satisfied that the intermediary will provide CDD information and documents on the underlying investors immediately upon request, for example by including relevant provisions in a contract with the intermediary or by sample-testing the intermediary's ability to provide CDD information upon request.

Outside cases a) to e), The fund or fund manager should also take risk sensitive measures to identify, and where relevant, verify the identity of, the investors underlying customers of the financial intermediary that invest in the fund, as these investors customers may increase the implied risk associated with could be beneficial owners of the funds invested through the intermediary."

16.20 e) It needs clarification as access to customer's files is not permitted under data protection & bank secrecy regulations in most countries. For this reason, we suggest changing this point to: "The fund or fund manager has taken risk-sensitive steps to be satisfied that the intermediary will provide, where relevant, CDD information and documents on the underlying investors upon request in a reasonable manner and timeframe immediately upon request, for example by including relevant provisions in a contract with the intermediary or by sample-testing the intermediary's ability to provide CDD information upon request."