Title: Office for Professional Body AML Supervision (OPBAS) **IA No:** **RPC Reference No:** **Lead department or agency:** HM Treasury **Other departments or agencies:** Financial Conduct Authority (FCA)	**Impact Assessment (IA)** **Date:** 01/01/2016 **Stage:** Consultation **Source of intervention:** EU **Type of measure:** Secondary legislation **Contact for enquiries:** Mark Frost

Summary: Intervention and Options

RPC Opinion: Awaiting Scrutiny

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANDCB in 2014 prices)	**One-In, Three-Out**	**Business Impact Target Status**
			Not in scope	Non qualifying provision

What is the problem under consideration? Why is government intervention necessary?

The Fourth Money Laundering Directive (4MLD) requires Member States ensure supervisory authorities comply with their anti-money laundering (AML) obligations, as set out in the 2017 Money Laundering Regulations (MLRs). The 2015 National Risk Assessment (NRA) noted that, whilst some supervisors are highly effective in some areas, there is room for improvement across the board including in understanding and applying a risk-based approach to supervision and in providing a credible deterrent. The government has highlighted the supervisory regime as a priority for reform. It intends to streamline guidance whilst ensuring supervisors adopt meet their obligations in the MLRs, whilst minimising unnecessary burdens on businesses, by providing the FCA with a new oversight role – OPBAS.

What are the policy objectives and the intended effects?

The government's objective is to implement 4MLD and make the UK's financial system a hostile environment for illicit finance, reducing the £24bn cost of serious and organised crime to the UK economy whilst minimising unnecessary burdens on business.

The government intends to ensure all supervisors provide a consistently high standard of supervision, by providing the FCA with a new oversight role – OPBAS – to strengthenen collaboration between supervisors and with law enforcement. OPBAS will also ensure guidance for regulated business is more streamlined and effective, minimising unnecessary burdens.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Two options are considered:

1. Do nothing. There will be no changes to the supervisory regime
2. Legislate to provide FCA with new powers to help, and ensure, professional body AML supervisors comply with their obligations under the MLRs 2017

Option 2 is the preferred option, as this would address the issues in the supervisory regime highlighted by the NRA and ensure professional body AML supervisors comply with their obligations. OPBAS will also support the Treasury in approving AML guidance, ensuring there is one piece of guidance available in each sector, to help strengthen the regime and reduce costs for businesses. This will ensure an effective AML superivisory regime, as required by 4MLD, and address inconsistencies that criminals could exploit.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 12/2022

Does implementation go beyond minimum EU requirements?		No		
Are any of these organisations in scope?	**Micro** No	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		**Traded:** n/a	**Non-traded:** n/a	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: ***Date:*** 04/06/2017

Summary: Analysis & Evidence

Policy Option 1

Description: Do Nothing

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate				

Description and scale of key monetised costs by 'main affected groups'

No change from baseline.

Other key non-monetised costs by 'main affected groups'

No change from baseline.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

No change from baseline.

Other key non-monetised benefits by 'main affected groups'

No change from baseline.

Key assumptions/sensitivities/risks **Discount rate**

n/a

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes/No	IN/OUT/Zero net cost

Summary: Analysis & Evidence

Policy Option 2

Description: Legislate to help, and ensure, professional body AML supervisors comply with their obligations in the MLRs

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate:

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	Optional		Optional	**Optional**

Description and scale of key monetised costs by 'main affected groups'

The Treasury is working with the FCA to develop the best model for OPBAS. This will underpin the operational costs and will be funded by a fee on professional body AML supervisors. As this fee is a transfer within the system, it will be included as a cost and a benefit in this Impact Assessment. These professional body AML supervisors will also need to engage with OPBAS – these costs are being considered alongside the potential models for OPBAS.

Other key non-monetised costs by 'main affected groups'

For the purposes of this Impact Assessment, all professional body AML supervisors are assumed to fully comply with their obligations in the MLRs, so costs due to investigations and penalties that OPBAS will take forward are not considered here.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

The operational cost of OPBAS is a transfer within the system, and will be included here as the model is developed.

There will also be benefits to businesses as professional body AML supervisors adopt more consistent approaches to supervision, and as AML guidance is streamlined. We are consulting on the magnitude of these savings.

Other key non-monetised benefits by 'main affected groups'

The UK financial sector, and the public, will benefit as the issues highlighted in the NRA are addressed, and professional body AML supervisors adopt consistently high standards of supervision and build more effective relationships with each other and law enforcement, improving the UK's defences against money laundering and terrorist financing and so reducing the flow of illicit funds into the UK's financial system.

Key assumptions/sensitivities/risks **Discount rate**

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Evidence Base (for summary sheets)

Strategic Overview

Background

- 4MLD requires that Member States require competent authorities to monitor effectively, and take measures necessary to ensure, compliance with the Directive. In addition, 4MLD requires that Member States ensure AML supervisors comply with their AML obligations, as transposed into UK legislation through the 2017 MLRs. This includes ensuring they:
  - (regarding resourcing) '*have adequate financial, human and technical resources to perform their functions. Member States shall ensure that staff of those authorities maintain high professional standards, including standards of confidentiality and data protection, that they are of high integrity and are appropriately skilled*' (Article 48);
  - (in applying a risk-based approach to supervision) *'have a clear understanding of the risk of money laundering and terrorist financing present in their Member State… (and) base the frequency and intensity of on-site and off-site supervision on the risk profile of obliged entities, and on the risks of money laundering and terrorist financing in that Member State'* (Article 48);
  - (regarding sharing information) *'policy makers, the FIUs, supervisors and other competent authorities involved in AML/CFT have effective mechanisms to enable them to cooperate and coordinate domestically concerning the development and implementation of policies and activities to combat money laundering and terrorist financing…'* (Article 49); and
  - (regarding applying sanctions) *'obliged entities can be held liable for breaches of national provisions transposing this Directive…. Any resulting sanction or measure shall be effective, proportionate and dissuasive'* (Article 58)
- However, there is currently no formal and systematic mechanism for assessing supervisors' performance and driving change to ensure effective AML supervision in place. The 2015 NRA, which identified and assessed the money laundering and terrorist financing risks faced by the UK, found that the effectiveness of the supervisory regime in the UK was inconsistent and, whilst some supervisors are highly effective in some areas, there is room for improvement across the board, including in the areas above.
- The NRA's findings shaped the government's 2016 Action plan for AML and CFT (the action plan), which set out how the government will tackle money laundering and deliver on its aim to make the UK's financial system a hostile environment for illicit finance. The action plan identified the supervisory regime as a priority for reform, and through the action plan the government launched a Call for Information on the AML Supervisory Regime (the Call for Information) to build an evidence base.
- The Treasury has sought to engage with supervisors through relevant fora, including the Anti-Money Laundering Supervisors Forum (AMLSF), as well as the smaller Affinity Groups, and the Annual Supervision Report. However, not all supervisors attend these meetings, nor do all supervisors submit returns to inform the Report. Responses to the Call for Information strongly supported greater government oversight of the regime to monitor supervisors' compliance with the MLRs and strengthen coordination. Separately, as part of the commitment to simplify and improve legislation and its implementation, the government has completed a Cutting Red Tape Review of the UK's AML and CFT Regime (the Cutting Red Tape Review).
- The Treasury considered a number of options to improve oversight of the AML supervisory regime, including creating a new organisation or increasing resources within an existing organisations. The latter option reduced the cost of increasing oversight substantially. The Treasury considered a number of exisiting organisations to host OPBAS, including law enforcement, HMRC, the FCA and the Treasury itself.
- The FCA was considered the best fit for OPBAS because OPBAS's objectives are closely aligned with those of the FCA, which holds overarching responsibility for protecting the integrity of UK financial markets. In addition, the FCA already oversees professional body supervision of regulated activities under Part XX of the Financial Services and Markets Act 2000, including several

professional body AML supervisors. The Treasury will retain oversight of, and policy responsibility for, the AML supervisory regime.

- On 15 March, the government set out its proposals to reform the regime in the Anti-money laundering supervisory regime: response to the consultation and call for further information (the call for further information). In particular, the government committed to create a new team – OPBAS – in the FCA to oversee and strengthen the regime and, in particular, help and ensure professional body AML supervisors comply with their obligations in the MLRs.
- Through the call for further information, the government sought views on the mandate and powers it felt OPBAS should have to effectively fulfil its objectives. Most respondents agreed the package proposed would ensure effective oversight whilst minimising unnecessary burdens on professional body AML supervisors.

Groups affected

- The groups affected by this legislation include:
  - Professional body AML supervisors, which supervise their members' compliance with the MLRs on behalf of HM Treasury
  - Statutory AML supervisors, including the FCA, HM Revenue and Customs and the Gambling Commission
  - Law enforcement agencies, including the National Crime Agency
  - Members of professional body AML supervisors that are subject to the MLRs – primarily accountancy and legal services providers
  - The general public, whose safety and security is impacted by the threat of serious and organised criminals

Consultation

- The NRA is a product of extensive consultation with law enforcement agencies, UK intelligence agencies, the UK Financial Intelligence Unit, supervisors and private sector representatives.
- In addition, as part of the action plan, the government launched the Call for Information to build an evidence base for reform. Separately, as part of the commitment to simplify and improve legislation and its implementation, the government has completed the Cutting Red Tape Review. Responses were received from supervisors, supervised businesses and their representative organisations as well as civil society.
- The call for further information set out the government's intention to create OPBAS, and sought further views on OPBAS's mandate and powers. Most respondents agreed the package proposed would ensure effective oversight whilst minimising unnecessary burdens on professional body AML supervisors.
- Separately, the OPBAS project team are engaging with professional body AML supervisors and other stakeholders in the coming weeks as they develop the model for OPBAS and develop an understanding of its impact. The Treasury is engaging with this process to build the evidence base for the final impact assessment.
- In addition, the draft regulations will be published for views on whether the drafting delivers on the policy intention, alongside this consultation stage impact assessment over the summer. As part of this consultation, the Treasury will seek evidence on the costs and benefits of OPBAS to help underpin the final impact assessment.

Rationale

- The Treasury currently has responsibility for appointing and removing AML supervisors through the Money Laundering Regulations. 4MLD requires that the UK ensure AML supervisors comply with their obligations in the MLRs. However there is currently no formal and systematic mechanism for assessing supervisors' performance and driving change to ensure supervisors comply with their obligations effectively.

- The Treasury seeks to engage with supervisors through relevant fora, including the AMLSF, as well as the smaller Affinity Groups, and the Annual Supervision Report. However, not all supervisors attend these meetings, nor do all supervisors submit returns to inform the Report.
- Respondents to the call for information strongly supported greater oversight of the regime to monitor supervisors' compliance with the MLRs and strengthen coordination, especially where multiple supervisors operate in the same sector. In practice, this primarily refers to the accountancy and legal services sectors where 23 supervisors are active, of which 22 are professional bodies.

In addition, businesses suggested that greater oversight could hold supervisors to account for their performance. Objectives

- The government's objective is ensure our AML supervisory regime is effective, as required by 4MLD, to help make the UK's financial system a hostile environment for illicit finance.
- This will help reduce the £24bn cost of serious and organised crime to the UK economy, whilst minimising unnecessary burdens on business.

Options considered

- The following options have been considered:
  - Option 1 is to do nothing
  - Option 2 is to legislate – this is the preferred option

Further information on the preferred option

- The Treasury considered a number of options to improve oversight of the AML supervisory regime, including creating a new organisation or increasing resources within an existing organisations. The latter option reduced the cost of increasing oversight substantially. Among existing organisations, the FCA was considered the best fit for OPBAS because OPBAS's objectives are closely aligned with those of the FCA, which holds overarching responsibility for protecting the integrity of UK financial markets. In addition, the FCA already oversees professional body supervision of regulated activities under Part XX of the Financial Services and Markets Act 2000, including several professional body AML supervisors. Therefore, the FCA was considered the best option to host OPBAS. The Treasury will retain oversight of, and policy responsibility for, the AML supervisory regime.
- OPBAS will work with professional body AML supervisors to develop high standards of supervision and hold them to account for their performance. OPBAS will liaise with statutory supervisors to discuss and share best practice to help ensure consistently high standards across the regime, and will liaise with other organisations as appropriate, including the Legal Services Board and the Financial Reporting Council, to ensure a consistent approach to professional body AML supervisors, and with law enforcement to facilitate the flow of information across the regime.
- OPBAS will have an ongoing dialogue with professional body AML supervisors as it sets out guidance on how they might meet their obligations in the MLRs, drawing on and promoting best practice in the sector. As far as appropriate, OPBAS's guidance will cover all obligations on professional body AML supervisors under the regulations from ensuring operational independence between their advocacy and supervisory teams, to ensuring they monitor their members and take necessary action to ensure their members' compliance with the regulations, to ensuring they provide adequate training for their staff and their members.
- In the past, the Treasury has engaged with professional body AML supervisors' collaboration, and sought their participation in initiatives to strengthen the regime. Whilst most supervisors engage with the Treasury on most of these initiatives, not all do so in all cases. Partly as a result, supervisory standards continue to be inconsistent across the regime.
- Therefore, professional body AML supervisors will be obliged to cooperate with OPBAS and to take its guidance into account. That said, OPBAS's guidance will not be binding, so professional body AML

supervisors may develop their own risk-based approach to supervision if they feel it is appropriate and meets their obligations in the MLRs.

- Whilst OPBAS's focus will be on engaging collaboratively with professional body AML supervisors to ensure they comply with the Regulations, it will also have powers to hold professional body AML supervisors to the standards laid out in regulations. These include investigatory powers, including powers to require professional body AML supervisors provide information, and that their staff attend interviews, as well as to be present during visits to members' premises and to publicly censure breaches. In particular, if a professional body AML supervisor chooses to take its own approach to supervision, rather than follow OPBAS's guidance, OPBAS may investigate them to ensure they continue to comply with their obligations in MLRs. Where OPBAS receives sensitive information held by professional body AML supervisors, it will be protected by appropriate safeguards.
- OPBAS will also have its own chapter in the FCA's Annual Report, where it will publish its progress against its objectives, its priorities for the coming year and its expectations around emerging risks. FCA will also raise funding for OPBAS through a new fee on those it oversees, and will consult on the details of how this fee will operate in due course.

Appraisal

Option 2 – legislate to introduce OPBAS

- The government's intention to introduce OPBAS was announced on 15 March, and Treasury and FCA are currently engaging with the sector to develop the evidence base to underpin the impact assessment. In particular, Treasury and the FCA are seeking evidence on the costs and benefits of:
  - OPBAS's activities, which will be funded through the fee on professional body AML supervisors. We expect to score this as a cost and a benefit, as it is a transfer of funding within the system.
  - Professional body AML supervisors engaging with OPBAS on a day to day basis to share their approach to AML supervision and incorporate best practice. We expect this to be a net cost to the sector.
  - Professional body AML supervisors adopting a consistent approach to supervision, rather than duplicating and contradicting each other with costs to them and their supervised populations. The cutting red tape review highlighted different supervisory expections, for example around customer due diligence checks, added substantial costs to the AML regime. We expect this to be a net saving to the sector.
  - AML supervisors building more effective relationships with law enforcement, to facilitate the flow of information across the regime. We expect this to be a net saving to the sector.
  - Regulated businesses being able to draw on a single piece of user-friendly guidance for their sector, reducing uncertainty and unnecessary costs in the regime. In the cutting red tape review, the Better Regulation Executive estimated these unnecessary additional burden costs businesses around £500m a year. Whilst these estimates require greater verification, we expect this reform to be a net saving to regulated businesses, especially small and micro sized businesses.
- The UK financial sector, and the public, will also benefit as the issues highlighted in the NRA are addressed. As the UK's defences against money laundering and terrorist financing are improved, the flow of illicit funds into the UK's financial system, and the corresponding social and economic cost to the UK, will fall.
- Alongside this draft Impact Assessment, the Treasury will publish the draft regulations to underpin OPBAS and the FCA will also launch consultations on how supervisors should monitor their members, how it will engage with them to ensure they comply with their obligations in the MLRs, and the fee. This will provide an opportunity for stakeholders to consider OPBAS in the round, and submit evidence to underpin the Impact Assessment.

Business impact target

- This legislation will ensure that supervisors comply with their obligation in the MLRs, as required by the Fourth Money Laundering Directive. Therefore, it is exempt from the business impact target.

Risks of preferred option

- Whilst this reform is intended to strengthen the regime by ensuring professional body AML supervisors adopt consistently high supervisory standards, some professional body AML supervisors may choose to step back from the responsibility of an AML supervisor. Their regulated members must continue to be supervised – but there is no agreed process whereby they would move to another supervisor. The Treasury is consulting on how the supervisory regime might evolve, and developing contingency measures to help mitigate this risk.

Enforcement

- OPBAS will be have powers to investigate and issue sanctions where it identifies areas where professional body AML supervisors may have breached their obligations in the MLRs. These will be complemented by appropriate safeguards, which the FCA will consult on in due course.

Summary and recommendations

- Option 2 is preferred. It achieves the policy objectives and strengthens the AML supervisory regime, whilst reducing unnecessary burdens on businesses.

Implementation

- The Treasury has sought views on the OPBAS's mandate and powers – this call for information closed on 26 April 2017.
- The draft impact assessment, and the draft regulations, will be published over the summer. They will then be updated and finalised.
- The Treasury has committed to legislate by the end of the year, and intends to do so in late autumn.

Monitoring and Evaluation

- This will be subject to review within 5 years, in line with government's obligations under the Small Business, Enterprise and Employment Act 2015.

Feedback

- There has been extensive consultation with professional body AML supervisors, regulated businesses, law enforcement, government departments and other government agencies, both bilaterally and through multilateral meetings such as AMLSF, in developing these reforms. This engagement will continue going forward.