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Dear Sir

RE: Consultation Paper – Guidelines on risk based supervision

The Investment Association welcomes the opportunity to respond to the joint ESA's consultation.

The Investment Association represents the UK asset management industry. Our members manage over £5 trillion in the UK of assets on behalf of UK, European and international clients, both retail and institutional. Collectively, our members make up the second-largest asset management industry in the world.

Below, we have provided our responses to the questions raised in your paper.

Yours

Adrian Hood
Regulatory and Financial Crime Expert

<u>**Consultation Paper – Guidelines on risk based supervision**</u>

Q a: Do you agree with the way the risk-based approach to supervision is described in these guidelines?

Yes, however, we would query a few elements of the guidelines.

In paragraph 18 of the proposed Guidelines it states that competent authorities should seek to identify other sources of reliable information on the ML/TF risks in their Member State where no NRA has been carried out or made available to competent authorities, or if the NRA appears to be out of date or incomplete. We would suggest that they should be expected to seek to identify all sources of reliable information on the ML/TF risks in their member state, even where an adequate NRA exists. Paragraph 21 seems to duplicate much of paragraph 18.

Should not paragraph 24 include legal professionals and estate agents as two of the sub-sectors to be understood? Article 2.1(3) of the 4MLD does include them in its scope.

We would strongly support paragraph 34 being reworded from a suggestion that competent authorities may find it useful, to a requirement that competent authorities do use a consistent catalogue of inherent risk factors for comparable subjects of assessment. This also applies to paragraph 39.

Q b: In particular, do you agree that the four steps in these guidelines reflect the essential components of a risk based approach to supervision?

If you do not agree, what else do you think supervisors should focus on? Please explain by providing details on the principles you believe form part of an alternative approach. Please also clarify how this alternative approach meets the requirements of Directive (EU) 2015/849 and the international standards (FATF Recommendations).

Yes, on the whole. The four-step process provides a very basic structure on which national competent authorities should build their risk based approach to supervision.

Q c: Do you consider that the level of detail in the guidelines is appropriate?

If you do not consider that it is appropriate, where do you think additional, or less, detail would be warranted?

Yes, but the Joint ESAs need to continue to take action to ensure that the Guidelines are interpreted and implemented in a consistent way by the different national competent authorities.

To this end the ESAs should undertake to conduct periodic benchmarking exercises, and facilitate sharing of information and thinking between the national competent authorities.

Firms active across the EU should expect to see the relevant risks being treated consistently in the different member states. National competent authorities should not be able to use their own interpretation of a risk based approach to discriminate against non-local firms.

Looking specifically at paragraph 27 and 30 of the proposed Guidelines, it seems that, where the subject of assessment is a cluster of firms, the national competent authority is expected to obtain information about, for example, the ownership and corporate culture of a cluster of firms. It is difficult to see how such information can exist on a cluster level. But it would seem disproportionate to require the national competent authority to gather the paragraph 27 information about every individual firm within the cluster, as this would go against the spirit and purpose of paragraph 8.

Paragraph 50 is excessively strict. It is not proportionate to require that all staff of a competent authority are suitable qualified to exercise sound judgement and carry out risk based AML/CFT supervision. Many of their staff will have little or nothing to do with AML/CFT supervision. This should be reworded to be more proportionate and apply only to relevant members of staff.

Q d: What do you think the impact of these guidelines will be on the financial services industry?

We think they would be generally positive. Particularly positive would be for firms and trade bodies to receive feedback from the national competent authorities as suggested under paragraph 72. This would enable them to better understand the thinking and expectations of the authorities.