Association des Banques et Banquiers, Luxembourg
The Luxembourg Bankers' Association
Luxemburger Bankenvereinigung

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Opinion on the Joint Guidelines under Article 17 and 18(4) of Directive (EU) 2015/849 on simplified and enhanced customer due diligence and the factors credit and financial institutions should consider when assessing the money laundering and terrorist financing risk associated with individual business relationships and occasional transactions ("Joint Guidelines")

The Luxembourg Bankers' Association (ABBL) is the professional organisation representing the majority of banks and other financial intermediaries established in Luxembourg. It acts as the voice of the whole sector on various matters in both national and international organisations. The ABBL counts amongst its members' universal banks, covered bonds issuing banks, public banks, other professionals of the financial sector (PSF), financial service providers and ancillary service providers to the financial industry.

The Association of the Luxembourg Fund Industry (ALFI) is the professional association who is the representative body of the Luxembourg investment fund community.

The Association of the Luxembourgish Insurance and Reinsurance Companies (ACA) is the professional organization representing the insurance and reinsurance companies in Luxembourg.

The "Association of Luxembourg Compliance Officers" for the Financial Sector (ALCO) is the professional organisation representing the Compliance Officer function of banks, financial sector professionals and the insurance sector in Luxembourg, whose role is to make sure that these institutions comply with the legislative, statutory and ethical standards.

The ABBL, ALFI, ACA and ALCO thank the ESAs for the opportunity to comment on the Joint Guidelines. The objective of this paper is to draw the attention of the European Supervisory Authorities (the ESAs) on some issues raised in the Joint Guidelines. First, we would like to stress the fact that the Joint Guidelines will give the professionals across Europe for the fist time a consistent approach allowing a level playing field between the different actors throughout Europe, in order to successfully combat money laundering.

We also would like to stress the fact that some of the comments in the present opinion are common to the ABBL, ALFI, ACA, ALCO one the one hand, and the EBF (European Banking Federation) on the other hand, the latter also reflecting our views.

Below you may find our brief replies to the questions that are asked under 5.2. of the Joint Guidelines titled "Overview of questions for Consultation":

a) We generally consider that these guidelines are conducive to firms adopting risk-based, but not always proportionate AML/CFT policies and procedures. We observe that customer due diligence ("CDD") measures are risk sensitive in line with the general rules set out in the Directive (EU) 2015/849. However the assessment of risk is a delicate issue, which needs to be handled very carefully. As stated below, we believe that the guidelines are not to be observed in all cases. We find it essential to stress that not all factors are applicable in all cases, and that one factor as itself is no sufficient to imply a higher risk. While we agree with the points made in the Joint Guidelines overall, we have specific comments on the details of the document as set out below.

b) We consider that these guidelines are conducive to competent authorities effectively monitoring firms' compliance with applicable AML/CFT requirements in relation to individual risk assessments and the application of both simplified and enhanced customer due diligence measures. It's crucial to be able to understand what the risks of money laundering are in order to adapt CDD measures to different situations. This requires determining the areas where the risk is higher whilst applying enhanced due diligence and giving the possibility to apply simplified due diligence when risks are lower. However, we believe that it is hard to distinguish the "normal" due diligence and the simplified due diligence ("SDD"). Most of the requirements for SDD in reality are the ones that are also applied for "normal" due diligence. For this reason we do not understand the criteria which makes the due diligence "lighter" in case of low risk (leading to apply SDD) since the same requirements very often apply in both cases. It would be helpful if this matter would be clarified with a specific guideline on the criteria that determine the due diligence in line with the level of risk and distinguish normal due diligence from SDD.

c) We believe that the organization of this consultation paper by types of business gives sufficient clarity on the scope of application of the AMLD to the various entities subject to its requirements. It is important to have an awareness and understanding of the risks in particular business areas.

1. General observations

1.1 Difference Between Anti Money Laundering and Combatting Terrorist Financing

We find it essential to make a difference between the treatments of, on one hand, risks related to the terrorist financing, and on the other hand risks related to money laundering. In our view, the criteria and questions in the Joint Guidelines clearly only concern the fight against money laundering. We think that these criteria and risk factors are not applicable to the terrorist financing. Therefore, the latter should be treated separately. Moreover, we believe that as far as terrorism is concerned, firms should mainly rely on lists of names issued by the UN/EU/national authorities.

1.2 Risk Factors

We acknowledge that the risk of money laundering is not the same in each case. Therefore we consider as very important the fact that the Joint Guidelines stress that "*the presence of an isolated risk factor may not reveal a higher risk, but a combination of several such factors should lead the professional to apply enhanced due diligence measures" (§ 17).* The Joint Guidelines leave therefore flexibility to the firms.

It is in fact important for the practice of supervision of accounts and transactions to focus on those transactions that are most likely to reveal a suspicion of money laundering or financing of terrorism. Supervision of the totality of the accounts and transactions on the basis of just one of the criteria would be disproportionate in relation to the aims that are sought.

This useful and flexible approach is however contradictory with the fact that some factors as such are considered by the Joint Guidelines as automatically high risk, such as private banking (see below), even if Directive 2015/849 does not apply such a compulsory approach.

Moreover, the fact that the list of risk factors that are set out in the Joint Guidelines is not exhaustive can result in disproportionate results for the firms. It is important for the firms to be aware of the risk factors applicable in their case but this would not be the case if the scope remains as broad as indicated in the Joint Guidelines. Additionally, the presence of the isolated risk factors not necessarily moving a relationship into a higher or lower risk category is vague since the wording “necessarily” (§17) is in the eye of the beholder. This flexible approach is as such a good one, but might lead to legal uncertainty owing to the application of sanctions in case the assessment of the situation were incorrect or the result of a misunderstanding.

We also would like to stress the fact that some risk factors are only applicable at the opening of a business relationship, while others can only be determined in the course of the relationship. In our view, the risk factors should clearly be treated separately according to the moment they should apply (opening of the relationship or on-going monitoring).

When a client is not in a standard activity, the Joint Guidelines consider that this activity is automatically high risk. We think that if it is necessary to adapt the measures in the context of the risk based approach, considering such activity as high risk is too restrictive. For example, this is the case for wealth management.

1.3 Identification of the beneficial owner

The requirements for the identification and the assessment of the beneficial owner is very detailed and much more burdensome than in the current situation. The difficulties for the professional are multiple, as the firms do not have in various cases any direct link with the beneficial owner.

1.4 Politically exposed persons (Paragraph 49)

Concerning Politically exposed persons (PEPs), we believe that the definition given by the Directive 2015/849 is difficult to implement. If professionals had at their disposal a precise list of persons regarded as politically exposed, i.e. not only those who have been entrusted with major public functions but also members of family and persons known to have close ties to them, it would be of particular interest to all professionals governed by anti-money laundering rules. Unfortunately no initiative has been taken in this field.

In absence of public/official lists, firms have to decide on their own to use the services of commercial providers such as WorldCheck or Factiva-Reuters. Due to the imprecise definition (especially of “persons known to have close ties” to PEPs,) firms are today obliged to consider (and to monitor closely) a large population of clients. Without precise lists of “persons known to have close ties”, they also may miss some of them.

It could be interesting for the professionals to have different level of requirements applicable to resident PEP one the one hand and non-resident PEP on the other hand. The risk-based approach should fully apply in relation with due diligence measures applicable to PEPs: risk indicators such as function and role, country of residence and distinction between domestic and foreign PEPs, etc. should be considered when assessing a new relationship with a PEP. The

Joint Guidelines should also confirm that so-called "indirect PEPs", i.e. PEP seating in the Board and acting as Director of a corporate or public or governmental body, are out of scope and should not be subject to EDD, except in situation where the PEP has full power to manage at his own discretion the corporate entity or the governmental body considered. This may be controlled in the articles of the corporation or signatory powers of the entity.

1.5 Third Country equivalence

In absence of a white list of third countries, financial institutions must conduct country-specific risk assessments for any jurisdiction outside of the EU where such financial institutions do business. We are of the view that such list should be added to the Joint Guidelines so that the third countries would be identifiable. Having this list would indeed avoid inconsistencies on the market. However it may be interesting for the professionals to have the possibility to add countries to this list based on their own country assessment (i.e. such list should not be exhaustive and restrictive).

1.6 Other comments on Title II (General part)

Paragraph 16 (fifth bullet point) brings the requirement to be aware of risks on the basis of information available in the media. However, we fear this could become a prescriptive guideline to consider such media source when assessing the AML risks. The wide number of media sources plays a big role on the difficulty of assessing the AML risks on this criterion. We believe that missing information published in one media should not engage the liability of the firms. Without challenging the work done by journalists, the question arises as to whether information published by media is always reliable. Moreover, relying on some information available in the media may be in clear contradiction with the fundamental legal principle of presumption of innocence if the information concerns a person only suspected of an offense but not sentenced yet.

Paragraphs 18 and 22 implies that a risk assessment should also be done on the beneficial owners, which goes further than the article 8 of the 4th AML Directive, which focuses on the customers themselves.

Under Paragraph 20 (i.e. third bullet point), one of the risk factors is set out as the firm knowing if the customer or the beneficial owner has been subject to a suspicious activity report in the past. However a time limit is not given. We believe that “five years” should be added to this risk factor so as to foresee a time limit. The existence of a maximum time period would also be in compliance with the data protection rules, according to which no time limit is incompatible with the protection of the personal data, as well as with the requirement foreseen in article 40 of Directive 2015/849.

Paragraph 21 (i.e. second bullet point) mentions “indicators that the customer might seek to avoid the establishment of a business relationship”. We suggest that this part be clarified, as we do not see how the fact of not establishing a business relationship would indicate an AML risk.

The same paragraph (i.e. fourth bullet point) refers to customers issuing bearer shares. We propose to specify that the issuance of bearer shares to hide beneficial ownership presents a risk in itself. While an indication of a maximum percentage of bearer shares may not be appropriate, we wonder whether or not this statement could be linked to the concept of beneficial ownership. We also propose that the “asset holding vehicles” under Paragraph 21 (i.e. fifth bullet point) be defined.

Under Paragraph 21 (i.e. eleventh bullet point), it is questioned whether or not a non-resident customer could be provided with better service somewhere else. However, we do not understand the logic of linking this question to the non-residency of clients, as the same comment might apply to the resident clients. Such criteria based on the residence of an EU

client is in any case not in compliance with the EU basic principles of non-discrimination, freedom of movement, free provision of services and free movement of capital.

Under Paragraph 23, the Joint Guidelines assume an equivalence between the FATF itself and its regional bodies. We would like this statement to be clearly stated by the Joint Guidelines, as a matter of principle and in the interest of legal certainty.

Paragraph 23 (i.e. second, seventh and ninth bullet) questions information from more than one credible and reliable source about the quality of jurisdictions. We propose to require such information from one reliable and independent source, as more sources may not be available in each case. The expressions of “credible and trustworthy source” and “politically stable jurisdiction” should be objective. Therefore we suggest that the mentioned expressions are clarified by setting out examples.

Under the same paragraph 23 (i.e. third bullet point), the information from law enforcement and from media is put at the same quality level. We recommend that the reliance on media information be specified (i.e. specifying how far such reliance could be).

Under Paragraph 23 (i.e. fifth bullet point) we recommend the terms tax haven, secrecy haven or offshore jurisdictions be defined and/or to related to official country lists, such as the OECD’s, and not be left at the sole appreciation of each Member State, otherwise this could lead to discrepancies among them.

Paragraph 42 (i.e. first bullet point, point ii.) h 42 (second bullet i) indicates that a firm must always ensure that the customer and the beneficial owner’s identity is verified on the basis of one document. This raises the question as to whether that is coherent with the concept of normal due diligence which would to our understanding also require one document only.”

The enhanced due diligence measures (“EDD”) under Paragraph 57 (third bullet point, points i. and iii.) seem to represent the same obligation as they both foresee increasing the frequency of reviews of the business relationship. We propose that a distinction be made if these two points refer to separate obligations.

Under Paragraphs 63, 64 and 65, we recommend replacing “systems” by “processes” to include manual processes, where they can be used for monitoring purposes.

Concerning Paragraphs 33 and 63, we wonder what consequences should be taken out of the notions of “weighting of the risk factor” and “emerging risk” which are not existing in Directive 2015/849.

2. Sector-specific guidelines

2.1 Sectorial guidelines for correspondent banks

As for Paragraph 84, we question why CDD questionnaires would not help correspondents comply with their CDD obligations. As these questionnaires aim at assessing the AML framework of respondent banks, we question why they are no longer considered as being part of the respondent’s assessment. Professionals extensively use these questionnaires. We recommend that under this point it is clarified what is likely to help correspondents comply with their CDD obligations.

Under Paragraph 88, firms are obliged to assess the quality of supervision. For this purpose the firms may consult FATF reports (i.e. second bullet point of Paragraph 88). However Joint Guidelines should nevertheless consider that some countries have not been evaluated by FATF recently and provide more practical guidance on this matter.

As for the Paragraph 88 (i.e. third bullet point), we recommend that will be foreseen that, depending on the risk, an assessment of the respondent's policies be required. And in terms of high risk cases, it should be clearly outlined that, if the assessment detects material deficiencies and/or in the case of higher risk, an on-site visit should be recommended.

2.2 Sectorial guidelines for retail banks

Directive 2014/92/EU foresees that consumers who are legally resident in the EU should not be discriminated against by reason of their nationality or place of residence, or on any other ground referred to in Article 21 of the Charter of Fundamental Rights of the European Union when applying for, or accessing, a payment account within the EU. However under the sub point "vi" of Paragraph 100, non-resident customers are deemed as to indicate higher risk. We are of the opinion that it is not possible for the EU while on one hand favouring opening of a bank account for everybody in any country in line with the mentioned Directive, on the other hand restricting this access because of suspicion of money laundering due to high risk. Such restriction would be against the above specified anti discrimination principle, as well as freedom of movement, free provision of services and free movement of capital. Therefore we propose that the sub point "vi" of Paragraph 100 of the Joint Guidelines be deleted. In fact, we assume that, in such cases, the risk factor is more the geographic risk rather than the fact that a client is non-resident, which geographical risk will always be taken into consideration.

We also are of the view that such a factor based on the residence of the client may impair the situation of many cross-border workers in the EU who cannot be considered as high risk just on the fact that they are non-resident.

In a number of Paragraphs (104, 108, 181), the Joint Guidelines consider online and non-face to face distribution, or business relationships as factors which indicate higher risk as long as there are no adequate safeguards. The fact that these relationships or transactions are considered as high risk implies that firms are consequently required to apply enhanced customer due diligence by default, which is however not required by Directive 2015/849.

However, the dematerialization of banking activities, the increasing use of digital banking, especially by young generations, will be impaired if no softening of these principles is foreseen. Even if transactions conducted at a distance may be regarded as more risky it would be difficult to systematically treat transactions that do not imply the physical presence of the parties as presenting a higher level of risk. Transactions conducted at a distance are tending to proliferate in line with the technological developments which allow clients to perform a growing number of operations without visiting a bank counter, including payments made by e-banking, by mobile telephone, etc. It would be counter-productive to automatically require a strengthened verification of such transactions. Professionals should rather be alerted by the combination of several risk factors, associated with the fact that the transaction was performed remotely.

We also consider that these rules are contradictory to the development of e-commerce and e-identification which are, on the other hand, promoted by the EU.

This is why the Joint Guidelines should detail which "adequate safeguards" are allowed in order to permit non-face to face relationships and in particular online identification of customers. In Germany, the BAFIN developed a specific set of measures allowing online identification (http://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Rundschreiben/rs_1401_gw_verwaltungspraxis_vm_en.html). Such measures could be endorsed by the ESAs as an example to promote online banking and e-identification.

Paragraph 104 states factors indicating higher risk. We propose that the factors indicating lower risk are also specified here.

Under paragraph 106 (i.e. first bullet point) the concept of EDD is introduced by verifying the customer's and beneficial owner's identity on the basis of more than one reliable and independent source. We propose to require such information to be obtained from one reliable and independent source, as more sources may not be available in each case.

Under Paragraph 106 (i.e. fifth bullet point) it is stated, "Where the risk associated with the relationship is particularly increased, banks should review the business relationship annually". Joint Guidelines should leave more flexibility on that aspect or better define what a particularly increased risk is.

According to Paragraph 108 (i.e. first bullet point), firms may apply SDD for pooled accounts when "the customer is subject to AML/CFT obligations in an EEA state and is supervised for compliance with these requirements". Joint Guidelines should clarify whether or not it is possible to apply SDD to a financial institution located effectively supervised and located in an equivalent country, as defined in Annex II of Directive 2015/849.

As per Paragraph 109 (fourth bullet point), in the presence of pooled account, as a SDD measure, it may be required to "establishing that the customer will provide upon request relevant information on their underlying clients, who are the beneficial owners of funds held in the pooled account". This may create data protection issues, as the national rules on data protection may prevent personal data to be transferred to other countries.

In Paragraph 109, the requirements for SDD in reality are the ones that are also applied for "normal" due diligence (identifying and verifying the identity of customer, including the customer's beneficial owners). For this reason we do not understand the criteria which makes the due diligence "lighter" in case of low risk (leading to apply SDD) since the same requirements apply in both cases.

2.3 Sectorial guidelines for wealth management

Tax Evasion Matter:

Under Paragraph 140 of the Joint Guidelines, tax evasion is put forth as an example to indicate a situation where clients who wish to conceal the origin of their funds in their home jurisdiction may abuse the wealth management firms' services. However, some new developments at international level must be taken into consideration. The OECD, together with G20 countries and in close cooperation with the EU, developed the Standard for Automatic Exchange of Financial Account Information. This is a standardised automatic exchange model, which builds on the FATCA IGA to maximise efficiency and minimise costs. It is also in line with the Directive (EU) 2014/107 where the rules of mandatory automatic exchange of information in the field of taxation are specified. 97 jurisdictions have so far signalled their intention to apply it, with 58 of these formally committing to be early adopters in January 2016. The implementation will start on 1 January 2016 with a view of performing a first exchange of information in 2017.

Due to these developments at international level, there does not exist a reason anymore to open a bank account in such foreign countries for tax evasion reasons.

Therefore we are of the view that the following part "…Wealth management firms' services may be particularly vulnerable to abuse by clients who wish to conceal origins of their funds or, for example, evade tax in their home jurisdiction" of Paragraph 141 be deleted or at least mitigated and the third bullet point of Paragraph 143 and first bullet point of Paragraph 146 be amended

as below:

143: "financial arrangements involving countries that do not implement the automatic exchange of information according to the OECD standards"

146: "business is conducted in countries that do not implement the automatic exchange of information according to the OECD standards"

Customer Risk Factors:

It is a fact that the risk is generally variable and the variables, on their own or in combination, determine the potential risk by either increasing or decreasing such risk. Therefore they have an impact on the level of preventative measures, such as customer due diligence measures. As a result there are circumstances in which enhanced due diligence should be applied and others in which simplified due diligence are more appropriate.

We do not agree with the ESAs view that wealth management is always high risk. It cannot be envisaged that any objective element enabling private banking to be treated as a higher risk factor, apart from the fact that the capital sums involved are large, which is not in itself a specific risk criterion provided that the origin of the funds has been identified. On the contrary, we believe that private banking generally presents a lower risk because a private asset management client is perfectly well known to his banker as the banking relationship has been in existence for a long time and the origin of the assets has been verified. The existence of this criterion as a risk factor within the meaning of the future directive will have the effect of requiring banks whose main business activity is private banking to prove that all of their clients do not present a high risk. However, it is not private banking as such that should be regarded as a risk factor but rather the lack of knowledge of the origin of the funds or the fact that the funds are related to an uncertain economic activity.

Paragraph 143 (i.e. seventh bullet) includes higher risk "assets deposited or managed in another financial institution, either of the same financial group or outside of the group, particularly abroad". It is difficult to understand why « assets deposited or managed in another financial institution, either of the same financial group or outside…, particularly abroad » may constitute per se a higher risk factor since this occurs increasingly in our global complex cross-border world. It is hardly unusual for a wealth management client, not even necessarily an UHNWI, to have private and/or business financial interests in several countries and to explicitly choose a banking institution able to advise and manage some or all of such assets in an as consolidated as possible way to provide adequate wealth oversight and consistency in investment strategy. This statement is too generic and remote from current wealth management realities.

We propose that the following higher risk indicator that has been categorized under Paragraph 143 for private banking shall be added to Paragraph 100 where the customer risk factors for retail banks are set out due to the fact that it is valid for retail banks as well:

- "lending (including mortgages) secured against the value of assets in other jurisdictions, particularly countries where it is difficult to ascertain where the customer has legitimate title to the collateral, or where the identity of parties guaranteeing the loan are hard to verify".

Under Paragraph 101 of the Joint Guidelines, some factors that may indicate lower risk are set out for retail banks. However, we observe that for private banking, such factors are not stated. We are of the view that the following factor shall apply to the private banking as well:

- "*The customer is a long-standing client whose previous transactions have not given rise to suspicion or concern, and the product or service sought is in line with the customer's risk profile*".

In order to avoid possible tax evasion risk, it may be added as a condition that the country of residence of the customer belongs to the list of countries that implement the automatic exchange of information according to the OECD standards.

Therefore, we propose that Paragraph 144 be followed by a new Paragraph:

"*The following factors may indicate lower risk:*

- *The customer is a long-standing client whose previous transactions have not given rise to suspicion or concern, and the product or service sought is in line with the customer's risk profile;*
- *The country of residence of the customer belongs to the list of countries that implement the automatic exchange of information according to the OECD standards".*

In the same way, we propose that Paragraph 146 be followed by a new Paragraph:

"The following factor may indicate lower risk:

- *The country of residence of the customer belongs to the list of countries that implement the automatic exchange of information according to the OECD standards".*

The factors that may indicate higher risk related to the customer are set out under the Paragraph 144 of the Joint Guidelines. "Customers with lifestyles that make it difficult to establish 'normal' or expected patterns of behaviour" is one of these high risk factors. We believe that such terminology that includes the wording "lifestyle" and "normal" are not acceptable. The perception of the words "lifestyle" and "normal" is in the eye of the beholder. The terms used are much too subjective and subject to diverging interpretations to be used as a relevant factor. Therefore we suggest that such higher risk factor be deleted or at least mitigated, if not, at least consider a sudden material change in lifestyle as more relevant.

Additionally, "customers whose identity evidence is of a non-standard form" is under Paragraph 144 where risk factors for private banking are set out. We are of the view that such customers would include consumers with no fixed address and persons seeking asylum under the Geneva Convention of 28 July 1951 relating to the Status of Refugees. This category of clients who indicate higher risk belongs to retail banking, not to private banking. Therefore we propose that such category is eliminated from Paragraph 144 and is added to Paragraph 100 where the customer risk factors for retail banks are set out.

Distribution channel risk factors:

The factor indicating higher risk under Paragraph 145 is very generic. We believe that more detail could be given on this risk factor. In fact, it is becoming more frequent to have wealth management customers provided with products and/or services from third party institutions: a single wealth management institution may not have the expertise in a specific area or types of products or the customer, for historic or relationship reasons, continues to entrust part of his financial assets to a third party. The important factor is not the fact of a customer being provided products / services from another institution, but the fact that the professional is understanding and documenting the reason why this is being done.

Country or geographic risk factors:

Under Paragraph 146 it is indicated that “business taking place in multiple countries” may lead to higher risk. We believe that more detail could be given on this risk factor. This is far too generic to be relevant as a risk factor in a world as global as ours. Most of wealth management clients have businesses and/or financial assets in multiple jurisdictions. This is also one of the reasons why they come to specialised wealth management banks to help them manage that complexity. It is part of the banks’ normal business. We would suggest deleting it altogether or at least mitigate it.

The statement under Paragraph 149 is not acceptable as over simplistic and in a way discriminating towards wealth management as a sector. Simplified due diligence is no more appropriate in wealth management than in retail banking when dealing with customers: SDD should be restricted to a limited number of clearly defined situations which occur with customers of both sectors.

2.3 Sectorial guidelines for life insurance undertakings

Generally it should be noted that the proposed due diligence measures should be adopted by the life insurance companies, not by banks that deal with life insurance firms.

We agree that in principle the three categories of risk factors described under Paragraph 177 (i.e. flexibility of payments, ease to access to accumulated funds and negotiability) may indicate a higher risk. However, some of the subcategories that were included are features that apply to the overwhelming majority of life insurance products. These factors indicating higher risk go against the risk based approach by including a too wide category of product. We would suggest adopting a more proportionate approach in taking in account circumstances such as the customer’s behaviour.

2.4. Sectorial guidelines for Investment managers

Paragraph 194 mentions as a higher risk factor the following behaviour “repurchasing or redeeming a long-term investment within a short period after the initial investment or before the pay-out date, in particular where this results in financial loss or payment of high transaction fees;” (first bullet point, point i.) and “the repeated purchase and sale of shares within a short period of time without an obvious strategy or economic rationale” (first bullet point, point ii). It should be mentioned that these risk criteria should not be taken into account when the firm under a discretionary management mandate operates transactions.

2.5. Sectorial guidelines for providers of Investment funds

As described under Paragraph 200, those services involve multiple parties (management company, custodian, registrars etc.). Accordingly, Joint Guidelines should specify who is responsible for performing due diligence measures. We also recommend adding distributors to the list of multiple parties.

Paragraph 201: We do not agree that the access to retail funds “is often easy”, as access to such financial instruments does often happen via regulated financial institutions.

Paragraph 203 refers to “third party subscribers”. We understand that subscribers will become shareholders in the funds in which case we do not see the enhanced risk. If the guidelines have a different understanding, we recommend that this be clarified. It also refers to “transactions involving accounts in multiple jurisdictions”. A transaction in a fund will usually involve one account in one particular jurisdiction.

Paragraph 205 (i.e. first bullet point, point vi) refers to the concept of "cooling off" which is not a concept used in the investment fund sector. The same comment in the paragraph 203 above applies to the Paragraph 205 (i.e. first bullet point, point vii). Finally, Paragraph 205 (i.e. first bullet point, point viii) mentions changes in clearing and settlement location, which do generally not occur in the fund industry, except in case of fund traded on the secondary market/stock exchange.

Paragraphs 206, 208, 211, 213 and 215 refer to EEA as opposed to EEA and countries which firms have identified as lower risk jurisdictions in line with Annex II of Directive (EU) 2015/849. We recommend modifying to align with corresponding statements made in other paragraphs of these guidelines.

Paragraph 207 reflects the case of widely distributed investment funds to retail and institutional investors. The way the risk is defined would possibly define regulated UCITS as higher risk. We recommend defining what types of investment funds are considered as high risk.

Paragraph 210 provides examples where EDD should apply. We recommend replacing "should" by "may". We also consider that there is a need to distinguish between director investors and intermediaries. Under the same Paragraph 210, bullet point four refers to "requiring that the redemption payment is made through the initial account used for investment". This may not always be practical. We think that the same good objective will be achieved by "requiring that the redemption payment is made to an account in the name of the person who has made the initial subscription". Finally the fifth bullet point of the same Paragraph requires "establishing limits on number and/or amount of transactions"; we consider this not being feasible and recommend to replace "establishing limits" by "monitoring".

Paragraph 212: We recommend adding in the list of examples "a regulated intermediary" and to replace "acts on its own account" by "acts on its own name". The sentence should read as follow:
"*Where a firm uses a financial intermediary to distribute fund shares, for example a regulated platform, a regulated intermediary, a bank or financial advisor, that intermediary may be regarded as the firm's customer provided that the intermediary acts on its own name* (…)".

We recommend deleting the sentence "In those situations, the firm should treat the intermediary's customers as the fund's beneficial owners", as it completely changes the meaning of "beneficial owners" and is no longer in line with the definition in the EU directive.

As per Paragraph 213, it is only possible to apply SDD when the intermediary (distribution network) is located in an EEA member. We believe that this should be extended to countries which firms have identified as lower risk jurisdictions in line with Annex II of Directive (EU) 2015/849.

Paragraph 214 requires, as part of SDD, the identification and verification of the identity of the intermediary and its beneficial owners. We do not consider that the verification of identity should be required in case of SDD, especially considering the regulated status of most intermediaries distributing funds. We also consider that obligation outlined in bullet point four to "establish that the intermediary will provide upon request relevant information on their clients, who invested in the fund and who are the fund's beneficial owners" is not achievable in most jurisdictions where the funds are distributed.

As a matter of conclusion, we would like to highlight Paragraph 53 of the Section 5 titled "Accompanying Documents" which provides that "The benefits of this approach for firms are that these guidelines allow firms to adopt policies and procedures that are proportionate to the nature, scale and complexity of their activities. This means that more complex, higher risk firms

will be able to tailor their risk management to their risk profile; and firms that are exposed to low levels of ML/TF risk will be able to adjust their compliance costs accordingly." Clearly this means that all the requirements in the Joint guidelines are obligations of means. However, if firms encounter sanctions, as they are deemed fully accountable for the decisions they make, this may lead de facto to impose on the professionals concerned an obligation to achieve results. It would be helpful if a clear statement on the obligation of means were introduced in the Joint Guidelines.