

11 July 2017

Joint Committee of the European Supervisory Authorities

## **AFME response to Consultation Paper JC 2017 25**

Dear Sir / Madam

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the Joint Committee of the European Supervisory Authorities' **Consultation Paper JC 2017 25 on Draft Joint Regulatory Technical Standards**.

Our comments are attached but we will be very happy to meet with you to discuss them at any mutually convenient time.

Yours faithfully

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Managing Director  
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## Consultation response

# AFME Response to Consultation Paper JC 2017 25 - Draft Regulatory Technical Standards

11 July 2017

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The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the Joint Committee of the European Supervisory Authorities' **Consultation Paper JC 2017 25 on Draft Joint Regulatory Technical Standards**. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76.

Our answers to the consultation questions can be found below.

### Questions

**1. Do you agree with the scope of the Draft RTS as described in Article 1?**

Yes.

**2. Do you agree that while minimum action must always be taken, credit and financial institutions can adjust the nature and extent of the remaining additional measures on a risk-sensitive basis?**

Yes, this is an important principle. Too much prescription in regulation is unnecessary and expensive. A one size fits all approach is not appropriate; a risk-based approach is. Even then, we find some of the minimum requirements in the Draft RTS to be unduly onerous, as set out below.

**3. Do you agree that the minimum action in Article 3 is appropriate?**

**If you do not agree, please explain and provide evidence where possible.**

**Are there any other minimum actions you think Article 3 should include? If so, please explain and provide evidence where possible.**

AFME agrees that the minimum action in Article 3 is appropriate, except article 3(c), which requires senior management approval for risk assessment and article 3(d), which deals with training.

On article 3(c), group or head office senior management approval for the risk assessment should be necessary only as decided internally on a risk-based approach (which the relevant credit or financial institution should be able to justify to its home State regulator).

On article 3(d), AFME agrees that training of relevant staff members is essential, but would like to note that no amount of training can *ensure* that staff are able to effectively identify ML/TF risk indicators and this obligation to *ensure* should therefore be removed and be replaced by *reasonable efforts to ensure*.

**4. Do you agree that the minimum action and additional measures in Article 4 are appropriate?**

**If you do not agree, please explain and provide evidence where possible?**

**Are there any other minimum actions or additional measures you think Article 4 should include? If so, please explain and provide evidence where possible.**

Article 4(1)(a) requires credit and financial institutions to inform the competent authority of their home Member State without delay (i) of the third country concerned, and (ii) how the implementation of the third country law prohibits or restricts the application of adequate ML/TF procedures. AFME does not understand the need for (ii), as the home Member State will be able to ascertain this information itself.

The rest of article 4 we find acceptable, if over-prescriptive, and we would hope and expect that national competent authorities supervise this in a proportionate manner.

**5. Do you agree that the minimum action and additional measures in Article 5 are appropriate?**

**If you do not agree, please explain and provide evidence where possible?**

**Are there any other minimum actions or additional measures you think Article 5 should include? If so, please explain and provide evidence where possible.**

Our answer is the same as for article 4, mutatis mutandis.

**6. Do you agree that the minimum action and additional measures in Article 6 are appropriate?**

**If you do not agree, please explain and provide evidence where possible?**

**Are there any other minimum actions or additional measures you think Article 6 should include? If so, please explain and provide evidence where possible.**

In relation to the provision in article 6(1)(a) requiring the branch or majority-owned subsidiary to provide relevant information to senior management, AFME believes senior management involvement should only be required where appropriate. It must also be clear that the examples given at article 6(1)(a)(i) and (ii) are only examples and omitting these will not be seen as a breach.

In relation to article 6(1)(b)(ii) we have the same comment on the ability of the home Member State regulator to be able to inform itself of third country laws.

The remaining minimum action and additional measures are appropriate.

**7. Do you agree that the minimum action and additional measures in Article 7 are appropriate?**

**If you do not agree, please explain and provide evidence where possible?**

**Are there any other minimum actions or additional measures you think Article 7 should include? If so, please explain and provide evidence where possible.**

In relation to article 7(1)(b), credit and financial institutions should only be required to carry out enhanced reviews in accordance with existing group policy (which they should be prepared to justify to their home State regulator).

In relation to the provision in article 7(1)(d) requiring the branch or majority-owned subsidiary to provide relevant information to senior management, AFME believes senior management

involvement should only be required where appropriate. It must also be clear that the examples given at article 7(1)(d)(i), (ii) and (iii) are only examples and omitting these will not be seen as a breach.

**8. Are there any other scenarios these RTS should address?**

**In particular, are there any policies and procedures in Article 8 of Directive (EU) 2015/849 where the implementation of a third country's law might prevent the application of group-wide policies and procedures?**

In relation to article 8(1)(a)(ii) we have the same comment on the ability of the home Member State regulator to be able to inform itself of third country laws.

**9. Do you agree with the impact assessment?**

**In particular,**

- **Do you agree that there are relatively few countries where the implementation of the law prevents the application of group-wide policies and procedures?  
Please provide the names of third countries, if any, and the nature of the impediment you have identified.**
- **Do you agree that Option 3, whereby the draft RTS distinguish between different situations where a third country's law prevents the application of group-wide AML/CFT policies and procedures, is the most proportionate option?  
If you do not agree, please explain and provide evidence where possible. Please also explain which approach you would prefer, and why.**

The consultation indicates preference for Option 3 because "in spite of appearing more complex than Options 1 and 2, it is both risk-based and proportionate and most likely to lead to effective outcomes".

AFME agrees with Option 3 as preferable to Options 1 or 2. However Option 3 is indeed complex, and some of the actions required are onerous. This is particularly the case for those AFME members who will have operations in the UK after that country ceases to be a member of the EU. We would be happy to work with you to devise a more simple (but not more risky) approach.

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