

Summary of feedback received

Consultation title	Examples of good and poor practice in 'Banks' control of financial crime risks in trade finance'
Date of consultation	June – October 2013
Summary of feedback received	<p>We received six responses to this consultation. We also met with three respondents to discuss specific concerns they had raised. Two respondents sent us drafting suggestions after our meeting.</p> <p>Most respondents found our examples of good and poor practice useful. They considered these would help firms implement more effective controls to identify, assess and mitigate financial crime risk in trade finance.</p> <p>Three respondents were concerned that a small number of examples of good and poor practice were drafted in a way that could lead some firms to adopt unduly restrictive controls; this could have a detrimental effect on international trade.</p> <p>Two respondents were concerned that the publication of this guidance consultation signalled a move away from our risk-based approach.</p> <p>And one respondent felt that the extent of money-laundering risk associated with trade finance was so small that it did not merit guidance.</p>
Response to feedback received	<p>We thank all respondents for taking the time to reply and for the constructive feedback we received. We have carefully considered all responses and have revised our guidance where appropriate.</p> <p><u><i>Pricing of goods, documentation and dual-use goods</i></u></p> <p>Three respondents were concerned about examples of good practice that suggested that banks check the pricing of goods, verify underlying trade documentation and transacting parties and identify dual-use goods. They believed that these examples were drafted in a way that could lead some banks to adopt unduly restrictive controls. Some respondents also thought that these examples were disproportionate or impossible to implement.</p> <p>We acknowledge that checking the pricing of goods, underlying</p>

trade documentation and transacting parties and identifying 'dual-use' goods can be challenging for banks. This is why we have provided examples of good practice that some of the banks in our sample had adopted. We believe that providing these examples will help other banks develop better financial crime systems and controls.

We have always made it clear that these examples are not binding and that banks can meet their legal and regulatory obligations in other ways but we have amended our draft to further stress the risk-sensitive nature of our guidance.

The risk-based approach

Two respondents considered that our examples of good and poor practice were prescriptive. They were concerned that we expected all firms to implement the controls listed as examples of good practice. This, they felt, was disproportionate and incompatible with the risk-based approach to financial crime prevention set out in international standards and Government policy. They said that this meant that we were moving away from our risk-based approach.

We remain firmly committed to the risk-based approach as the most effective way to assess and mitigate financial crime risk. We have always sought to make clear our expectation that our Guide will be used in a risk-based, proportionate, outcomes-focused way. We understand that firms have very different ways of meeting their legal obligations given such factors as their nature, size and complexity and the Guide includes, in the introduction, examples of how the same piece of guidance might apply to different firms. This is designed to help users understand that they can adapt the contents of the Guide to suit their individual circumstances.

We believe that the risk-sensitive nature of our guidance and general approach to financial crime regulation is clear and many respondents privately acknowledged this. For the avoidance of doubt, we have, in some instances, included specific references to the risk-based approach where respondents suggested this was particularly important.

Trade finance and financial crime

One respondent considered that there was little evidence linking trade finance to financial crime. They considered that implementing better financial crime systems and controls was likely to be disproportionate.

Domestic and international organisations, including the Joint Money Laundering Steering Group, the Financial Action Task Force and the Wolfsberg Group have drawn attention to the misuse of international trade finance for financial crime purposes. The complexity of transactions and the volume of trade flows can hide individual transactions and help criminal organisations to

Changes made to the guidance as a result of feedback received

transfer value across borders.

We found significant shortcomings in banks' management of financial crime risk in trade finance as well as a very limited understanding, in most banks, of what those risks were likely to be. Firms subject to our financial crime regime must put in place systems and controls to identify, assess and mitigate financial crime risk in a proportionate and effective way. We recognise that not every bank will be exposed to the same level of financial crime risk and it is up to each bank to decide how best to mitigate the risk they are themselves exposed to. Our guidance makes this clear.

We made several minor changes to our guidance as a result of the feedback we received.

In '**Governance and MI**', we inserted an example of good practice to clarify that we do not expect all banks to establish a forum specifically to discuss financial crime risk in trade finance. Instead, we consider it good practice for banks to facilitate the sharing of financial crime information and knowledge among trade finance staff and acknowledge that this can take different formats. We deleted the corresponding example of poor practice and amended a second example of poor practice to avoid duplication.

We also made a minor amendment to one example of poor practice to clarify that we do not expect internal audit always to carry out dedicated trade finance financial crime reviews, but that trade finance should be included in the scope of internal financial crime audits.

In '**Risk assessment**', we amended an example of good practice to make clear that we do not expect all banks to carry out a stand-alone trade finance financial crime risk assessment. Banks are required to assess financial crime risk across all areas of operation and the amended example of good practice makes clear that this assessment should be commensurate to the relative importance of the bank's trade finance business.

In '**Policies and procedures**', we amended an example of good practice to stress that staff have to identify key parties to a transaction and screen them against sanctions lists. We do not expect banks to screen all parties to a transaction.

We also changed an example of poor practice, which respondents felt was unclear, to an example of good practice to show that banks should find ways to ensure staff recognise red flags in trade finance transactions.

In '**Due diligence**', we merged examples of good and poor practice to provide more detail on the type of information banks' procedures should contain in relation to due diligence.

In **'Training and awareness'**, we added an example of good practice to suggest that training should sensitise staff to look for suspicious variances in the pricing of comparable or analogous transactions.

In **'AML procedures'**, we replaced the term 'Level 1 processor', which was unclear. We also inserted specific references to the risk-based approach in the examples of good practice that relate to the review of underlying trade documentation and the use of third party data to verify information given in the Documentary Letters of Credit and Documentary Bills for Collection to alleviate respondents' concern that we expect banks to review and verify underlying information in all cases. We deleted a corresponding example of poor practice to avoid duplication.

Finally, we amended an example of good practice to reflect that the analysis of pricing for traded commodities, although desirable, may not always be possible.

In **'Sanctions'**, we merged two examples of good practice and added further detail to this and an example of poor practice, which respondents felt was necessary in the interest of clarity.

In **'Dual use goods'**, we amended an example of good practice to specify that staff should be capable of identifying red flags that suggest that dual use goods may be used for illicit purposes. We deleted one example of poor practice, which duplicated an example of good practice.

Finally, **we added a reference** to this chapter to Chapters 3 and 7 of Part 1 of the Guide and made some **administrative changes**.