

### **APPENDIX 3**

#### **Additional Comments Received by CIMA**

At the end of the consultation period, the industry associations submitted their comments on the proposed GN amendments. However, some of the comments submitted by the industry associations were not in relation to the proposed GN amendments and as such do not form part of the consultation process. Therefore, responses to these additional comments received will be communicated to the relevant associations separately. The following table lists the additional comments received by CIMA and includes CIMA's responses.

<b>List of Comments/Questions/Requests for further Guidance from Industry</b>			
<b>Comm ent #</b>	<b>Section</b>	<b>Industry Comment</b>	<b>Authority's Response</b>
1.	Formatting CIBA PSC	<p>Given that professionals in other jurisdictions will be accessing and relying on the Guidance Notes for various reasons, there is a need to address the issue of consistency of numbering and formatting in different sections of the GN which includes:</p> <ul style="list-style-type: none"><li>• Part I – Section 1 A - Starts with para 1 and goes to para 4</li><li>• Part I – Section 1 B - Starts with para 1 and goes through to para 7.</li><li>• The same pattern remains in place for the remainder of Part I</li><li>• Part II starts in the same fashion, with Part I Section 1 A, Section 2 A, B, C and D all commencing with para 1</li><li>• Section 3 A and B both start with para 1. Section B ends on para 8.</li><li>• Section 3 C starts at para 9.</li><li>• Section 3 D starts at para 1 through to para 11.</li><li>• Section 3 E starts at para 12 through 13.</li><li>• Section 3 F starts at para 1 again.</li></ul>	<p>Agree</p> <p>This will be addressed when issuing the consolidated version of the GNs at the end of 2018.</p>

		<ul style="list-style-type: none"> <li>• Section 3 G starts at para 1, but it is noticeable that a different font is used.</li> <li>• Section 4 is even more inconsistent.</li> <li>• Section 4 A starts at para 1 through to para 21.</li> <li>• Section 4 B starts at para 8.</li> <li>• Section 4 C, D, E, F, G, and H start at para 1</li> <li>• Then there is another Part II – Section 4 C.</li> <li>• There are further examples of different font being used throughout the document notably in Part II Sections 9 and 10.</li> </ul>	
2.	Referencing CIIPA	The referencing used is difficult to track. Suggest that new referencing to include Part, Section Para (A, B C etc.) in the header or footer and/or that the section and Paragraph be added to the contents page so that can be matched to page numbers.	Agree  This will also be addressed when issuing the consolidated version of the GNs at the end of 2018.
3.	Point raised CNB; CIBA PSC	Should consideration be given to the fact that a local Driver's Licence is Government issued where the holder has formally attested to the information provided being true and correct and where a false declaration is punishable by a fine of two thousand dollars and to imprisonment for 12 months. Currently the Authority's position is that a Drivers Licence is specifically disallowable for proving residency. Paragraph 28 of Section 4 of the GN's recommends a common sense approach and some flexibility without compromising sufficiently rigorous AML/CFT procedures in certain circumstances. Therefore, when considering a KYC file as a whole, can such a common sense approach also apply to the acceptability of a Drivers Permit for proof of residential address? Perhaps the Authority can reconsider its stated position regarding the use of a Drivers Licence as proof of residential address is not in compliance with what was formerly Section 3.19 of the previous version of the Guidance Notes (now Paragraph 30 of	Since, driver's licenses do not always reflect the correct residential address of the holders, if a person wishes to use driver's licence as a proof of address, then the driver's licence should be supported by another document to evidence that the address provided in the driver's licence is correct and current.

		<p>Section 4 in the December 2017 Revision). We are of the view that although Paragraph 30 provides examples of documents that can be used for verification of name and address, this list is not exhaustive. Further compounding this non-acceptability of a Drivers Licence is the conflicting requirement between Cayman AML regulations and FATCA/CRS regulations which accept that a driver's licence as acceptable for address confirmation. Further, many of the documents CIMA requires in the Guidance Notes are not acceptable under FATCA/CRS. As such, licensees will still often be required to obtain a Government Issued document such as a Driver's Licence to comply with FATCA/CRS, thereby requiring different documents to satisfy the same residential address requirement under the Guidance Notes and FATCA/CRS regimes.</p>	
4.	Regulation 24 – Nominee/written assurance letter	<p>In the meeting between CIMA and Cayman Finance Working Group on 11 April 2018 (the "Meeting"), it was discussed that the requirement for a written assurance from nominees containing the to-the-letter confirmations set out in Regulation 24 was causing industry difficulties, in cases where certain overseas financial institutions which act as "nominees" are precluded by the laws of their own jurisdiction, or contractual arrangements with their underlying customers, from providing certain confirmations. CIMA indicated that they understand the practical problem posed and the uncertainty regarding upon whom CDD must be carried out (the nominee or the customer behind that arrangement) and will consider possible solutions and advise on whether, in the absence of a written assurance, FSPs can still rely on the available SDD under the Regulations.</p> <p>We would note that the FATF Recommendations still permit reliance upon nominees that are themselves regulated financial institutions (or their subsidiaries) in equivalent jurisdictions.</p> <p>Industry anxiously awaits a workable solution to this issue.</p> <p><u>Proposal:</u> Industry's assumption is that that the purpose of the Regulations is to ensure a KYC look-through where a "nominee" entity is being used and/or controlled by persons who would meet the definition of "beneficial owner" in the AML Regulations.</p>	<p>Regulation 24 of the AMLRs requires nominees to provide CDD information of their principles and principles' beneficial owners to FSPs on request without delay.</p> <p>FSPs should know who their real customers are (i.e., nominees' principles and principles' beneficial owners) and for that purpose should be able to obtain all the CDD information from nominees as and when needed. Additionally, FSPs should be able to provide the CDD information to competent authorities when requested.</p> <p>As such, nominees should provide a written assurance agreeing to provide CDD information to the FSP upon</p>

		<p>Accordingly, in cases where a nominee is a) a regulated financial institution in its own right (or a controlled subsidiary thereof) and (b) is effectively an investment pooling vehicle and none of the customers of the nominee meet the beneficial ownership criteria, industry suggests that there could be derogation from the requirement to obtain a written assurance letter.</p> <p>This is because there would be no "beneficial owners" (as defined) of the applicant for business.</p> <p>Accordingly, precluding investment because the nominee is itself precluded by laws applicable to it from providing certain confirmations, would be an unnecessary negative outcome.</p> <p>If the Authority agrees, then it would be helpful if it could include sector specific guidance for funds that where a nominee investor is a regulated financial institution in its own right (or a controlled subsidiary thereof) that provision of a representation by the "nominee" that it has no interest holders/customers which meet the "beneficial owner" definition, means that provision a written assurance letter is unnecessary.</p> <p>In this context, confirmation is also requested that "beneficial owner" in this context means the nominees' customers and/or their beneficial owners, and not the beneficial owner of the nominee (which could e.g. be the owner/controller of the relevant financial institution).</p>	<p>request without delay per regulation 24 of the AMLRs. Of note, the GNs cannot override the requirements imposed by the AMLRs.</p> <p>Beneficial owners in the context of regulation 24 of the AMLRs are nominees' customers and/or customers' beneficial owners.</p>
5.	Authorised signatories/persons	<p>Industry's understanding of an FSP's customer verification requirements is that, in applying a risk based approach, it may determine on a case by case basis what verification materials are required in respect of such authorised signatories. This is particularly relevant in the context of major financial institutions, or nominees, which are controlled by major financial institutions, where the relevant applicant for business may list dozens of authorised signatories, for purposes of carrying on their business. Such signatories are functionaries of the financial institution and in the ordinary course have no vested interest in the relevant investment. The AML/CFT risk posed by the authorised signatories in this context is not material.</p>	<p>The Authority requires further details/clarity to provide a response on this issue.</p> <p>The Authority will engage with the relevant industry association(s), if necessary, to discuss this matter in detail.</p>

		<p>In this context, the Guidance Notes currently provide that:</p> <p><i>"FSPs shall take a risk based approach in determining the scope of the identification and verification documentation that is required to be collected. FSPs may need to collect several or all types of documentation and information as listed below depending on the specifics/type of the corporate applicant and risks posed"</i></p> <p>Furthermore, the previous guidance notes required authorised signatory verification in the case of trust, banking and money services business. Understandably, this is still the case in the current sector specific guidance.</p> <p>However, the Guidance Notes also include general guidance which includes:</p> <p><i>"In circumstances where an applicant/customer appoints another person as an account signatory e.g. appointing a member of his/her family, full identification procedures should also be carried out on the additional account signatory."</i></p> <p><i>"FSPs shall conduct CDD on the authorised person(s) using the same standards that are applicable to an applicant/customer."</i></p> <p>The funds industry is extremely concerned that this general guidance will be deemed applicable to the funds sector, when in the scenario described above it would not be practicable to obtain full verification materials, in the context that it is irrelevant from an AML/CFT perspective.</p>	
6.	Sector specific guidance on unregistered funds	<p>Industry welcomes the opportunity with assisting in the drafting of sector specific guidance for unregistered funds. However, Cayman Finance suggests that there first be a meeting with a specialised working group to discuss this sector and practical implementation of AML/CFT policies.</p> <p>We note for completeness that the structured finance industry has separately been discussing sector specific matters with CIMA. Such</p>	<p>The Authority invites views and comments from industry participants with respect to providing a separate sector specific guidance for unregistered funds.</p> <p>The Authority is in the process</p>

		discussions would remain separate as the businesses are essentially unrelated.	of developing sector specific guidance for structured finance entities (SPEs) which will be issued for consultation in the near future.
7.	Other unregulated "investment entities"	Cayman Finance encloses a paper to CIMA discussing the AML status of passive entities within group structures.	The Authority will respond on this matter separately and will engage with the relevant industry associations, if necessary, to discuss in detail.