HM Treasury Consultation:

Amendments to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 Statutory Instrument 2022

Ordo response

Submission to: Anti-MoneyLaunderingBranch@hmtreasury.gov.uk

By: 14 October 2021

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Context and Introduction to Ordo

Who we are:

We are Ordo, the trading name of The Smart Request Company Ltd (company number 11338545). We are a fintech start-up and TPP. We are regulated by the FCA to carry out AIS and PIS under FRN 836070

The five founding directors incorporated the business in May 2018, having previously worked together in the Faster Payments Scheme, driving new competition in banking and payments and transforming access to the Systemically Important payment system. Whilst we were the leadership team at Faster Payments, we instigated bringing on new challenger banks and other PSPs such as Monzo, Starling, Atom, ClearBank and Transferwise. The team were awarded the Payments and Cards Awards Industry Achievement Award in 2017 by their payments industry peers for their work to allow Transferwise and its customers to benefit from technical direct access to the Faster Payments System.

Following our time at Faster Payments, we set up Ordo to build and run Open Banking enabled solutions such as Request for Payment, eCommerce and Point of Sale solutions, amongst others. We are backed by Nationwide Building Society, and are fully integrated with the well-known accounts package services QuickBooks, Sage, Xero, and banking platforms such as Contis. We are partnered with CGI to run our platforms. Ordo has won Open Banking Expo's #PoweroftheNetwork award, been rated (confidentially) No. 3 2021, and No. 10 2020, in BusinessCloud's Top 50 and 100 (respectively) FinTech rankings, accepted onto TechNation's FinTech programme, been nominated for Fintech Futures' FinTech of the Future award, and been finalists for multiple EPA awards in 2021 and 2020.

Ordo's Open Banking platform:

Ordo's highly secure, cloud based, open banking enabled payments platform provides businesses large and small with low cost, secure and easy to use e-commerce, Point of Sale and invoice payments direct from their customer's bank accounts into their own bank accounts. Businesses can access the Ordo platform in a number of ways: though an Ordo Merchant Acquirer/PSP payments partner, via Ordo's modern APIs, and for smaller businesses, through our integrations with QuickBooks, Sage, and Xero accounting software or directly via Ordo's web/app interfaces.

Ordo also uses open banking payments to enable refunds and secure customer pay outs as well as account validation services.

Ordo is a FCA regulated AISP and PISP. We answer the questions relevant to us as an interested and affected stakeholder.

AISPs and PISPs

1. What, in your view, are the ML/TF risks presented by AISPs and PISPs? How do these risks compare to other payment services?

Risk of AISPs/PISPs

ML/TF risks presented by AISPs and PISPs are low.

AISPs simply aggregate information; no money is transferred.

PISP operation

Today, if a business or consumer wishes to be paid by a Faster Payment bank transfer, they provide their payer with a sort code, account number, and their account title, alongside the amount and any payment reference they wish to see on the transfer. This information may be passed on paper, by email, electronic message or even by voice call. The payer then uses their internet or mobile banking service to set up and send the payment, under the protection of the sending bank's SCA. ML and TF oversight of this process is undertaken through the two party's bank's and for certain high-risk types of business (e.g. estate agents) directly via the business collecting payment.

PISPs simply overlay these processes, removing risks of errors in information exchange and payment instruction setup, and risks of data intercept and fraudulent changes between the parties. PISPs, like Ordo may add additional protections by, for example, proactively showing the payer a validated receiving account title, ensuring that payment can only be made once, and ensuring that any payment reference provided by the biller is passed through Faster Payments as a payments reference. These protections also simplify the process for both parties.

PISP operations are not an alternative to other payment services, they sit on top of existing bank to bank Faster Payment services.

From an ML/TF perspective the participation of the PISP does not add any risk, they are simply carrying out a businesses and a payer's instructions. A business submits a payment request to their chosen PISP, the PISP sets up this payment in the potential payer's bank account, where the payer is required to authorise payment for money to transfer in accordance with the businesses and payer's instructions and consent.

A PISP does not provide a potential Money Launderer or Terrorist Financer with any capabilities or tools that would allow them to launder money or finance terrorism any more easily than using the existing process of Faster Payments that PISPs overlay – they require the same information and set up the same payments as manual payments processes. Indeed, they may be deterred from using PISPs as all PISPs, through their record keeping obligations, will hold an additional record of payments made, that could be connected with a single PSU allowing otherwise unconnected ML/TF payments to be connected.

A PISP is a conduit for instructions between a biller, a payer and their banks. A PISP, to be operating, will have been, and remains, authorised and regulated by the FCA. As part of original authorisation, the FCA assesses a PISP's business case, security provisions, risk assessments, shareholders, and executive for fitness to act purposes. The PISP then acts as a conduit to fulfil the instructions of others.

A PISP transfers money from one account held with an authorised bank over which there are general account opening AML obligations and KYC stipulations, to the receiving bank with likewise obligations. Banks are in the position of being able to see all account activity of their customers, unlike a PISP. A bank is the party best placed to discern any unusual activity. A bank is the party which should carry out KYC checks on their potential customers and satisfy themselves that they are not opening an account for a fraudster.

2. In your view, what is the impact of the obligations on relevant businesses, in both sectors, in direct compliance costs?

Because of our risk assessments of the impact our service can have on ML and TF (see answer to question 1), beyond normal requirements for record keeping of payments transactions we enable, and processes we have in place to ensure that payers know who they are paying we do not currently see a particular compliance burden. If there was a general view that we must duplicate the ML and TF obligations and processes of the banks directly involved in these payments, then our compliance costs would be significant. It would require altering our technology at a platform level and on a majority of journeys making the solution so unattractive and costly as to be useless (see answer to question 3).

3. In your view, what is the impact of such obligations dissuading customers from using these services? Please provide evidence where possible.

If PISPs (in addition to Account Servicing PSPs) were required to KYC all payers, this would stifle this innovation to non-existence; it breaks the concept PDS2 envisaged. It would place a greater regulatory burden on PISPs than ASPSPs who do not need to validate where payments come from into their customers' accounts via Faster Payments. If PISPs were required to KYC all payers, then these services could only be used by payers who had proactively registered for each PISP service, going through a KYC process not unlike that required to open a bank account at an ASPSP. This will fundamentally undermine most PISP customer propositions, preventing PISPs bringing competitive pressure to bear on banks. Given that all payers using PISPs must make payments from UK ASPSPs, and to have an account with an ASPSP they must have gone through a KYC process to open that account this adds no benefit in ML/TF terms at a large cost.

4. In your view should AISPs or PISPs be exempt from the regulated sector? Please explain your reasons and provide evidence where possible.

It is our view that AISPs and PISPs should be exempt from the regulated sector in respect of this level of ML/TF for the reasons outlined above, principally because they do not present incremental ML/TF risks and because banks and high-risk businesses already carry the appropriate ML/TF obligations in all PISP enabled payments transactions. Requiring PISPs to conduct ML/TF checks will only duplicate what ASPSPs are already under a regulated duty to carry out and will not, of itself, reduce the risk of ML/TF. Furthermore, should PISPs duplicate these regulatory obligations, it may cause ASPSPs to relax their conduct of them in the first place. The primary financial relationship of a payer is with their ASPSP. In any payment, whether it uses a PISP or otherwise, requires them to authorise payment with their ASPSP using their ASPSP's SCA. A PISP only overlays a secure messaging service to this ASPSP SCA payment. On the basis of sensible risk assessments, ML/TF obligations on AISPs/PISPs do not materially reduce ML/TF risks in the economy. It is not in the interests of competition or innovation, agendas that HM Treasury itself, as well as the FCA, CMA and PSR are actively pursuing. If the current obligations were interpreted in a very regulatory-risk-averse way, then controls and compliance could damage PISP functionality to the point of rendering it nearly useless, a result which would not allow the UK to remain the global FinTech hub and leader that it is today.

We are a commercial TPP providing multiple Open Banking enabled competitive solutions and are live in the market today. We have been providing our solutions for over a year, with millions transferred using our platform. We are connected to 100% of banks offering Open Banking which is 98% of the banking market. See our range of solutions, learn more or try for free today.