



Consultation on Proposed Changes to the FATF Standards

*Compilation of Responses from the Financial
Sector*

PART ONE

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Re: Response to FATF Public Consultation on the Review of Standards - Preparation for the 4th Round of Mutual Evaluations

Dear Mr. Urrutia,

The Alliance for Financial Inclusion (AFI) Financial Integrity Working Group (FINTWG) is pleased to provide comments to the FATF's ongoing review of the standards in preparation for the 4th round of mutual evaluations.

AFI is an independent network of policymakers in developing and emerging markets that provides its members with the tools and resources to share, develop, and implement their knowledge of successful financial inclusion policies. AFI's network today is comprised of more than 60 countries, mainly represented by central banks, ministries of finance, supervisory bodies, and other policymaking institutions that play a leading role in establishing policies that are relevant to financial inclusion.

AFI members find the challenging task of balancing the maintenance of financial system integrity with providing greater financial access as a key issue in their quest to establish a financial environment where advantageous financial services are provided for the poor and the underprivileged. In this vein, the FINTWG was established in 2010 to provide a platform to discuss critical policy and regulatory issues, as well as to encourage the exchange and sharing of successful country-level experiences in balancing and reinforcing financial integrity with inclusion.

The Working Group is chaired by the Ministry of Finance and Public Credit of Mexico and its members consist of: National Treasury of South Africa, Superintendency of Banking, Insurance and Private Pension Funds (SBS) of Peru, Central Bank of the Philippines, Reserve Bank of Malawi, Bank Indonesia, and Central Bank of Kenya.

The FINTWG welcomes the G-20 call for international standard-setters to contribute to financial inclusion while remaining consistent with their respective mandates. We are encouraged by FATF's actions in regard to this initiative - one in particular is the call for public consultation to review issues that are of interest to our Working Group, namely: the risk-based approach,

customer due diligence, and reliance on third parties, as well as exploration of future issues relevant to financial inclusion.

As a response to FATF's call, please find enclosed consolidated comments from FINTWG members that we submit as our input to support the ongoing review of standards.

We commend FATF's initiatives in actively engaging and collaborating with relevant financial inclusion stakeholders through various processes that are aimed to identify avenues to establish a reliable, safe, and sound financial environment that would allow for greater financial inclusion. The FINTWG remains committed in collaborating with FATF in this pursuit.

We look forward to further productive deliberations with FATF.

With best regards,

Jose Christian Carreon Alvarez
Chair
AFI Financial Integrity Working Group

Reply to Public Consultation

FATF Review of the Standards - Preparation for the 4th Round of Mutual Evaluations

AFI welcomes the opportunity to comment on FATF's review of its 40+9 Recommendations and to predominantly contribute to the financial inclusion perspective and agenda. AFI is a global network of policymakers, in developing countries, which provides members with tools & resources to develop, share & implement their knowledge of cutting-edge financial inclusion policies. AFI's goal is to support the exchange of knowledge between developing countries on successful financial inclusion policies. Members are represented by senior officials of Ministries of Finance, Central Banks and leading financial regulatory institutions in more than 60 countries.

The **AFI Financial Integrity Working Group (FINTWG)** is a group of seven countries (South Africa, Malawi, Kenya, Indonesia, Philippines, Mexico and Peru) with special interest in exchanging views and experiences on identifying and leveraging the complementarities between financial integrity and financial inclusion. This document represents their consolidated view.

Based on FATF's current review of the Risk Based Approach (RBA), Customer Due Diligence (CDD), reliance on third parties and tax crime as a predicate offence for money laundering, members provided their views on, (a) The Risk-Based Approach and related Recommendations; (b) Recommendation 5 (Customer Due Diligence); (c) Recommendation 8 (New technologies and non-face-to-face business), and (d) Recommendation 9 (Third-party reliance) as they are the most relevant to the financial inclusion agenda.

AFI members understand that the primary objective of the FATF is to develop and promote national and international policies to combat money laundering and terrorist financing and recognize its importance in the

financial stability framework of their individual countries. Concomitantly, financial inclusion complements and strengthens the effectiveness of this mandate, in particular the enforcement of AML/CFT policies while equally contributing to the effectiveness of financial stability in the long run. That said, finding the right balance between these objectives will be crucial to the effectiveness of implementing such policies. Developing countries have already experimented with these policies and have developed innovative solutions, and offer experiences that could add value to the FATF processes. The following is the collective contributions from our members to this process, for FATF to consider.

Risk Based Approach

A common view emerged within the group is that there is room and scope for greater clarity on the RBA parameters and associated obligations.

Members suggested that a single comprehensive statement about the application of RBA in relation to CDD could be preferable over the dispersed references in the current 40+9 Recommendations document. An added benefit would be that a consolidated statement could explicitly confirm that RBA is an acceptable method for CDD implementation. To add further clarity, there is support for the proposed draft of Interpretative Notes.

The Members support the initiative to include examples of high and low risk ML/TF financial products and expressed their interest on benefiting from a wide variety of examples. Further, a clearer distinction between "risk factors" and "risk characteristics" would be welcomed as well as clarification of the differences in obligations of financial institutions and DNFBPs.

Regarding the feasibility of meeting the new RBA elements proposed by FATF, concerns were raised on the challenge of translating the elements of the RBA into effective policies (legislative provisions) for the countries. For example, some jurisdictions face significant challenges in the implementation of the new RBA elements due to an absence of or insufficient infrastructure regarding civil registration or identification systems.

A clear understanding of the principles and obligations associated with the RBA is a crucial precondition for implementation (discussed further below). The additional clarification in the Interpretative Notes will make this easier if the previously expressed clarifications are considered.

Countries' legal and regulatory frameworks may vary in their flexibility to adopt the RBA. The same holds true at the level of financial institutions, where DNFBPs and smaller financial institutions will be challenged in establishing risk measures and mitigation procedures. The challenge will include creating infrastructure that will provide meaningful information to conduct an effective risk assessment and creating a proper framework for supervision (discussed below).

An important clarification required from members on the analysis of risks is what will be considered a reasonable appropriate implementation time and/or an implementation period for the establishment of the new RBA elements proposed by FATF. It is commonly understood that a risk assessment should be done at the beginning of the business relationship, and ongoing monitoring should take place to obtain a clear understanding of customer behavior. However, it is still unclear what the elements of ongoing monitoring means in practicality and how this is demonstrated to FATF in the context of assessment. Guidance will therefore assist authorities, who will spend time and resources to provide suitable direction for financial institutions.

There is significant support for FATF to give guidance on how risk assessments should be conducted, e.g. by providing examples of crucial elements in such assessments that are acceptable to FATF. Countries feel strongly that a risk assessment performed by authorities should be accepted based on the common understanding of the guidance provided by FATF on what the crucial elements of a risk assessment are. FATF's guidance could ensure a common understanding while maintaining the flexibility to be tailored to countries' different risks. However, the different realities of different jurisdictions need to be considered and guidance should be tailored to take this into account. The FINTWG considers including specific examples of how risk assessment ought to be done as helpful in crafting the necessary regulations or programs aligned with the RBA.

In particular, FATF should consider giving examples on how risk assessments should be undertaken by financial institutions faced with customers or transactions posing ML/TF risks varying from high to low, as well as those meriting exemption(s) from being subject to stringent anti-ML/TF regulations. FATF could likewise provide guidance and clarify risk assessment measures at the Supervisory Authorities level, as well as possibly

provide examples of how other jurisdictions regulate such financial institutions catering to various clients posing varying degrees of ML/TF risks.

Ideally, risk assessment should precede the implementation of RBA at the national level for those that have not introduced the RBA yet. This positions authorities to provide better guidance to institutions, which have to assess and manage risks pertinent to their business. Meaningful and accurate information is crucial to the risk-based framework of any country. Further, it would be helpful if FATF provided some guidance as to how the two processes (national assessment and assessment by financial institutions) are linked and how they feed into each other. Financial institutions ought to conduct risk assessment before and during roll-out of new products. In both phases, controls should be implemented in relation to the assessment results. It is clear that the initial controls would be less accurate and be based on past experiences or similar products.

Recommendation 5 (Customer Due Diligence or CDD)

There are concerns regarding the correct application of FATF standards, primarily relating to implementation of customer identification measures, reliability of documents, legal aspects of personal data use and information on ongoing CDD.

For example, many countries do not have a sufficient, if any, infrastructure relating to registration or identification systems and thus the implementation of customer identification might be virtually impossible in countries without an ID system. A challenge is also posed by the reliability of identification documents and usage of various documents in systems, where there is no single standardized national identification document, an example of which is refugees and migrants who have no documentation at all. An appropriate approach to the development of financial inclusion will be to consider what alternative forms of confirmation of a customer's identity would be considered sufficiently 'independent' and 'reliable' to be an acceptable means of confirming a person's identity in the absence of a registration or identification system, and to draw from countries that have considered such alternative forms of identification. This could be in the form of a guidance paper.

For example, in some countries it is not common to use street addresses in rural or peri-urban areas. And in one instance, financial institutions in rural areas rely on letters from village chiefs as ID documents. The question then

that arises is how acceptable is this in the context of the FATF assessment and the RBA?

It would be helpful if FATF could establish what other, alternative means and sources of identification for both natural and legal persons ought to be considered as valid. Another helpful measure would be to clarify what are reliable sources for verification of foreign clients. Finally, jurisdictions would benefit from obtaining more precise clarification of what measures constitutes ongoing CDD.

There is also a need to obtain more information on the risks associated with products targeted at the poor population. It is important to recognize that products targeted at the poor are not automatically low risk, just because of the target group and low value accounts. Some products contribute to financial inclusion, but might be a high ML/TF risk - in this case FATF and regulators must give more thought to appropriate regulatory framework to strike a balance between access and risk. Further, jurisdictions would find it helpful to obtain more information about the risk variables in assessing ML/TF risks that increase or decrease the potential risk and result in changes to the extent of CDD measures.

Relating to products targeted at the poor, there could be specific challenges related with the application of CDD measures. For example, there is the challenge of coming up with parameters to classify products as 'low risk' or to set minimum acceptable CDD measures for low-risk products. Practical examples provided by FATF are helpful for better understanding.

As mentioned above, FATF may provide regulators and supervisors with more guidance on the supervision in this regard, in particular for low-risk products in the form of practical examples as well as training. It would be of great benefit to obtain more information about the range of risk factors relating to an institution's systems and controls for assessing ML and TF risks. FATF could provide examples of how low-risk products and services are used in ML/TF transactions as well as information on methodologies in other jurisdictions to combat ML/TF associated with such transactions. This would assist the countries in combating ML/TF and in drafting proportional regulations. The FINTWG would propose to introduce more training workshops involving experience from other jurisdictions.

Recommendation No. 8 (New technologies and non-face-to-face business)

From our discussion, a view emerged that there is room for greater clarification for the new R.8 parameters. Specifically, our members found that the criteria \ leaves large discretion to jurisdictions about risk management with regard to the development of new products and allows varied interpretation of the criteria - if it can be justified. Practical examples of specific CDD measures would be helpful in the context of R.8. Further, the FINTWG suggests providing better description on the types of additional information required once customers of financial institutions are trying to access more advanced services. It is not clear at the moment, what FATF regards as sufficient mitigating measures (such as low-transaction account) and where it sees the main conflicts with risks of ML/TF. Clarification of these points would be greatly beneficial.

Members are positive about the feasibility of meeting the new elements on the RBA and R.8 as proposed by FATF.

New technologies are often considered as an innovative channel to expand access to finance. More guidance regarding fast-paced technological change is needed and members cautioned FATF to not assume that new technologies used for provision of financial services would be automatically high-risk, but treat them as any other product. With regard to FATF's future approach to new technologies, the FINTWG considers a comprehensive analysis, pointing to specific risks of which jurisdictions should be aware regarding new technologies, as valuable. Clearer guidance is needed on the risks and as to whether such solutions as low transaction accounts provide sufficient risk mitigation. Further, the FINTWG encourages FATF to hold regular dialogues with the financial services industry to enable proactive identification of risks regarding new technological developments.

Recommendation No. 9 (Third party reliance)

There is a general consensus that the new parameters included in R.9 are sufficiently clear, except that it would be beneficial to obtain definitions on 'outsourcing' or 'agency' relationships as well as 'reliance on third-party', potentially in the Glossary. The delineation between outsourcing and third-party reliance ought to be clarified. Practical examples on the aforementioned concepts would be of great value.

It is generally felt that most members find it feasible to meet the new elements of R.9, qualified by the fact that it is feasible for jurisdictions, which permit third-party reliance to meet the new parameters.

However, there are some concerns members wish to highlight: (1) Greater clarity on the appropriate treatment of relationships such as outsourcing or agency by the regulator is needed, (2) clarity on the appropriate contractual arrangements for outsourcing services that ought to be in place in financial institutions, (3) clear definitions of obligations and responsibilities between financial institution and agents. This particular concern, although raised under R.9, can be clarified under R.5.

One related thought expressed is that some institutions might not be subject to AML/CFT obligations, such as telecoms or pre-paid scheme providers or, in the same vein, e-money issuers or other entities that serve as banking agents in rural areas. For those, it would be necessary to establish who should carry the main supervision responsibility regarding these institutions. Concerns regarding data protection and the safeguarding of customer information were raised and the importance of data protection legislation and the protection of sensitive customer information, especially when third parties are used.

Members believe that countries that allow financial institutions to use agents should be able to demonstrate the adequacy of the safeguards in place. Currently, some of our members already have measures in place for third-party usage for CDD.

Another important concern relates to the ability to apply the new elements of the RBA across-the-board as some new products might be outside of the regulatory realm of the supervisor or some components of the value chain may not be supervised. One example is m-banking: Provision of mobile financial services depend on several participants in the payment chain, some of which might be subject to compliance with R.8, whereas others are not (e.g. transaction processing companies). Associated with these vertical production chains in payment service provision are problems relating to legal responsibilities, for example reporting of STRs.

There is unanimous support for the concept of Know-Your-Agent (KYA), in other words CDD on agents being conducted by financial institutions. The use of agents is a valuable means to increase outreach of financial services to underserved segments of the population. While some members are of the opinion that this approach can be accommodated within the FATF

framework, it is believed that FATF could place more emphasis on this type of arrangement in the context of financial inclusion. Several members would like FATF to provide more guidance on KYA approaches.

In countries that already require their supervised institutions to submit information on third parties to their local financial authorities, KYA would not provide much additional value, but there are still areas that require clarity. For example, there is the question concerning STR-requirements: do they need to be fulfilled by financial institutions or agents? FATF could probably provide practical examples on practices of KYA related to CDD requirements. There is a clear consensus among FINTWG countries that financial institutions are responsible for their agents.

We would like to express our appreciation of the opportunity for public consultation with FATF and hope to contribute to FATF procedures with our input as AFI FINTWG.

Jose Christian Carreon Alvarez
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5 January 2011\MS

Review of the Standards – Preparation for the 4th Round of Mutual Evaluations

Dear Mr Urrutia, dear Madam or Sir:

We appreciate the opportunity to provide input to the referenced consultation.

Our association represents most of the foreign banks active in the German market and we work closely with the German regulator and FIU to reach adequate and efficient AML standards and rules. Since, by nature of our association, all of our members belong to international groups, we expressly welcome the intra-group reliance proposal (R 9) in the consultation paper.

We hope that our views and statements in the attached position paper are helpful to the FATF for the preparation for the 4th round of mutual evaluations.

Yours sincerely,

Dr. Oliver Wagner

Dr. Martin Schulte

Position Paper – Review of the Standards for the 4th Round of Mutual Evaluations

Tax crimes as predicate offence for money laundering (R 1/13)

In order not to overstress the responsibilities of AML officers, the inclusion of tax crimes as a predicate offence for money laundering should be designed with due care. While it seems appropriate to include heavy tax crimes – in particular tax offences conducted in a commercial manner or by a criminal organisation, **“ordinary” tax evasion should not become a predicate offence** since, especially in smaller institutions, AML departments usually do not have the capacity to monitor such offences. The FATF should also consider that determining tax crimes requires specific knowledge of tax law that is commonly expected only of specially trained lawyers or tax consultants. Due to the higher frequency and amounts of transactions it is significantly easier to determine commercially conducted or organised tax crime. Also, such offences would reasonably justify requiring assistance from other departments in the institution or from external advisors. Tax evasion committed by individuals is practically impossible to spot, given the capacity that can reasonably be expected of AML-officers and departments. The associated costs for monitoring each tax offence would scarcely be justified by the expected outcome of such attempt.

Generally speaking, we fear that a too large extension of the list of predicate offences – as also partly envisaged for insider trading of securities and securities’ market manipulation (which we strongly oppose, too) – would most likely lead to **frictions between regulators and the financial industry**, since the industry would not be able to fully comply with such requirements at once. It should be taken into account that institutions currently experience an invasion of new duties and responsibilities that sometimes require inappropriately high budgets.

As opposed to extending the list, financial markets’ regulation should rather seek to enhance the prosecution of the existing predicate offences.

Enhancing transparency of cross-border wire transfer (R 7)

In our opinion, requiring each intermediary and beneficiary financial institution in the payment chain to ensure that all originator information accompanying a wire transfer is transmitted with a wire transfer is **not** a necessary measure. The institution originating the transfer is the only part in the chain that can effectively verify whether there are grounds for suspicion with regard to ML/TF because of having carried out the customer due diligence. If the originator institution carries out the transaction without having

determined irregularities, it seems hard to imagine how the beneficiary institution could see evidence or indicators for a criminal offence based on the transmitted data, which obviously cannot be verified due to the lack of a customer relation, as the consultation paper correctly highlights. In the event that the beneficiary raises suspicion that could potentially be substantiated by information on the originator, **it is inevitable for the beneficiary institution to contact the originator institution** in order to discuss the case. A standard set of data transmitted through the wire chain will hardly improve forensic research but simply increase costs and bureaucratic effort.

We see an adequate solution in requiring the originator institution **to provide originator information upon request**, as envisaged for national transactions.

Obligations to screen wire transfers against financial sanctions lists

All or at least most of the institutions have implemented efficient IT-based methods to screen all transactions against the sanctions lists distributed by the German central bank.

Although the importance of requiring the financial sector to support anti-terrorism measures of governments is beyond doubt, our experience has **not shown that screening transactions against sanctions lists** containing mainly long Arabic-sounding names **has led to successful tracing of terrorist financing transactions**.

We would thus like to encourage reconsidering the methods applied in institutions to combat terrorism by carefully assessing bureaucratic effort and prospective outcome of the envisaged measure.

Obligations of intermediaries

In our opinion, **creating duties for intermediary banks will not improve the quality of AML/TF processes**. Since there is no customer relationship with the originator or the beneficiary, the forensic input that can reasonably be expected is rather small.

In particular, a potential obligation for intermediaries to freeze transactions where incomplete data was supplied would seriously affect the well-functioning of payment services without enhancing AML processes.

**ASSOCIATION OF GERMAN BANKS¹ RESPONSE TO THE FATF CONSULTATION PAPER
ON THE REVIEW OF THE STANDARDS-
PREPARATION FOR THE 4TH ROUND OF MUTUAL EVALUATIONS**

7. January 2011

¹ The Association of German Banks is representing the German private commercial banks.

A. Preface

We appreciate some of the pragmatic proposals made by the FATF, such as on intergroup reliance of third parties and clarifications made on the Risk Based Approach as well as the efforts undertaken to improve mutual evaluation reports. However, we would like to warn against the general tendency to impose on the private sector, what public authorities are struggling or are unable to provide such as a lists of relevant Politically Exposed Persons, clear information on the Beneficial Ownership (BO) of companies or actionable information on emerging threats such as tax crime. Furthermore, any proposals for new checking requirements on financial transactions should take into consideration technical limits of current international payment systems and should be subject to a thorough cost - benefit analysis before being adopted.

In the following please find more specific comments on the issues addressed in the Consultation Paper (CP) of the FATF dated October 2010.

B. Comments

I. Recommendation 5 and its Interpretative Note - RBA

Concerning the Risk Based Approach (RBA), we would like to stress that the RBA has proved to be the most efficient approach. Thanks to the RBA, financial institutions' AML/CFT risk analysis benefits from a more focused search for risky transactions and/or customers. We welcome that the FATF recognises under no. 17 CP that a "one-size-fits-all" approach is not necessary, especially since the 40+9 Recommendations apply to different sectors with their specificities. In order to emphasize the importance of the risk based approach we, therefore, propose to insert this statement – with some adaptation – at a prominent place right at the beginning of the section and preferably after the first sentence of no. 15 CP.

Moreover, the FATF phrasing on the Risk Based Approach should make clear as stated by the Secretariat during the meeting on 22 November that the scope will not go beyond mere clarification and not introduce more detailed rules on the Risk Based Approach. Therefore, we would welcome a clear endorsement of the Risk Based Approach. In particular, the listing of examples of ML/TF risk factors and simplified and enhanced Customer Due Diligence (CDD) measures carry the risk of becoming hard and static indicators in the eyes of regulators.

It is, therefore, important that they remain examples and that they are not generalised and their use as indicators prescribed on a compulsory basis.

II. Identification and verification of customers and beneficial owners of legal persons and arrangements

The proposed amendments of the FATF concerning the identification and verification of customers and BOs of legal persons and arrangements in no. 19 et seq. CP unfortunately do not seem to specify or – at least – clarify the measures financial institutions need to undertake to identify the real controlling ownership structure. We believe that the EU Standard should be used as a benchmark at international level. European financial institutions widely apply a risk based approach and the EU threshold of 25 % is helpful as an objective criterion, thus giving a clearer and appropriate picture concerning control from a company law perspective. As discussed at the FATF Consultative Meeting in Paris in November the extension of beneficial ownership to “mind and management” structures and even beyond this to external advisers is impractical. The management has generally a different – more short term/day to day – type of control. This is clearly different from the concept of ownership in a more legal sense as the current understanding is in many countries. The identity of chief executive officers (CEOs) and authorised representatives is often verified and documented on the basis of their role as executive officers. These two different approaches should not be mixed up. To identify external advisers of customers is generally impossible for banks.

Furthermore, it should be recognized that a financial institution’s ability to identify the BO without an explicit statement/agreement of the legal person representative is limited and therefore, based on whatever reliable information is available to the financial institutions. We would like to stress that for financial institutions to be able to focus on high risk cases the key element consists in relying on public authorities to provide sufficient information for verifying the BO of clients. Issuing harmonised FATF guidelines for the inclusion of relevant and updated information concerning BO in public registries pursuant to the provisions of the national AML/CFT regimes of FATF member jurisdictions would be extremely helpful for financial institutions in discharging their BO identification obligations.

III. Recommendation 6: Politically Exposed Persons

With regard to Politically Exposed Persons (PEPs) we generally agree with the proposal of FATF to have an approach as outlined in no. 29 CP. Furthermore, we welcome the recognition of the fact that there is a higher level of risk attached to foreign PEPs and that a risk based approach should be taken concerning domestic PEPs. While a rule-based approach is detrimental to the efficient fight against money laundering and terrorism financing it would be useful to have more specific information on objective risk criteria. This would include lists of PEPs.

IV. Recommendation 9: Third Party Reliance

We welcome the approach of the FATF in no. 36 CP to delineate what constitutes third-party reliance through a functional definition by proposing a set of positive or negative elements which describe situations that are characteristic of a reliance context.

Moreover, we commend the proposed pragmatic approach of the FATF for reliance where the third party is part of a financial group. This would greatly enhance the flexibility, effectiveness and quality of the CDD process as well as the AML/CFT compliance framework. Reliance should take place based on the Group AML Policy and procedures, in accordance with national (i. e. home country) legislation. A possible element envisaged in such procedures would be the issuance of a “Group Certificate” by a Group Member which has performed the CDD process, upon which all other Group members could rely.

V. Recommendation 1 - Tax crime as predicate offense

We generally warn against the extension of the list of predicate offences as proposed in no. 39 et seq. CP, which creates additional administrative burden and associated heavy costs for the industry. Necessary internal monitoring, research and investigations to combat tax crimes and any other emerging threats cannot be carried out without proper access to hard and reliable information/intelligence from governmental authorities. It is important that financial authorities fulfil their role in detecting and identifying emerging threats. A clear definition of the offence/crime is crucial for the efficient functioning of financial institutions’ AML/CFT compliance procedures and operations. Operational difficulties to identify tax crime should be considered, such as the time lapse between a suspicious transaction and the tax payment or the difficult distinction between tax avoidance and evasion. Although we doubt that the AML/CF framework of financial institutions would be the appropriate framework to combat tax crime, those institutions should only be required to focus on serious tax crimes.

VI. Special Recommendation VII: Transparency of cross border wire transfers

From a German banking and payments perspective we emphasise that the EU must be clearly recognized as a single jurisdiction as stated in the para. 11 of the Basel Committees guidance dated May 2009. This is of fundamental importance and is one of the defining features of the European Union. In particular the FATF should take note of the fact that the European financial sector has taken substantial steps to establish SEPA which will be fully operational by 2014 and will then

account for the bulk (if not the whole volume) of EU payments (based on a EU-Regulation on SEPA). SEPA will solve some of the most pressing issues addressed in the proposed FATF amendment as far as the EU as a single payments area and jurisdiction is concerned.

We suggest that any amendments to Special Recommendation (SR) VII and its Interpretative Note (INSR) proposed by the FATF should avoid an overly detailed approach and be focused more on general principles. Moreover, we believe that any amendment to SR VII and the INSR should take into account that

- intermediary financial institutions (FIs) are not in the position to check the correctness of the accompanying information (concerning originator and beneficiary)
- verification of beneficiary information by the originator/ordering FI (OFI) is by no means possible and
- within the jurisdiction of the EU only sanctions lists published by the United Nations (UN) Security Council and transposed by the EU institutions into EU law (regulations) or autonomously set by the EU are regarded as legally binding.

We caution the FATF not to proceed on this very complex project with undue haste. It is imperative to conduct a thorough and intensive discussion with all stakeholders and develop a measured and balanced approach to the issue so that a smooth functioning of the global payments system is ensured. It should be emphasized that imposing additional compliance burden on intermediary FIs such as the obligation to check against sanctions lists and to ensure a “CDD loaded” processing of wire transfers (with regard to accompanying originator and beneficiary information) along the payment chain (as discussed at the Consultative Meeting) would seriously slowdown the global payments system and eventually jeopardize its effectiveness.

VII. Usefulness of Mutual Evaluation Reports

Concerning the list of countries that adequately/inadequately implement FATF standards, we call for more transparency regarding the listing and delisting procedures for countries within the mutual evaluation and the post-evaluation monitoring process. Especially, a typology table should clearly indicate what factors lead to a country being put on the list or not. This is very important, in light of increasing legal references to this FATF list, for example in the pending EU legislation of Alternative Investment Funds.

The FATF Mutual Evaluation Reports can provide useful indicators for the internal risk assessments of financial institutions. Reports are, however, not always clearly formulated and often too long to be really useful. Therefore, an aggregated table reflecting the relative rankings of mutually evaluated FATF Member States and the progress achieved over time by those Member States that were initially awarded a less favourable ranking would represent an additional and very valuable tool for financial institutions to evaluate the AML/CFT specific country risks of their business

operations in different jurisdictions. Moreover, FATF should clearly distinguish between Financial Institutions' and Public Authorities' level of compliance with FATF standards in order to be useful for financial institutions risk assessment.

C. Concluding remarks

In view of the aforesaid we would like to stress once more the need for a measured and balanced approach with regard to the issues to be considered under the preparation of FATF's 4th Round of Mutual Evaluations. In this context we would like to refer to no. 1 CP and point out that the FATF itself has declared that the planned review is based on a focused exercise, inclusiveness, openness as well as transparency with an increased focus on effectiveness. The German Private commercial banks fully support these principles and therefore wish to contribute along these lines to the successful outcome of the consultative process between the private sector and the FATF.

Bundesverband Öffentlicher Banken Deutschlands



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FATF Secretariat
2 rue André Pascal
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France

23 December 2010

Dear Madam,
Dear Sir

The Bundesverband Öffentlicher Banken Deutschlands (VÖB – Association of German Public Sector Banks) is the apex association of public sector banks representing nearly 30% of the banking market in Germany.

We welcome FATF's initiative to have increased interaction with the private sector in preparation of the 4th round of its mutual evaluations. We, therefore, take this opportunity to comment on the issues presented at the FATF Consultative Meeting in Paris on 22 and 23 November 2010 on the basis of the FATF Consultation Paper of October 2010 titled "The Review of the Standards - Preparation for the 4th Round of Mutual Evaluations". These issues are of considerable importance for our member banks (Landesbanken among others) that are internationally active in multiple jurisdictions.

In this context we would like to express our full support of the comments submitted by joint committee operated by the central associations of the German banking industry, the Zentraler Kreditausschuss (ZKA), dated 23 December 2010 which we have attached for your convenience. In its letter the ZKA presents substantive arguments against the general tendency of standard setters and legislators in the area of Anti-Money Laundering and Combat of Financing Terrorism (AML/CFT) to hastily impose on the private sector obligations, that public authorities are themselves struggling or are unable to provide such as


- a list of relevant Politically Exposed Persons,
- clear information on the Beneficial Ownership (BO) of companies and
- actionable information on emerging threats such as tax crime.

Moreover, we support the view that any proposals for new customer due diligence related checking requirements on financial transactions should take into consideration technical limits of the current international payment systems and should be subject to a thorough cost -benefit analysis before being adopted.


On the other hand, we do appreciate some of the pragmatic proposals made by the FATF, such as on intergroup reliance of third parties and clarifications made on the Risk Based Approach as well as the efforts undertaken to improve mutual evaluation reports. We, therefore, would like to stress the need for a measured and balanced approach with regard to the issues to be considered under the preparation of FATF's 4th Round of Mutual Evaluations. In this context we would like to refer to no. 1 CP and point out that the FATF itself has declared that the planned review is based on a focused exercise, inclusiveness, openness as well as transparency with an increased focus on effectiveness. VÖB as well as the German banking industry is fully committed to these principles and therefore wishes to contribute along these lines to the successful outcome of the consultative process between the private sector and the FATF.

We hope you find our views helpful. Should you have any further questions about the issues which we have addressed, please do not hesitate to contact us at your convenience.

Yours sincerely,
Bundesverband Öffentlicher Banken Deutschlands
(Association of German Public Sector Banks)



(Karl-Heinz Boos)



(Carsten Groß)

Attachment

ZENTRALER KREDITAUSSCHUSS

MEMBERS: BUNDESVERBAND DER DEUTSCHEN VOLKSBANKEN UND RAIFFEISENBANKEN E.V. BERLIN • BUNDESVERBAND DEUTSCHER BANKEN E.V. BERLIN
BUNDESVERBAND ÖFFENTLICHER BANKEN DEUTSCHLANDS E.V. BERLIN • DEUTSCHER SPARKASSEN- UND GIROVERBAND E.V. BERLIN-BONN
VERBAND DEUTSCHER PFANDBRIEFBANKEN E.V. BERLIN

ZKA¹ RESPONSE TO THE FATF CONSULTATION PAPER ON THE REVIEW OF THE STANDARDS- PREPERATION FOR THE 4TH ROUND OF MUTUAL EVALUATIONS

23. December 2010

¹ The Zentraler Kreditausschuss (ZKA) is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen und Giroverband (DSGV), for the savings banks financial group, and the Verband der Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 2,300 banks.

1. General remarks

ZKA would like to thank the FATF for the constructive dialogue during the FATF Consultative Meeting with the private sector on 22 and 23 November 2010 in Paris. ZKA welcomes the opportunity to comment on the review of the FATF standards in preparation of the 4th Round of Mutual Evaluations.

We appreciate some of the pragmatic proposals made by the FATF, such as on intergroup reliance of third parties and clarifications made on the Risk Based Approach as well as the efforts undertaken to improve mutual evaluation reports. However, ZKA would like to warn against the general tendency to impose on the private sector, what public authorities are struggling or are unable to provide such as a lists of relevant Politically Exposed Persons, clear information on the Beneficial Ownership (BO) of companies or actionable information on emerging threats such as tax crime. Furthermore, any proposals for new checking requirements on financial transactions should take into consideration technical limits of current international payment systems and should be subject to a thorough cost -benefit analysis before being adopted.

In the following please find more specific comments on the issues addressed in the Consultation Paper (CP) of the FATF dated October 2010.

2. Specific comments

2.1 Risk Based Approach

Concerning the Risk Based Approach (RBA), we would like to stress that the RBA has proved to be the most efficient approach. Thanks to the RBA, financial institutions' AML/CFT risk analysis benefits from a more focused search for risky transactions and/or customers. ZKA welcomes that the FATF recognises under no. 17 CP that a "one-size-fits-all" approach is not necessary, especially since the 40+9 Recommendations apply to different sectors with their specificities. In order to emphasize the importance of the risk based approach we, therefore, propose to insert this statement – with some adaptation – at a prominent place right at the beginning of the section and preferably after the first sentence of no. 15 CP.

Moreover, the FATF phrasing on the Risk Based Approach should make clear as stated by the Secretariat during the meeting on 22 November that the scope will not go beyond mere clarification and not introduce more detailed rules on the Risk Based Approach. Therefore, ZKA

would welcome a clear endorsement of the Risk Based Approach. In particular, the listing of examples of ML/TF risk factors and simplified and enhanced Customer Due Diligence (CDD) measures carry the risk of becoming hard and static indicators in the eyes of regulators.

It is, therefore, important that they remain examples and that they are not generalised and their use as indicators prescribed on a compulsory basis.

2.2 Recommendation 5: Identification and verification of customers and beneficial owners of legal persons and arrangements

The proposed amendments of the FATF concerning the identification and verification of customers and BOs of legal persons and arrangements in no. 19 et seq. CP unfortunately do not seem to specify or – at least – clarify the measures financial institutions need to undertake to identify the real controlling ownership structure. ZKA believes that the EU Standard should be used as a benchmark at international level. European financial institutions widely apply a risk based approach and the EU threshold of 25 % is helpful as an objective criterion, thus giving a clearer and appropriate picture concerning control from a company law perspective. As discussed at the FATF Consultative Meeting in Paris in November the extension of beneficial ownership to “mind and management” structures and even beyond this to external advisers is impractical. The management has generally a different – more short term/day to day – type of control. This is clearly different from the concept of ownership in a more legal sense as the current understanding is in many countries. The identity of chief executive officers (CEOs) and authorised representatives is often verified and documented on the basis of their role as executive officers. These two different approaches should not be mixed up. To identify external advisers of customers is generally impossible for banks.

Furthermore, it should be recognized that a financial institution’s ability to identify the BO without an explicit statement/ agreement of the legal person representative is limited and therefore, based on whatever reliable information is available to the financial institutions. ZKA would like to stress that for financial institutions to be able to focus on high risk cases the key element consists in relying on public authorities to provide sufficient information for verifying the BO of clients. Issuing harmonised FATF guidelines for the inclusion of relevant and updated information concerning BO in public registries pursuant to the provisions of the national AML/CFT regimes of FATF member jurisdictions would be extremely helpful for financial institutions in discharging their BO identification obligations.

2.3 Recommendation 6: Politically Exposed Persons

With regard to Politically Exposed Persons (PEPs) ZKA generally agrees with the proposal of FATF to have an approach as outlined in no. 29 CP. Furthermore, we welcome the recognition of the fact that there is a higher level of risk attached to foreign PEPs and that a risk based approach should be taken concerning domestic PEPs. While a rule-based approach is detrimental to the efficient fight against money laundering and terrorism financing it would be useful to have more specific information on objective risk criteria. This would include lists of PEPs.

2.4 Recommendation 9: Third Party Reliance

ZKA welcomes the approach of the FATF in no. 36 CP to delineate what constitutes third-party reliance through a functional definition by proposing a set of positive or negative elements which describe situations that are characteristic of a reliance context.

Moreover, we commend the proposed pragmatic approach of the FATF for reliance where the third party is part of a financial group. This would greatly enhance the flexibility, effectiveness and quality of the CDD process as well as the AML/CFT compliance framework. Reliance should take place based on the Group AML Policy and procedures, in accordance with national (i. e. home country) legislation. A possible element envisaged in such procedures would be the issuance of a “Group Certificate” by a Group Member which has performed the CDD process, upon which all other Group members could rely.

2.5 Recommendation 1 - Tax crime as predicate offense

ZKA generally warns against the extension of the list of predicate offences as proposed in no. 39 et seq. CP, which creates additional administrative burden and associated heavy costs for the industry. Necessary internal monitoring, research and investigations to combat tax crimes and any other emerging threats cannot be carried out without proper access to hard and reliable information/intelligence from governmental authorities. It is important that financial authorities fulfil their role in detecting and identifying emerging threats. A clear definition of the offence/crime is crucial for the efficient functioning of financial institutions’ AML/CFT compliance procedures and operations. Operational difficulties to identify tax crime should be considered, such as the time lapse between a suspicious transaction and the tax payment or the difficult distinction between tax avoidance and evasion. Although we doubt that the AML/CF

framework of financial institutions would be the appropriate framework to combat tax crime, those institutions should only be required to focus on serious tax crimes.

2.6 Special Recommendation 7: Transparency of cross border wire transfers

From an European banking and payments perspective we emphasise that the EU must be clearly recognized as a single jurisdiction as stated in the para. 11 of the Basel Committees guidance dated May 2009. This is of fundamental importance and is one of the defining features of the European Union. In particular the FATF should take note of the fact that the European financial sector has taken substantial steps to establish SEPA which will be fully operational by 2014 and will then account for the bulk (if not the whole volume) of EU payments (based on a EU-Regulation on SEPA). SEPA will solve some of the most pressing issues addressed in the proposed FATF amendment as far as the EU as a single payments area and jurisdiction is concerned.

We suggest that any amendments to Special Recommendation (SR) VII and its Interpretative Note (INSR) proposed by the FATF should avoid an overly detailed approach and be focused more on general principles. Moreover, we believe that any amendment to SR VII and the INSR should take into account that

- intermediary financial institutions (FIs) are not in the position to check the correctness of the accompanying information (concerning originator and beneficiary)
- verification of beneficiary information by the originator/ordering FI (OFI) is by no means possible and
- within the jurisdiction of the EU only sanctions lists published by the United Nations (UN) Security Council and transposed by the EU institutions into EU law (regulations) or autonomously set by the EU are regarded as legally binding.

ZKA cautions the FATF not to proceed on this very complex project with undue haste. It is imperative to conduct a thorough and intensive discussion with all stakeholders and develop a measured and balanced approach to the issue so that a smooth functioning of the global payments system is ensured. It should be emphasized that imposing additional compliance burden on intermediary FIs such as the obligation to check against sanctions lists and to ensure a “CDD loaded” processing of wire transfers (with regard to accompanying originator and beneficiary information) along the payment chain (as discussed at the Consultative Meeting) would seriously slowdown the global payments system and eventually jeopardize its effectiveness.

2.7 Other issues/ Usefulness of Mutual Evaluation Reports

Concerning the list of countries that adequately/inadequately implement FATF standards, we call for more transparency regarding the listing and delisting procedures for countries within the mutual evaluation and the post-evaluation monitoring process. Especially, a typology table should clearly indicate what factors lead to a country being put on the list or not. This is very important, in light of increasing legal references to this FATF list, for example in the pending EU legislation of Alternative Investment Funds.

The FATF Mutual Evaluation Reports can provide useful indicators for the internal risk assessments of financial institutions. Reports are, however, not always clearly formulated and often too long to be really useful. Therefore, an aggregated table reflecting the relative rankings of mutually evaluated FATF Member States and the progress achieved over time by those Member States that were initially awarded a less favourable ranking would represent an additional and very valuable tool for financial institutions to evaluate the AML/CFT specific country risks of their business operations in different jurisdictions. Moreover, FATF should clearly distinguish between Financial Institutions' and Public Authorities' level of compliance with FATF standards in order to be useful for financial institutions risk assessment.

3. Concluding remarks

In view of the aforesaid we would like to stress once more the need for a measured and balanced approach with regard to the issues to be considered under the preparation of FATF's 4th Round of Mutual Evaluations. In this context we would like to refer to no. 1 CP and point out that the FATF itself has declared that the planned review is based on a focused exercise, inclusiveness, openness as well as transparency with an increased focus on effectiveness. The German banking industry fully supports these principles and therefore wishes to contribute along these lines to the successful outcome of the consultative process between the private sector and the FATF.



AUSTRALIAN BANKERS' ASSOCIATION INC.

20 December 2010

FATF Secretariat
FATF/GAFI
2, rue André Pascal
75775 Paris Cedex 16
FRANCE

fatf.consultation@fatf-gafi.org

Dear FATF Secretariat,

Australian Bankers' Association Submission on *The Review of Standards - Preparation for the 4th Round of Mutual Evaluations*

The Australian Bankers' Association (**ABA**) welcomes the opportunity to comment on *The Review of Standards – Preparation for the 4th Round of Mutual Evaluations* Consultation Paper published by the Financial Actions Task Force (**FATF**) in October 2010 (**Consultation Paper**).

The ABA has identified a number of key issues arising from the Consultation Paper that impact the banking industry in Australia, which are set out below.

Risk-Based Approach (RBA)

The FATF's focus on the Risk-Based Approach (RBA) is a positive development in so far as it confirms the Australian industry's position that RBA is the correct approach for dealing with ML/TF risk. The ABA considers that the use of risk-based analysis permits efficient allocation of resources by focusing capital, both human and other, on efforts where the risk is the greatest.

Australian financial institutions, working closely with the Australian Transaction Reports and Analysis Centre (**AUSTRAC**), have implemented their obligations under the risk-based approach. Each reporting entity must undertake a risk assessment to meet its AML/CTF obligations. This exercise obliges businesses to focus on their risks and consider the best way to address them. This is a targeted, effective use of resources.

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A change to the approach at this stage would necessarily mean that further resources would have to be expended, which are unlikely to be warranted from a risk perspective. Further, given that AML/CTF implementation experiences are still being analysed in Australia, changing the approach at this stage would be premature, and would lead to significant and unnecessary costs for reporting entities and their customers.

The ABA submits that an appropriate model for the RBA should not require the evaluation of risk for each and every customer – an assessment of products and services used may reasonably indicate low risk.

The key issue in this regard is whether the proposed FATF approach of providing a more detailed list of examples of lower/higher ML/TF risk factors has the potential to become a negative, if the FATF examples were to be relied upon or interpreted to introduce more prescription by treating them as determinative of the appropriate risk assessment. This possibility can be seen in the Australian regulator's (ie. AUSTRAC's) questions in relation to the FATF review:

"Does industry agree that it may be appropriate for AUSTRAC to list specific high-risk scenarios in the Rules (which would then mandate the application of a reporting entity's enhanced customer due diligence program)?"

AUSTRAC's question indicates that they could introduce scenarios as a further level of prescription. The ABA wishes to clarify that this is not the intent or likely effect of any detailed FATF examples. The ABA would be grateful if the FATF could confirm that these examples are only intended to provide high level guidance, from which reporting entities should remain free to depart where appropriate, rather than a prescriptive approach. Any additional level of prescription has the potential to undermine the RBA, which the ABA submits must remain the overarching approach.

The ABA also notes FATF's consideration of new technologies and non-face-to-face business. The ABA submits that the use of new technology is itself a form of non-face-to-face business and therefore should not be treated as a separate issue. It is appropriate to deal with both on the basis of a risk assessment. Subject to addressing concerns about the potential for illustrative scenarios to be treated by jurisdictional regulators as determinative of risk assessment, the ABA would welcome more frequent typologies that cover new technologies, given the speed at which technology is advancing.

Beneficial ownership

The Consultation Paper proposes specific and extensive obligations to identify and verify beneficial ownership. In particular, paragraph 21 of the Consultation Paper proposes that financial institutions should:

- (1) First identify and take reasonable measures¹ to verify the identity of the natural persons who ultimately have a controlling ownership interest;
- (2) Where the ownership interest is too dispersed, identify and verify those persons that have effective control through other means; and
- (3) Consider if there are no other persons identified as beneficial owners, whether in such cases the beneficial owners might be the "mind and management" that has already been identified.

As a practical matter, there are significant limitations that prevent full interrogation of beneficial ownership in common law jurisdictions. The ABA understands that code law jurisdictions, which do not have the equitable concept of beneficial ownership, do not face the same difficulties.

Entities in Australia can adopt complex structures, and there is no obligation to lodge information in a publicly searchable way in Australia. For example there is no requirement that entities disclose to Australia's corporations regulator, the Australian Securities and Investments Commission (ASIC), the identity of the ultimate beneficial owner. Nor are shareholders always required to advise if they hold shares beneficially. There may be circumstances where the identity of the ultimate beneficial owners is unknown to an entity itself, and therefore such information cannot be collected by financial institutions.

It is difficult and impractical for financial institutions to obtain and maintain details on beneficial ownership when there is no obligation on the Australian corporations regulator to undertake any form of due diligence at the time of registration by an entity.

There are further issues with ongoing customer due diligence. For example, a financial institution may become aware of changes to an entity's beneficial owner structure, however these changes may not have been recorded with the Australian regulator and verification by the financial institution will not be possible.

FATF's requirements are wholly at odds with the Australian corporate law environment (and potentially also the corporate law environment in other common law jurisdictions), and would oblige reporting entities to exceed the current scope of the Australian corporate regulator's powers. Significant reforms to Australian corporate legal and regulatory requirements would be required to ensure that beneficial ownership information is collected in respect of legal

¹ FATF's advice in the consultation paper is that "The reasonableness of the beneficial owner identity/verification measures should be based on the ML/TF risk of the customer".

entities operating in Australia and that such information is in turn readily accessible to financial institutions.

Such reforms would involve cooperation between the Government and multiple regulators and would have a significant lead time.

The Australian banking industry has strong concerns that the implementation of FATF's proposed requirements (where compliance is possible) would impose disproportionately burdensome obligations on financial institutions, in addition to those already in place, and would come at great cost to industry, with no measurable benefit in increased ML/TF detection.

In addition to the ABA's overarching concerns about extensive obligations to identify the beneficial owner, the ABA has identified some specific concerns about the proposed approach:

- (1) The FATF proposal would require financial institutions to verify persons that have effective control "through other means", including by exerting influence over the directors of a company. In practice, it would be very difficult for financial entities to do so. This kind of inquiry is generally undertaken by regulators with powers of investigation, and even then can be a matter for significant expert analysis and debate. In the absence of such powers, financial institutions will not be in a position to determine whether persons have effective control; and
- (2) The use of the term "mind and management" needs to be considered in a practical sense. It is unclear what the term is intended to cover, and significant difficulties arise in attempting to identify the "mind and management" of an entity. For example, in relation to a trust, a question arises as to whether the "mind and management" is the trustee rather than the ultimate beneficiary, and if so, is it proposed that CDD should extend to both "mind and management" and ultimate beneficiary. If that is intended, the ABA submits that such an outcome should not be prescribed, but should rather be guided by a financial institution's risk assessment.

Politically Exposed Persons (PEPs)

The Consultation Paper states (at para 29) that:

"the FATF is considering the following approach: (i) to leave the FATF requirements related to foreign PEPs as they are, i.e. foreign PEPs are always considered to be higher risk; (ii) to require financial institutions to take reasonable measures to determine whether a customer is a domestic PEP; and (iii) to require enhanced CDD measures for domestic PEPs if there is a higher risk."

The ABA submits that implementation of the 'three-limbed' FATF approach is inappropriate. Australian financial institutions already take steps to identify PEPs under their AML/CTF program, where warranted under the RBA, and in practice,

depending on the risk profile of particular PEPs, those financial institutions may already carry out enhanced CDD in relation to domestic PEPs.

The introduction of a "reasonable measures" obligation is unnecessary in the context of the RBA. It is more appropriate to allow a decision as to the treatment of domestic PEPs to flow from a risk assessment, as is already the case in Australia. The additional "reasonable measures" obligation would represent an inefficient use of resources, and would also undermine the existing RBA that has been successfully and effectively used thus far in Australia to identify situations that merit further scrutiny.

The FATF also proposes requirements for financial institutions to determine whether a PEP (foreign or domestic):

- (1) Is the beneficial owner of an account (ie. where a family member or close associate of a PEP has a business relationship with a financial institution and the PEP is the beneficial owner of the funds in such a relationship), instead of the current requirement to determine whether a customer of beneficial owner is a family member or a close associate of a PEP (para 30)²; or
- (2) Is the beneficiary of a life insurance policy, or a beneficial owner, so that appropriated CDD measures may be applied – being enhanced CDD for foreign PEPs and RBA in respect of domestic PEPs (para 26 and 31)?

For the reasons discussed above, this proposal suffers from the same problems as the general proposals. The ABA therefore recommends that the FATF does not proceed with its proposal.

The ABA also recommends that the RBA applied to PEPs should be based on an independent corruption index. This would have the dual effect of ensuring that corrupt PEPs are treated equitably the world over, and also encourage greater transparency among members.

Third Party Reliance

The Consultation Paper proposes explicitly extending countries' discretion regarding the types of third parties that can be relied upon, as long as they are subject to effective AML/CTF obligations. This is a positive development.

The Consultation Paper also considers that prescriptive definitions of "outsourcing" and "agency" should not be introduced as those concepts vary between jurisdictions. The ABA agrees with this approach, as it is important to leave flexibility for each jurisdiction.

The FATF plans to develop a "functional definition constituted by a set of positive and negative elements which describe situations or elements which are

² The ABA notes that family members and close associates have been a founding principle of PEP management and care needs to be taken not to dispense with the concepts completely.

characteristic of a reliance context” (para 36). This is a potentially positive development, however the ABA is concerned that any examples or scenarios used in the functional definition should not result in a more prescriptive approach in Australia.

The Designated Business Group (DBG) provisions in Australian’s AML/CTF legislation allow for intra-group reliance. It is not clear whether the reference to “encouraging countries to require financial groups to have an AML/CFT programme at the group level” (para 37) implies a requirement to do so as a default position. The ABA considers it should remain a choice whether an AML/CTF program is implemented at group or individual financial institution level.

Cross-border wire transfers

The ABA is concerned about FATF’s proposal for mandatory screening of all wire transfers against financial sanctions lists “to identify and freeze terrorist financing-related transactions” (para 49) on two grounds. First, there is a lack of information, particularly beneficiary information in SWIFT messages, and secondly it is impractical. The practical matters include:

- (1) A lack of information, particularly for intermediary financial institutions;
- (2) It appears that FATF is contemplating the collection of additional information, including beneficial ownership information, which would result in a significant added burden on financial institutions;
- (3) There is a risk that the requirement to extend screening to all wire transfers will cover information only messages, in addition to funds transfer instructions, which the ABA submits would be inappropriate.

It appears that FATF is contemplating a requirement for screening against beneficiary information instead of, or in addition to, screening for originator information – this imposes more prescriptive and onerous obligations on financial institutions, which they are unable to perform, and are not supported on a risk basis.

Finally, FATF has sought input from industry on what financial institutions do when they get a hit, and how they respond when data is incomplete. The ABA submits that this must be risk based, as is currently the case. The ABA also suggest that FATF works with SWIFT and other payment providers to ensure that fields in a SWIFT message can be used to pass on the information used to “de-identify” a potential match to the next bank in the chain so that all parties are not stopping payments on the same potential hit.

Life Insurance Policies

There are no significant ML/TF opportunities with life insurance policies. Entitlement to a benefit is invariably linked to the occurrence of an undesirable event.

Life insurance claims procedures are already rigorous due to the level of insurance fraud internationally, with a heavy onus on claimants to satisfy insurers of the validity of claims. The additional requirements to verify identity for AML/CTF purposes could be particularly burdensome for the claimant. For example, a widow may require the swift payment of a benefit to meet funeral expenses, but may not be able to easily access sufficient identification to verify her identity. There would be further difficulties if the husband happened to be a PEP.

There are of course, some life insurance policies that contain an investment element and these are covered in the Australian AML/CTF legislation.

Please contact me if you would like to discuss any of the matters raised in this submission further.

Yours sincerely



Tony Burke



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7 January 2011

The Financial Action Task Force Secretariat
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By e-mail to: fatf.consultation@fatf-gafi.org

Copy to:

Australian Transaction Reports and Analysis Centre
PO Box 5516 West Chatswood
NSW 1515 AUSTRALIA

Dear Sir/Madam,

**CONSULTATION PAPER - REVIEW OF THE STANDARDS - PREPARATION FOR THE
4TH ROUND OF MUTUAL EVALUATIONS**

Thank you for the opportunity to provide comments on the Consultation Paper dated October 2010 in respect of *The Review of the Standards - Preparation for the 4th Round of Mutual Evaluations*.

1. BACKGROUND

The Australian Finance Conference is an Australia-based finance industry association, established in 1958 with a diverse membership including traditional finance companies, banks, motor vehicle financiers and financial leasing companies which provide consumer and commercial finance. Our associate members include receivables management companies and credit reporting agencies. This submission is provided on behalf of members of the Australian Finance Conference (AFC) and its affiliated bodies the Australian Equipment Lessors Association, the Australian Fleet Lessors Association and the Institute for Factors and Discounters which together represent more than 150 financier organisations. The AFC and its affiliated bodies were involved for many years in the development of Australia's current Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) Regime, in close consultation with AUSTRAC which is Australia's Financial Intelligence Unit and AML/CTF Regulator.

Our members are aware of their obligations under Australia's AML/CTF laws and, on balance, are of the view that the current laws provide a workable anti-money laundering and counter-terrorism financing regime for the Australian financial services industry. The industry incurred great cost in implementing processes and procedures to comply with the current regime from its commencement in 2006. Our members are therefore concerned that any amendments to the FATF 40 Recommendations, the 9 Special Recommendations or the Interpretive Notes

are only made following a rigorous investigation to ensure that any consequential amendments to Australia's AML/CTF laws will have the effect of significantly reducing the likelihood of financial services being used for money laundering or terrorism financing purposes.

Our comments below address the specific areas which are relevant to our members in their capacity as financiers to Australian-based consumers and businesses.

2. THE RISK-BASED APPROACH

We would support the development of a single comprehensive statement on the risk-based approach incorporated into the FATF Standards as a new Interpretative Note, provided that this does not have the result of altering the overall scope of the risk-based approach.

3. RECOMMENDATION 5 AND ITS INTERPRETIVE NOTE

We would support the publication of examples of higher and lower money laundering and terrorism financing risks; and examples of enhanced measures for higher risks and simplified measures for lower risks. The proposed new material on "risk variables" would also be helpful to our members.

We have some concerns regarding the changes being considered for Interpretative Note 5 on the Risk-Based Approach (INRBA 5) in relation to identification and verification of the identity of customers that are legal persons or arrangements. We are not opposed to the principle that information about the "mind and management" of a legal person or arrangement should be obtained, but the implementation of this principle must take into account the circumstances of each jurisdiction. We would support changes which introduce more clarity regarding the identification information that is necessary to collect in relation to customers that are legal persons or arrangements; but we would not support further prescription about what information must be verified.

The reasons for our concerns are that in Australia, as in some other Common Law countries, legal entities such as private companies and discretionary trusts are common and perfectly legal business structures. A feature of these structures is that it is not always possible to accurately verify who the company shareholders are, or who the trust beneficiaries may be, at any particular time. In the case of privately owned companies, this is largely because it is not necessary for the Companies Register maintained by the Australian Securities and Investments Commission to be kept up-to-date with shareholder information about proprietary or private companies. In the case of private or discretionary trusts, there is no public or government maintained register which records details of the trust because such trust arrangements are essentially private matters between the trustees and the beneficiaries. Some secondary sources may be used to assist in verification of private company and trust information. This could include income tax returns lodged with the Australian Taxation Office, but it is not the role of the Australian Taxation Office to verify information about company shareholders or trust beneficiaries and not all entities may be required to lodge income tax returns.

We would not oppose making it explicit that it is necessary to verify that a person has authority to act on behalf of a customer which is a natural person.

4. RECOMMENDATION 9: THIRD PARTY RELIANCE

We support, in general, the proposals in paragraphs 33 - 38 regarding requirements in relation to third parties acting on behalf of financial institutions and/or customers, whether as part of an outsourcing, agency or other reliance arrangement. In particular, we agree that an attempt to define these concepts would not be appropriate and that a clearer functional definition would be useful.

5. TAX CRIMES AS PREDICATE OFFENCE FOR MONEY LAUNDERING

Under Australia's AML/CTF Act, reporting entities are required to make a report to AUSTRAC if they suspect on reasonable grounds that information that they have concerning the provision, or prospective provision, of a financial service may be relevant to investigation of, or prosecution of a person for, an evasion, or an attempted evasion, of a taxation law. "Money laundering" is defined in the AML/CTF Act to cover, broadly speaking, offences relating to dealing with the proceeds of crime. It is our understanding that an offence under a taxation law is not currently "money laundering" as defined in the AML/CTF Act; and that they are conceptually classified as separate types of offence. This is supported by the itemisation in the AUSTRAC Annual Report for 2009-2010 of suspicious matter reports of money laundering as a separate category to suspicious matter reports of tax evasion. It is our understanding that a suspicious matter report which refers to a taxation offence often results in an investigation by the authorities to see if there has also been a money laundering offence committed.

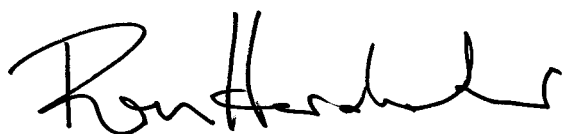
If tax crimes were included as predicate offences for money laundering in Recommendation 1, a consequential amendment to Australia's AML/CTF Act might be required, resulting in expansion of the duties of financiers. In particular, this could broaden the overall requirements for the scope of financiers' AML/CTF programs and could impact on the following specific provisions of Australia's AML/CTF Act:

- Section 36 which relates to monitoring customers' accounts as part of ongoing customer due diligence to identifying the risk that provision of a financial service might involve or facilitate money laundering;
- Section 65(6) which relates to the ability to refuse to make electronically transferred money available if there is a risk of facilitating money laundering; and;
- Sections 97 and 98 in relation to correspondent banking due diligence requirements.

We suggest that before any change is made to include tax crimes as predicate offences in Recommendation 1, a detailed legal analysis of the consequential impact on the AML/CTF laws in each jurisdiction be carried out.

We appreciate the opportunity to provide the above comments on the Consultation Paper. If you have any questions or comments on this submission, please email me at ron@afc.asn.au or our Corporate Lawyer Catherine Shand at catherine@afc.asn.au.

Yours truly,



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Executive Director

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	BSBV 99/2010		5.1.2011

Revised FATF Recommendations

The Bank and Insurance Division of the Federal Economic Chamber representing all Austrian Credit Institutions would like to comment on the revised FATF recommendations as follows:

Elimination of the EUR 1,000 limit

The elimination of this limit would lead to further disproportionately higher ... on the part of banks. more würde zu einem weiteren unverhältnismäßigen hohen Mehraufwand bei den Banken führen.

Terrorist organisations usually control a broad network that keeps a low profile and therefore does not appear in any pertinent lists, generally allowing money transfers to take place to some extent.

Although it is believed that smaller amounts are also being transferred to finance terrorism, the elimination of the limit would hardly inhibit the flow of funds given the means and the networks terrorists have. Extending the provisions currently in place would impose an enormous additional workload on banks - capturing all relevant ID data and identity verification of any counterparts based on ID documents - and foist additional costs on customers. It is already difficult to facilitate an understanding among end customers for the current measures. Countless domestic customers make cash deposits to settle invoices. Foreign customers need to be able to make cash deposits in order to support their families back home.

Inclusion of domestic PEPs

Including domestic PEPs in the enhanced due diligence scheme would not only entail significantly more work and costs but also create problematic situations for the banking sector in relation to the customers concerned. What needs to be remembered is that, in analogy to the foreign PEPs, any previously existing customers belonging to the domestic PEP category would have to be taken into account too, a group which is incomparably larger than

that of foreign PEPs. Any limitation to the "beneficial owner" would not substantially reduce the additional work and costs involved.

Introducing Steuerdelikten als verpflichtend anzusehende Vortat

In Austria, crimes relating to direct and indirect taxes already constitute a predicate offence for money laundering insofar as they involve funds that exceed the threshold for criminal prosecution. It is not clear why tax crimes as such should be considered predicate offences for money laundering (which, after all, qualifies for criminal prosecution). To the extent that acts constitute a tax crime in administrative criminal proceedings, this project does not fit in with Austria's current system of law either. Incorporating the consequential act of covering up/transferring these funds into the penal code would create a legally questionable situation in that the main crime (tax evasion) would not be punishable by a court of law while the consequential crime - transfer/cover-up- would be sanctionable by a court of law.

Ultimately, a general change would make of the banks an extended arm of the tax investigation authorities. The primary task of any financial institutions continues to be the provision of financial services. Anything beyond this would entail additional work and costs and require additional monitoring on the part of banks, which, at the end of the day, would again use up resources in the institution.

A definition of "tax crime" is also lacking. For the above reasons, we would reject any extension to include all financial offences.

Check by the Intermediary Bank

- Given that customer payment transfers are checked twice - once by the ordering bank and then by the beneficiary's bank - the due diligence obligations currently implemented by the banking industry, particularly with regard to cross-border fund transfers, are already far-reaching. Imposing a duty to check payments on intermediary banks that have no account relation to the principal and the beneficiary would presumably make it impossible for "orderings banks" to implement payment orders on the same day starting the year after next. It is surprising that not even the European representatives at FATF brought that up.
- The mail does not address FATF's considerations regarding the beneficiary's data. These apparently run counter to the PSD's specifications (execution of the payment order based on a unique identifier, optional identification of the beneficiary with no bearing on the proper execution of the order). Because of this SPD requirement alone will it be possible to implement payment orders within the compulsory deadline of one day across Europe starting in 2012. The FATF must be prevented from requiring data on the beneficiary (beyond the unique identifier) and subjecting order execution on this data.

Kindly give our remarks due consideration.

Sincerely,

Dr. Herbert Pichler
Managing Director
Division Bank and Insurance

BLOM BANK - Jordan

Please note that our comments regarding the screening of wire transfers against the OFAC ,UN ,Europe Lists , refers to the case where the mentioned matched suspicious name is not our customer(does not maintains an account with our bank) , whether he is the ordering customer within the Incoming transfer or he is the beneficiary within the Outgoing transfer , and the action that will be taken if the beneficiary within the Incoming transfer is a suspicious matched name and maintains an account at our end :

1. First of all our AML/CFT Policies & Procedures prohibits the bank from opening or dealing with any Individual or entity Listed under OFAC ,UN ,Europe Lists or any other unofficial lists identified through the World Check Organization Database , so if our customer is listed after opening the account it will be defiantly seized the moment its identified through the periodic review against the Black Lists mentioned above.
 2. The funds received will be credited to the seized account .
 3. File a STR to the FIU.
 4. Any transaction processed through the seized account is subject to the previous approval of the National AML/CFT Committee.
 5. We agree that an additional information of the beneficiary should be obtained such as Full name ,Nationality ,account number , national number or the Identification number , date of birth ,address especially when the bank is acting as an intermediary bank within the chain of the transfer to be able to take the decision of accepting or rejecting the transfer.
- In the case of Legal persons or arrangements where the ownership or control structure of the company consists of other companies (e.g. the company under question is a Holding company) , to what extent should the financial institutions go deep through the CDD procedures , taking into consideration that the mentioned companies within the ownership or control structure is not subject to the disclosure standards.
 - We are totally agree with the proposed amendments that recommend to include domestic PEPs within the definition of PEPs and the enhanced CDD measures of ML/FT risks , and recently we redefined the definition by including domestic PEPs as a result of the corruption issues that occurred lately , and applying the same AML high risk measures as for foreign PEPs .
 - We are totally agree with the proposed amendments regard including tax crimes to the designated categories of predicate offence for money laundering , in addition to redefining the smuggling category to be related to customs and excise duties and taxes.

- In the case of persons acting on behalf of customers , our AML Policies and Procedures already covers this issue by applying the same CDD measures on the authorized signatory which include identification and verification of those persons in addition to the beneficial owner.
- All wire transfers is being screened against OFAC ,UN ,Europe Lists regardless whether its an intermediary (transit) or as an origin part of the transfer process , the moment a match is identified :
 1. An enhanced investigation is processed to determine that the suspicious name in the transfer is the same black listed individual or entity.
 2. If the match is positive the transfer will be rejected and a STR is filed to the FIU.
 3. If there is an incomplete mandatory fields within the wire transfer , the transfer will be suspended and an enquiry message is sent to the ordering institution to clarify and complete the missing data in order to decide whether to reject or accept the transfer depending on the ML/FT risk exposed to file a STR to the FIU.
- Individuals or entities listed under the domestic financial crimes should be added to the lists that should be screened , and the same procedures above will be applied when a suspicious transfer is identified.
- Regard the cross-border cash and bearer notes flow between countries , it's not clear how should customs officers identify and verify the ML/FT risks associated with that issue to take the right decision to report the issue to the FIU or authorities in charge , or its reported regardless the suspicion.

Response from the BVI Bank Association

Having reviewed the Consultation paper on The Review of Standards – Preparation for the 4th Round of Mutual Evaluations, in general the changes proposed will assist in providing clarity on the current Standards and allow improved quality of Country Assessments. The underlying concept of the changes proposed is to a large extent embodied in most of the Country's Guidance Notes. Obviously, it will be critical to see the exact details of the changes to fully understand the implication for individual institutions.

Below listed are our comments:

2. Recommendation 5: and its Interpretative Note

Further clarity is required with respect to the changes to this Recommendation, particularly with respect to CDD measures that are required for persons acting on behalf of a customer. It is unclear whether the intention is simply to verify that the person is authorised to act or whether or not the change will be to conduct CDD on the particular individual.

Regarding lower or moderate risk accounts, the FATF Guidelines allow Financial Institutions to apply simplified CDD measures. Although BVI's AML/CFT Code of Practice advises that simplified CDD processes can be applied, it also indicates that a business relationship assessed as normal or low risk should update its customer due diligence information for that customer at least once every three years. This appears to contradict the FATF's application of simplified processes. In addition, it should be clearly outlined so that there is no misinterpretation of the intent that simplified CDD measures should not be acceptable whenever there is a suspicion of money laundering or terrorist financing.

Financial Services Commission Comment

While there may appear to be a contradiction between the requirements of the FATF and those outlined in the BVI's Anti-money Laundering and Terrorist Financing Code of Practice in actuality there is not as the Recommendations allow for a jurisdiction to apply higher standards than those imposed by the FATF. The BVI has chosen to take this approach in relation to applying simplified CDD measures by requiring regulated entities to review low risk customers' due diligence information once every three years.

4. Recommendation 9: Third Party Reliance

The proposed changes to this recommendation particularly who can be relied upon to include all types of businesses or professional that are subject to the AML/CFT requirements is acceptable, provided that they are subject to regulation to ensure compliance with the requirements - e.g. in most countries jewellers and real estate agents are subject to the AML/CFT regulations, however they are not regulated and from our perspective would not be a reliable third party.

5. Tax Crimes as a predicate offence for money laundering

Note 39: The FATF states that it is considering including tax crimes as a predicate offence for money laundering in the context of its Recommendation 1. More precisely, it proposes to amend the list of designated categories of predicate offences for money laundering as follows:

- To clarify the current designate category of smuggling by referring to: smuggling including in relation to customs and excise duties and taxes.
- To add a separate designated offence category: tax crimes – related to direct taxes and indirect taxes.

This is a critical issue and could have significant implication for our international business. It will require Bankers to be knowledgeable of the tax laws of their International clients or require legal opinions for each client. While it is recognised that the FATF looks at whether the laws in a jurisdiction support the AML/CFT regime, it is however, impractical for bankers to identify and know the tax laws and legal implications of all the countries in which they have a client.

For the private sector, the key result of this change will not be the impact of this change on Recommendation 1, which already states that crimes punishable by over 6 months of imprisonment be included within the predicate offenses, but rather to the obligation to support suspicious transactions under Recommendation 13. Thus transactions related to the laundering of the proceeds of tax crimes would have to be reported as suspicious activity.

We strongly do not support this Recommendation.

6. Special Recommendation VII and its Interpretative Note

Every Financial Institution's new account opening procedure ensures that their AML/CFT Code of Practice requirements are integrated in client acceptance procedures. The three basic components are

1. Identifying the client and verifying the identity of the client by obtaining evidence from documents. Data or information obtained from independent and reliable sources.
2. Identifying the beneficial owner(s) of a client, so that the identity of the individual(s) who is the ultimate owner or controller is known and then verify their identities on a risk sensitive basis. Specific steps are undertaken to ensure that the ownership and control structure is understood.
3. Information on the purpose and intended nature of the business relationship.

Customers due diligence measures are comprehensive and include customer identification, beneficial ownership requirements, ongoing due diligence, measures for politically exposed persons, correspondent banking and new technologies along with procedures for non-face to face customers. Requirements for introduced business are also detailed. Additionally, there is ongoing account monitoring by the banks, their compliance departments and head Offices for incoming and outgoing wire transactions. The Recommendation for adding more

originator details/information is not supported by us as we believe the current processes are considered adequate.

Note 47. Ordering Financial Institutions are not in the position to identify the beneficiary's identification information, however the beneficiary's Financial Institution is responsible to have effective risk based procedures (e.g. CDD) for identifying and handling cross border wires.

Currently, financial institutions do require accurate information on beneficiary names in order to process a transaction and use such information to manage the ML/TF risks. Financial institutions use various screening mechanisms such as Hotscan, World Check and other database checks and sanction lists to detect suspicious names and activities. Both international and domestic wires are screened and all hits are investigated and where a positive hit is identified the transaction is rejected and a regulatory report filed. Hits for incomplete data are also stopped and required data obtained. We believe and see no other value for requiring additional beneficial information than what is currently being provided.

Note 50 – Other Issues. We have no recommended changes to current measures being undertaken by the financial institutions in this regard.

Response from the BVI Association of Registered Agents (ARA)

We write further to the consultation paper issued by the FATF stemming from their review of the 40 +9 Recommendations in respect of issues including the Risk Based Approach; Customer Due Diligence and Reliance on Third Parties.

The ARA sent a copy of the consultation paper to all its members asking for comment. Below is a summary of the responses:

1. Recommendation 9 ("R.9"): Third party reliance: this is clearly a very important area for the BVI. We believe that the proposals appear to be positive and we therefore support this recommendation. Many of our members already apply all of the proposed changes to R.9. We believe that R.9 and the proposed changes make life a lot easier for us here in the BVI, especially considering that a lot of our business is not face to face business and it is often more convenient, for both us and the customer, to rely on third parties, especially where the information has already been supplied to the third party who has AML/CFT provisions in place.

Financial Services Commission Comment

Recommendation 9.1 provides that a financial institution relying on an intermediary or other third party should "immediately obtain from the third party the necessary information concerning certain elements of the CDD process" (identified in 5.3 to 5.6). This requirement appears to have attracted a literal interpretation which may not be feasible in a modern-day business environment where third party introductions are a norm of business transactions (notwithstanding that the actual copies of documentation are not required). It should suffice

that the domestic receiver of introduced business should satisfy himself that the introducer has conducted and obtained all the relevant CDD information in respect of the introduced business as identified in Recommendation 5. If need be, a requirement could be included requiring the domestic receiver of the introduced business to test from time to time the introducer's CDD records.

This arrangement is considered more feasible in that it would enable the establishment of business relationships without the added delay of requiring a range of CDD measures that would already have been collected and in the custody of the introducer. In any case, this appears to be the approach taken by many jurisdictions in which reliance on third party introductions for establishing business relationships is recognised. Recommendation 9.2 is considered relevant in this context and therefore more practical.

It is recommended therefore that Recommendation 9.1 be either dispensed with altogether or be modified so as not to require any immediate acquisition of any CDD measures if such measures have been acquired and are being kept by the third party introducer.

2. Tax Crimes as a Predicate Offence for Money Laundering:

“39. The FATF is considering tax crimes as a predicate offence for money laundering in the context of Recommendation 1 (R.1). More precisely, it proposes to amend the list of designated categories of predicate offence for money laundering as follows:

- ***To clarify the current designated category of “smuggling” by referring to: smuggling (including in relation to customs and excise duties and taxes).***
- ***To add a separate designated offence category: tax crimes – related to direct taxes and indirect taxes.”***

Comment:

Financial institutions have to rely on the information provided by clients to determine if they have obtained the necessary tax and legal advice with regards to the accounts or structures they establish with service providers. To add a separate designated offence category to the money laundering offences: tax crimes would imply that in order for the financial institutions to determine if there is a money laundering offence being committed, the institutions will have to have the required tax and legal knowledge on every single client jurisdiction other than the relevant jurisdiction of domicile of the business entity or bank account to determine the legality of the company structure/bank account. These are requirements which cannot be met for obvious reasons. The trust companies and banks are not in the business of providing legal and or tax advice, they are not licensed to provide such advice and can therefore not be held responsible to verify if the end user client is in fact committing an offence in relation to direct or indirect taxes of their country of domicile.

The overall view is that this must be repudiated as strongly as possible. The practical implications of this may be that, without a tax opinion, we would have to submit a SAR for every company incorporated in a low tax jurisdiction, (the BVI), by somebody from a higher tax jurisdiction. The fact that this includes direct taxes is somewhat absurd. We cannot be expected to know and understand the tax laws and what constitutes a tax crime in every jurisdiction in which we have a client. It has been suggested that we obtain evidence of tax advice from each of our clients. This may be feasible for a law firm with less than 500 clients, and for which they are providing a substantial amount of value added work; but for the high volume low margin trust companies this is really not possible.

“42. Special Recommendation VII is aimed at enhancing the transparency of cross-border wire transfers by requiring financial institutions to obtain and include originator information, which has been verified and subjected to applicable customer due diligence, in the message or payment form accompanying the transfer. Each intermediary and beneficiary financial institution in the payment chain is required to ensure that all originator information accompanying a wire transfer is transmitted with the wire transfer. Beneficiary financial institutions are required to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.”

Comment:

Every financial institution has the obligation to verify the identity of their clients and document client due diligence. Therefore as part of account opening procedures of banks, client due diligence and KYC documentation is verified prior to account opening and before an account number is assigned.

Once a client account has been opened, client files are risk classified. Highly rated client accounts are reviewed on a more frequent basis (yearly) and lower risk client accounts are reviewed typically on a 3-year basis. Furthermore, there is ongoing account monitoring by compliance departments for all cross-border wire transactions for both incoming and outgoing payments. The ongoing monitoring is done by using World Check data for client accounts and the verification of individual transactions. The recommendations with regards to adding originator information does not enhance the transparency of the cross-border wire transfers as the originator will have already been verified by the financial institution at the moment of account opening. The physical transaction is also verified by the transaction/compliance departments of the banks.

Adding additional information to transaction processing system has the following consequences:

- Require extensive system changes to existing payment processing applications.
- Such changes will be expensive and time consuming to implement for the financial services industry.

- The changes will add additional time and costs to the processing of international payments and therefore increase the costs for clients to participate in international business transactions
- The changes will directly affect client confidentiality and open the door for possible abuse of client confidential information as this information will no longer be solely held within the individual financial institutions.

“47. In light of these policy interests, FATF seeks input from the private sector on: (i) whether financial institutions require accurate information on beneficiary names in order to process a transaction; (ii) whether it would be feasible and useful, in managing the ML/TF risks associated with the beneficiary party, for financial institutions to have additional beneficiary information (i.e. for the purpose of detecting suspicious activity and screening prohibited transactions); (iii) what additional beneficiary information could be required that would be feasible, useful to financial institutions, practical for originating parties, and proportionate so as not to push transactions underground.”

Comment:

- (i) The responsibility for verification of client should primarily sit with the financial institution responsible for the account opening and maintenance
- (ii) It would be feasible but very costly and time consuming as this would duplicate efforts in capturing client information. As mentioned in (i), the individual financial institutions are responsible for both initial and ongoing client verification within their own financial institutions.
- (iii) The current information is sufficient to process and verify client transactions.

“48. In order to meet applicable laws and regulation implementing United Nations Security Council Resolutions (UNSCRs) to combat terrorist financing, financial institutions are required to take measures to detect and avoid transactions involving prohibited parties.”

Comment:

Most client databases are verified through the appropriate AML verification systems such as World Check. In addition, on Group level, additional steps are taken to run our incoming payments also through the same verification processes. These verification processes are however technology dependant and time consuming and not accessible to all financial institutions.

“49. The FATF is considering incorporating into the international standard an obligation to screen wire transfers in order to comply with the UNSCRs to combat terrorist financing (i.e. to identify any terrorist financing-related transactions). The FATF seeks input from the private sector on: (i) whether financial institutions screen all wire transfers, including when they are acting as intermediary financial institutions in

the payment chain; (ii) what financial institutions do if they get a hit; (iii) if beneficiary information were included in the payment message, how the current processes might differ with respect to hits on beneficiary information as opposed to hits on originator information; and (iv) when screening transfers, whether financial institutions detect incomplete data fields and, if so, how they respond if incomplete data fields are detected (e.g. file a suspicious transaction report, process the transaction, suspend the transaction, request complete information from ordering financial institution, etcetera)”

Comment

- (i) See earlier comments with regards to question 48.
- (ii) If a ‘hit’ is received on the verification, additional research is done to confirm the details on both payment, UBO and other relevant information.
- (iii) See previous comments with regards to question 42.
- (iv) Additional information is normally requested from the ordering financial institution to clarify the payment details

“50. The FATF is also seeking input from the private sector with respect to:

- (i) considering whether there are sound reasons for making distinctions as to how these requirements should be applied in different market contexts (e.g. in cases where the payment service provider of the originator is also the payment service provider of the beneficiary); and*
- (ii) whether additional guidance may be needed to assist jurisdictions in applying SR.VII to new payment methods.”*

Comment

Refer to comments re item 49.

“51. In addition to the issues presented above, the FATF is also viewing Recommendations related to international cooperation, with a view to reinforcing requirements for countries on mutual legal assistance, extradition (Recommendations 36-39) and cooperation/exchange of information between competent authorities (Recommendation 40) and clarifying that these requirements equally apply for ML and TF situations. The key proposals are: (a) to clarify the respective obligations for the requesting and requested countries to have and use clear and efficient processes to facilitate the execution of mutual legal assistance and extradition requests in a timely manner; (b) to strengthen requirements for countries to have arrangements for sharing confiscated assets; (c) to require countries to be able to assist with requests based on foreign non-conviction based confiscation orders in certain circumstances (such as death, flight, or absence of the perpetrator); (d) to require countries to render mutual legal assistance notwithstanding the absence of dual criminality when assistance does not involve coercive actions determined by countries. In addition, the

FATF is considering Recommendation 40 – international cooperation/exchange of information between competent authorities – with a view to ensuring full, effective and timely co-operation in practice. This latter work is still at a preliminary stage.”

Comment:

With regards to the indicated plans of reinforcing requirements for countries on mutual legal assistance, extradition (Recommendations 36-39) and cooperation/exchange of information between competent authorities, we consider as unacceptable “non conviction based confiscation orders” and “legal assistance notwithstanding “the absence of dual criminality”. In our opinion, there must be a well-founded suspicion before information can be exchanged. No fishing expeditions and “informal” requests should be allowed.

3.



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Dear Sirs:

The Canadian Bankers Association welcomes this opportunity on behalf of our member banks¹ to provide you with our comments on the proposed changes to FATF Recommendations as articulated in *The Review of the Standards – Preparation for the 4th Round of Mutual Evaluations* posted on the FATF web-site in late October 2010 (the "Consultation Paper"). While we understand that these recommendations were discussed at the *FATF Consultative Forum* held in Paris on November 22 and 23, we trust our comments will help the FATF to finalize its review of the FATF Standards and produce a document that will enhance the effectiveness of the global anti-money laundering (AML) and anti-terrorist financing (ATF) regime in a practical manner and be a valuable assistance to financial institutions in implementing their policies and procedures against money laundering and terrorist financing.

General Comments

We are generally supportive of the content of the Consultation Paper, which are reflective of the considerable efforts made by our member banks over the past number of years to meet the challenges of money laundering and terrorist financing.

We note, however, that the FATF is seeking input from the private sector on a limited number of issues, specifically:

- The risk-based approach ("RBA") – various Recommendations
- Tax crimes as a predicate offense – Recommendation 1
- Customer Due Diligence ("CDD") – Recommendation 5
- Politically Exposed Persons ("PEPs") – Recommendation 6
- Reliance – Recommendation 9

¹ The Canadian Bankers Association (CBA) works on behalf of 51 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 260,000 employees. The CBA advocates for effective public policies that contribute to a sound, successful banking system that benefits Canadians and Canada's economy. The Association also promotes financial literacy to help Canadians make informed financial decisions.



- Enhanced transparency of cross-border wire border wire transfers – Special Recommendation 7

We also understand that work is going on separately with respect to:

- Transparency of legal persons and arrangements – Recommendations 33/34
- Other forms of international cooperation – Recommendation 40

Whilst we are generally supportive of FATF's initiative to review the Standards we encourage ongoing collaborative dialogue as the review process unfolds since we believe that the high-level broad concepts outlined in Consultation Paper need to be more clearly defined before our member banks can fully assess any operational issues that may be associated with implementation of the proposed revisions.

The Risk Based Approach

We note that concerns have been raised that the current text on the RBA, which is located in several different parts of the existing Standards, may lack sufficient clarity. RBA Guidance developed in June 2007 by the FATF in collaboration with industry expressed the concepts more clearly, but such Guidance does not form part of the Standards.

It is proposed that the FATF develop a single comprehensive statement on the RBA which would be incorporated into the Standards as a new Interpretive Note applicable to R 5, 6, 8 – 11, 12, 15, 16 21 & 22.

Canada's *Proceeds of Crime (Money Laundering) and Terrorist Financing Act and Regulations* oblige Canadian financial institutions, including the member banks, to take a risk-based approach to implementing an AML/ATF regime. We completely endorse and welcome proposed reinforcement in the Standards of a RBA to AML/ATF which recognizes the need for each financial institution to have the flexibility to manage its risks as it deems best within the context of the legislative requirements.

We support the following components of a comprehensive RBA:

1. **Risk assessment** - A country should take appropriate steps to identify and assess the ML/TF risks for the country.
2. **Higher risk** - A country should ensure that their AML/ATF regime addresses the higher ML/TF risks, and that financial institutions apply enhanced measures in relation to these higher risks.
3. **Lower risk** - If a country identifies lower ML/TF risk, it may allow financial institutions to apply simplified measures for certain recommendations.
4. **Exemptions** - Where there is proven low ML/TF risk, and in strictly limited and justified circumstances, a country may exempt financial institutions from applying certain FATF Recommendations.



We note that while the Consultation Paper endorses a RBA, the level of guidance provided in many country regimes is granular and detailed, and sets out lists of specific procedures that are to be implemented by financial institutions. We are therefore concerned at this seeming departure from a risk-based approach by many regimes and believe reasonable measures should be left to each financial institution to decide according to its risk management framework.

Tax crimes as a predicate offense – Recommendation 1

We note that the FATF is considering including tax crimes as a predicate offence for money laundering in the context of Recommendation 1 by amending the list of designated categories of predicate offence. We also note that the FATF believes that the key result for the private sector of such a revision will mainly be in relation to the obligation to report suspected tax evasion as suspicious transactions as required under Recommendation 13. We believe this conclusion oversimplifies the matter.

We are concerned that this proposal would place an unreasonable and inappropriate burden on financial institutions to identify and report tax crimes as operation of an account or the provision of financial services do not provide a financial institution with sufficient or relevant information that would enable the financial institution to identify tax crimes. More importantly, financial institutions are not skilled in assessing or applying the highly complex nuances which characterize tax regimes, including those of regimes foreign to the financial institution.

In our view each country will face different challenges implementing this change, and the financial institutions within each country will need to receive very clear guidance as to the intent of national regulations.

Customer Due Diligence (“CDD”) – Recommendation 5

We note that the FATF indicates the primary change to Recommendation 5 and its interpretive guidance is to seek to clarify requirements for legal persons and arrangements, in particular beneficiaries of life insurance or other investment related insurance policies.

We note that under the proposals financial institutions should:

- identify and reasonably verify the identity of natural persons who ultimately have a controlling ownership interest, and
- where that ownership interest is too dispersed to exert control, identify and verify the identity of those who exert or influence control. We believe that further clarification is required with respect to this component. For example, where a corporation is publicly traded this could mean information should be collected on senior management, however for a large multi-national publicly-traded corporation with a large and diverse management structure it is less clear what would be appropriate.

Proposed revisions to Recommendation 5 would also require financial institutions to verify the authority of persons who act on behalf of the client.

We believe further clarification is needed to outline expectations on what additional steps would be required to implement and document this.



Politically Exposed Persons (“PEPs”) – Recommendation 6

We note that while the proposal does not seek to change the existing Recommendation 6 with respect to foreign PEPs, it does contemplate including domestic PEPs as a category subject to enhanced due diligence in cases of higher risk. This would result in enhanced due diligence being conducted in all instances on foreign PEPs, but would apply a risk based approach with respect to domestic PEPs.

We support the concept of a risk based approach to all PEPs, both domestic and foreign. The proscriptive requirement of enhanced due diligence for foreign PEPs is counter to the risk based approach, and fails to acknowledge that many foreign PEPs do not pose any greater risk than many domestic PEPs.

Creating a different standard for domestic and foreign PEPs creates anomalies for international institutions – for example, a domestic PEP client who is not deemed high risk in one jurisdiction would be considered high risk by an affiliate in another jurisdiction. We believe the more sensible approach is to apply a risk-based approach to all PEPs, both domestic and foreign, rather than mandating that all PEPs are equally high risk.

Reliance – Recommendation 9

We note that the proposal contemplates continuing the existing regime that affords each country the discretion to determine whether a financial institution may rely upon a third party, and as a general concept we support this position. We note however that there is no easy way to distinguish between reliance, outsourcing and agency, and that the FATF does not propose to define these terms. While we note that the FATF proposes to better delineate what constitutes third party reliance, we believe that greater clarification is required to enable financial institutions to provide more meaningful comment.

We are pleased to note the proposal to adopt a more flexible approach to intra-group reliance, however are concerned that any final language may still be restrictive.

Enhanced transparency of cross-border wire transfers – Special Recommendation 7

We note that the FATF is seeking input from the private sector on:

- i. whether financial institutions require accurate information on beneficiary names in order to process a transaction;
- ii. whether it would be feasible and useful, in managing the ML/TF risk associated with the beneficiary party, for financial institutions to have additional beneficiary information (*i.e.* for the purpose of detecting suspicious activity and screening prohibited transactions); and
- iii. what additional beneficiary information would be required that would be feasible, useful to financial institutions, practical for originating parties, and proportionate so as not to push transactions underground.

Without question there is value in having accurate beneficiary information in wire transfer message. The most useful information would be name and address. An account number is also useful, although primarily for the purpose of effecting payment by the beneficiary bank and for the purpose of tracing the payment at some later date.



However, we believe that the beneficiary information requirement, as proposed by the FATF, is of questionable value in addressing transparency gaps. Given that some beneficiary information may not always be available to the ordering party, and potential misrepresentation of beneficiary information by the ordering party cannot be effectively addressed by either the originating or receiving financial institution, mandating inclusion of beneficiary information may result in significant challenges to the efficiency of the straight-through payment system with no obvious benefit.

We also note that the FATF is considering incorporating into the international standard an obligation to screen all wire transfers in order to comply with *United Nations Security Council Resolutions* ("UNSCRs"), and is seeking specific input from the private sector on:

- i. whether financial institutions screen all wire transfers, including when they act as an intermediary financial institution in the payment chain;
- ii. what financial institutions do if they get a hit;
- iii. if beneficiary information were included in the payment message, how the current processes might differ with respect to hits on beneficiary information as opposed to hits on originator information; and
- iv. when screening wire transfers, whether financial institutions detect incomplete data fields and, if so, how they respond when incomplete data fields are detected (e.g. file a suspicious transactions report, process the transaction, suspend the transaction, request complete information from the ordering financial institution, etcetera).

Financial institutions have implemented a variety of measures to monitor both incoming and outgoing wire transfers to ensure that all relevant information is included. The measures may include:

For incoming wire transfers:

- a) advising correspondent banks of the need to provide originator information on payments;
- b) monitoring the inclusion of ordering party information on incoming wire transfers from high risk correspondents and taking necessary steps to address repeat offenders;
- c) adopting the four Wolfsberg Group and Clearing House payment message standards;
- d) distributing the Wolfsberg Notification for Correspondent Bank Customers;
- e) implementing Basel Committee recommendations from the paper entitled *Due diligence and transparency regarding cover payment messages related to cross border wire transfers*; and
- f) implementing the new SWIFT MT202COV payment standard.

Specific internal controls may include:

- financial institution's payment systems may automatically verify if all SWIFT mandatory fields are populated in accordance with SWIFT standards, so that financial institutions may obtain any SWIFT mandatory information that is not present in the wire transfer message prior to processing;
- monitoring wire transfers for ordering party information;
- following up with high risk correspondent banks where they fail repeatedly to provide originator information on payments, and filing suspicious transaction reports or terminating relationships where appropriate; and
-



- performing risk based enhanced scrutiny on payments missing originator information and monitoring for suspicious activity that may result in the submission of suspicious transaction reports to the appropriate authority.

For outgoing wire transfers, a variety of measures are taken which may include:

- financial institution's systems used to transmit wire transfers may automatically verify that all SWIFT mandatory fields, as well as ordering party information, are populated;
- originator name, address and account number may be mandatory fields in the system used by business units to generate outgoing wire transfers;
- wire transfer systems may be linked to client information files to populate client name, address and account number, and
- client information is subject to standard client identification and verification processes designed to provide correct, current and verified client information.

In terms of beneficiary information, measures may include:

- for commercial/corporate clients utilizing automated wire transfer systems, originating client name, address and account number are preformatted in fixed system templates used by the client; in certain cases, beneficiary information may be either preformatted in templates used for repeat transactions; or mandatory fields may be used by clients.

Finally we note that the FATF is seeking input from the private sector with respect to:

- i. considering whether there are sound grounds for making distinctions as to how these requirements should be applied in different market contexts (e.g. in cases where the payment service provider of the originator is also the payment service provider of the beneficiary); and
- ii. whether additional guidance may be need to assist jurisdictions in applying SR. VII to new payment methods.

Financial institutions use beneficiary name primarily for the purpose of screening against various sanctions lists. Originating, beneficiary and intermediary financial institutions all screen beneficiary name, but the beneficiary bank is in the best position to perform screening since it has other KYC information useful in clearing false positives. Screening efforts are constrained by the tendency for listed persons to have many aliases and alternate spellings and the lack of unique identifiers to assist in disambiguation. Originators may easily disguise a listed person's name who is an intended beneficiary, as the sending financial institution has no means of verifying the identity of the name used for the beneficiary field.

Since most financial institutions effect straight-through-processing on the basis of account number, a payment with a false beneficiary name would elude screening efforts and still be paid into the target account.



Much has been made of the need for some form of customer identifier, sometimes a unique identifier, presumably in order to assist with matching against listed persons. Address is the most common; however, some jurisdictions (particularly in the EU) have chosen to allow substitution of address with a national identity number, client identification number, or date and place of birth. These differing practices only hinder sanction screening efforts. In the case of matching against listed persons where one record contains an address and another contains a different identifier, such singular identifiers serve no valid purpose. This dysfunction goes a step further when each subsequent transaction involving the same originator or beneficiary may use a different identifier, for example, address the first time, passport number the second, national identity card number the third, place and date of birth the fourth, and so on.

Unique identifiers in respect of a beneficiary name create another set of challenges. The only way to gather beneficiary information is upon origination of the wire transfer by requesting information from the originator. As a consequence, the accuracy of the information and the extent to which reliance should be placed on that information comes into question. The originator may not have the information or could inadvertently or deliberately supply incomplete or erroneous information. The originating financial institutions, absent a client relationship with the beneficiary, would have no means to verify the accuracy of the information. Ultimately the argument that an originating financial institution could rely upon such beneficiary information is flawed.

The only party in the payment chain with the ability to verify beneficiary information is the beneficiary financial institution. If the beneficiary financial institution is using advanced straight-through processing the wire transfer will be automatically credited, without human intervention, to any valid account number uninterrupted by its own interdiction software.

Should the beneficiary financial institution be required to identify any manifestly meaningless or incomplete information including beneficiary name, address or other identifier, it is too late to repair the message and right the mistake without withdrawing the funds from the beneficiary's account and returning the wire transfer. Such a solution is both inefficient and impractical and potentially a breach of the beneficiary financial institution's legal obligation to its client.

Although the FATF plans for revisions to SR VII are clearly well-intentioned, in our view the practical reality is that the proposed standards relating to mandatory beneficiary information will serve only to impose additional regulatory burdens on financial institutions without enhancing the impact of SR VII to achieve its objective of combating terrorist financing.

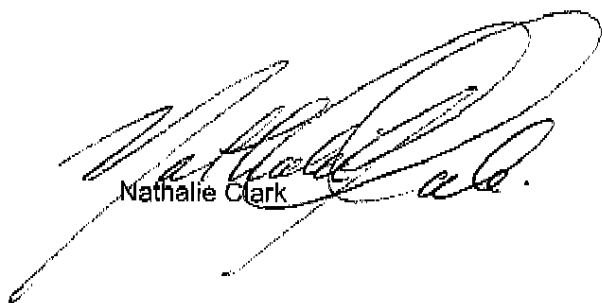
We believe that the objective of SR VII is most effectively achieved through appropriate KYC and customer due diligence procedures which are a cornerstone of FATF member countries' legislation. Financial institutions that know their clients, and understand their client's banking transactions, are in the best position to detect potential terrorist financing. A requirement that payments include unverified beneficiary information will add nothing to the ability of existing screening procedures to detect terrorist financing activities.



Should there be continued interest in making changes to the information required in SWIFT messages, we recommend that the discussions begin with SWIFT itself, as jurisdictions that are not compliant with FATF wire transfer standards and that do not otherwise wish to make such changes will necessarily implement them if driven to do so by SWIFT. However, upon review, there are no demonstrable benefits to be obtained from mandating full beneficiary party information.

Thank you again for allowing us the opportunity to review the Consultation Paper and to provide you with our comments. We are, of course, willing to discuss further with you any of the issues we have raised in this letter, or any other matters that you feel you would like to discuss with us before the document is finalized.

Yours truly,



Nathalie Clark

CEA response to the FATF consultation paper "The Review of the Standards - Preparation for the 4th Round of Mutual Evaluations"

CEA reference:	LIF-11-001	Date:	5 January 2011
Referring to:	FATF consultation Paper : The Review of the Standards - Preparation for the 4th Round of Mutual Evaluations		
Related CEA documents:			
Contact person:			E-mail:
Pages:	4		

Introduction

The CEA welcomes the efforts of the FATF in advancing global standards for combating money laundering and terrorist financing. The CEA acknowledges the importance of the review of Standards to ensure that current anti-money laundering (AML) and counter-terrorist financing (CFT) standards are effective while identifying any shortcomings in the current standards.

The risk-based approach (RBA)

The CEA stresses that appropriate risk-based flexibility should remain a core principle of the global AML/CTF standards and that current use should be expanded across all AML/CTF efforts in a manner that allows resources to be allocated in the most effective way to address identified and prioritised risks in the right order and with the most adequate response.

The CEA acknowledges that there is a need for more clarity, leading to greater consistency among countries and, through this, achieving cost efficiencies for international operating insurance groups. The CEA would suggest applying the RBA consistently to other domains, including beneficial ownership and politically exposed persons (PEPs).

Finally, the CEA appreciates that measures to manage risk associated with new technologies and non-face-to-face business should be risk-based. It is important to recognise that insurance business is, generally speaking, an intermediated business, which —by its nature — has a third party involved. As such, all business could be "misinterpreted" as non-face-to-face, given that the insurer does not have direct face-to-face contact with the customer. However, we believe that the FATF paper is addressing sales through general non-face-to-face channels, such as internet and telemarketing, and that this should be clarified to avoid any misinterpretations during implementation.

Unlike in banking, it is not possible to take out an insurance product that carries significant cash values online and to execute autonomous transactions through a non-face-to-face channel immediately after inception. Any insurance product, opened non-face-to-face or through other channels, has a large number of checks and controls in the background, such as underwriting, claims assessment, etc. As a result, the CEA does not support the FATF recommendation that “non-face-to-face business relationships and transactions should be a ML/TF risk factor to be considered by financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs) when assessing the specific risk associated with a transaction or a business relationship”. The CEA suggests using the RBA on the contract itself rather than including the non-face-to-face channel as a risk factor.

Recommendation 5 (Customer due diligence and record-keeping) and its interpretative note.

1) The impact of the RBA

The CEA welcomes the practical examples put forward, as they can provide useful guidance and would be a welcome addition to the AML/CFT regime. Furthermore the CEA fully agrees that “one-size-fits-all” measures are not necessary. However, the CEA does not believe prescriptive “risk variables” would be efficient as they could lead to a checklist mentality which would not result in greater effectiveness.

2) Legal persons and arrangements – customers and beneficial owners.

The CEA would welcome clarification by the FATF of the measures that would normally be needed to identify and verify the identity of the beneficial owners for legal persons and legal arrangements. However, in this regard, the FATF proposal requires insurers to obtain details of the “mind and management” of the legal person or arrangement. As it is currently unclear what constitutes “mind and management”, clarification and supporting examples are needed to ensure a consistent application of this requirement.

The CEA would suggest establishing a central government registry for trust and partnerships where it does not yet exist to obtain consistency and both time and cost efficiency for insurers identifying the beneficial owners. This could be used throughout the process, from policy issuance to payout, when non-natural persons are involved.

3) Life insurance policies

The CEA welcomes the clarification around a beneficiary of a life insurance contract and the differentiation with (ultimate) beneficial ownership. It is important to recognise that the control over the funds in a life insurance policy changes during the “lifetime” of an insurance contract. While the policyholder is the controller of the funds and therefore could be considered their beneficial owner during the lifetime of the insured person, the designated beneficiary of a life insurance contract will receive the proceeds of a life insurance contract in the event of the death of the insured person. Therefore we support the proposal to NOT see the beneficiary as the beneficial owner, as there are no rights a life insurance beneficiary has until the death of the insured person and no vested rights at any time. This will need to be well defined and we recognise that the similarity of the words “beneficiary” and “beneficial (owner)” can lead to confusion, as we have seen this often in the past.

As a result, we support the beneficiary not being seen as a customer of the insurance company and as such requiring a different treatment.

Given the nature and regulations of life insurance products, a life insurance company can only establish the identity of the beneficiary at the pay-out stage, as the beneficiary may not be known to the insurance company beforehand or may change many times during the “lifetime” of an insurance contract.

Therefore, with respect to a class of beneficiaries, it is unclear what the added value is of “obtaining sufficient information concerning the beneficiary” before the moment of pay-out in order “to satisfy themselves that they will be able to establish the identity of the beneficiary at the time of the payout”, particularly in situations where there may never be a pay-out to the beneficiary, as the money will go back to the policyholder should the contract be cancelled before the death of the insured person.

It is important to recognise that insurance companies already identify the beneficiary (or beneficiaries) at any pay-out to prevent potential fraudulent activities and that such measures should be deemed sufficient for the purpose of identifying the beneficial owner in the case of pay-outs.

Finally, the CEA would appreciate receiving clarification of the “beneficial owner of the beneficiary that is a legal person or arrangement” and of “the policyholder and its beneficial owner”. Both terms seem confusing when dealing with life insurance. We would welcome the opportunity to work with the FATF on the definition of these terms.

Recommendation 6: Politically exposed persons (PEPs)

- 1) Impact of the inclusion of a reference of the United Nations Convention against Corruption (UNCAC) regarding domestic PEPs.

The CEA believes that current CDD measures are sufficient and that the RBA is enough to detect unusual situations. However, the RBA should be consistent in its application. All ML/TF risks should be assessed individually based on their own characteristics. The same consistency in approach should apply to PEPs whether they are foreign or domestic, given that not all foreign PEPs are high risk. Therefore, the CEA believes that foreign PEPs should not always be considered as higher risks as is currently the case. Instead, the CEA suggests applying a risk based approach to all PEPs regardless of their origins. Consequently, foreign PEPs should not be an exception to the RBA.

- 2) Beneficiaries of life insurance policy

The CEA suggests applying the RBA to all phases of a life insurance contract, which will include the pay-out stage at which the beneficiary becomes relevant. Should the beneficiary turn out to be a PEP, regardless of their origins and domicile, a risk-based and not a prescriptive approach shall be applied to these situations as well. This would also increase the consistency of the RBA in the recommendations.

Recommendation 9: third party reliance

The CEA welcomes the proposed changes as they could improve the current state of affairs and provide greater flexibility in determining third party reliance scenarios.

Furthermore, the CEA highlights that the FATF approach with regards to reliance where the third party is part of a financial group might lead to inconsistency between national legislations.

It should be clarified that financial institutions do not have to control the third party. In cases where there would be such an obligation, the distinction between outsourcing and third party will be impossible.

Finally, it must be recognised that insurance is an intermediated business, as mentioned before, and as such more frequently uses third parties in the CDD process than other industries. We would welcome an acknowledgement and clarification of this aspect of the guidance and of the fact that the use of third party (intermediaries) will not automatically lead to an increased risk for all intermediated insurance business.

Tax crimes as a predicate offence for money laundering

The CEA suggests further clarifying “tax crimes”, taking into account the difference between tax avoidance and tax evasion. The CEA suggests not leaving this to individual countries in order to avoid the creation of an unlevel playing field. The CEA also recommends setting a threshold for the definition of “serious” tax crimes.

Special recommendation VII and its interpretative note.

This section focuses on the business of cross-border payments and we deem this to be addressing the banking sector. All payments that are made by an insurance company go through banks and the insurance company has no influence over the level of detailed information that will be included in the final payment and can only control the payment order like any other non-bank company. Any change to the requirements for payee details could only be driven through amendments to the international payment formats and standards and the banking industry.

Usefulness of mutual evaluation reports

The CEA welcomes the proposed considerations of the FATF. These reports are useful to the insurance industry and they should be continued. It would be helpful if the reports contained specific information about the regulatory oversight and controls for the insurance industry and insurance intermediaries in the countries that are being assessed.

About the CEA

The CEA is the European insurance and reinsurance federation. Through its 33 member bodies — the national insurance associations — the CEA represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. The CEA represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe’s economic growth and development. European insurers generate premium income of over €1 050bn, employ one million people and invest more than €6 800bn in the economy.

Review of the FATF 40+9 Recommendations Chilean Banking Association's view

THE RISK-BASED APPROACH

We strongly believe that the Risk Based Approach is basic for an adequate AML/CFT process. Financial institutions must identify and evaluate their ML/FT risks; have policies, controls and procedures in place to manage and mitigate their risks effectively and take enhanced measures regarding high risk customers, transactions, geographic areas, etc.

Institutions built the Risk Based Approach by the stages and on the elements described in the FATF's document. We agree that all institutions activities should be considered and should also provide procedures and methodologies so that they are protected from being used directly as an instrument for money laundering or for concealing assets from such activities.

For this reason, to adopt this approach means to recognize the existence of the risks, and to perform the necessary tasks to face and develop strategies to manage and mitigate the identified risks.

RECOMMENDATION 5 AND ITS INTERPRETATIVE NOTE

We agree on the importance of doing a good due diligence of the legal persons and arrangements in order to identify their ownership and control structure.

In this field, financial institutions should take reasonable measures to verify the identity of the natural persons who ultimately have a controlling ownership interest. The control should be performed by means of legal documents, interviews with the customer, public information, etc.

We agree with the clarification of the requirements for legal persons (corporations), the issuance of Life Insurance and other investment related insurance policies.

However, we believe that for legal persons, the owners or final beneficiaries (e.g. having at least a 25% share of the property) should always be identified. It should also identify the people in their management level according to the type of society that is concerned and their legal representatives.

RECOMMENDATION 6: POLITICALLY EXPOSED PERSONS

As a self regulatory measure, it is an extended practice to include the local PEPs under a riskier category, even if the local regulation only includes the foreign PEP. Due to this and in line with the United Nations Convention against Corruption, it would be adequate to incorporate the local PEPs under a more specific and higher risk category. Notwithstanding any incorporation that FATF considers necessary we believe it is necessary to have a clear definition and guideline in order to have proper identification of this category.

In Chile's case, the regulations require special measures concerning the recruitment and monitoring of politically exposed persons (PEPs). Therefore, we believe that, beyond any consideration by the financial industry, the formal inclusion of measures referred to national PEPs, is a matter beyond the competence of the industry, staying within the regulators agencies.

RECOMMENDATION 9: THIRD PARTY RELIANCE

We believe that it is a good initiative to extend countries' discretion regarding the types of third parties that can be relied upon, mainly due to the AML/CFT controls that currently are applied to different types of institutions, the dynamism of the economy and globalization.

It is also good that FATF give some guidelines regarding reliance, outsourcing and agency to avoid misunderstandings.

At last, we strongly support the new, more flexible, approach regarding Intra-Group reliance. The levels of AML/CFT risks are lower than the ones that may be found in a third party that is not part of a Financial Group, who should have similar or identical AML/CFT policies and procedures.

We believe that the outsourcing of the compliance function to third parties outside the financial group not be recommended and is much less suitable for information confidentiality reasons as required by law.

We feel that as a rule, it would be possible to trust a third party to the extent that said party is subject to regulatory and supervisory levels of demand that are similar or superior to those of the entity that places its trust in it.

We consider absolutely necessary and advisable to facilitate intra financial group outsourcing, thus drawing on the experience (national and / or international as appropriate) in order to achieve synergies that will benefit not only the financial group itself but ultimately the country. In that sense, we feel that it is important to have an area of corporate compliance (and not individual areas) for the whole group in a country that supports the prevention of money laundering and terrorist financing in different societies, but taking into account the need to safeguard the handling of sensitive information.

TAX CRIMES AS A PREDICATE OFFENSE FOR MONEY LAUNDERING:

In our country, tax crimes are not predicate offense; nevertheless, if the political authorities change the predicate offense catalog, we would be able to control and report suspicious transactions.

It is important to clarify that the banks only report suspicious transactions, not crimes; because in almost all cases, even if it is a predicate offence, we are unaware and unable to determine the real source of the suspicious transaction (this is the reason why it is a suspicious transaction).

We believe that is an issue of competence of the political authorities, and from that perspective goes beyond the scope of responsibilities of obligated subjects / entities subject, particularly in the financial industry.

SPECIAL RECOMMENDATION VII AND ITS INTERPRETATIVE NOTE:

In general terms, we agree with the proposed amendment because all the additional information included on a cross border wire transfer allows us to enhance our AML/CFT process. Nevertheless, it is very important to maintain an adequate balance between the new requirements of information, the viability to obtain it and its reasonability.

Regarding the proposal to include information of the beneficiary, we are not able to check this when we act as the ordering financial institution, because the beneficiary is not our customer, as is indicated in the document. When we receive the wire transfer, we are able to check and process / reject the transaction if the information of the beneficiary is not correct or complete.

Our input about the questions for private sector included on paragraphs 47, 49, and 50 of the document goes in the same order:

Paragraph 47

(i) whether financial institutions require accurate information on beneficiary names in order to process a transaction;

Yes, to perform our AML/CFT control process and to screen the names against Sanctions List.

(ii) whether it would be feasible and useful, in managing the ML/FT risks associated with the beneficiary party, for financial institutions to have additional beneficiary information (i.e. for the purpose of detecting suspicious activity and screening prohibited transactions);

Not necessary. In many cases the requirement of additional information did not add critical data to the AML/CFT processes.

(iii) what additional beneficiary information could be required that would be feasible, useful to financial institutions, practical for originating parties, and proportionate so as not to push transactions underground;

N/A.

Paragraph 49

(i) whether financial institutions screen all wire transfers, including when they are acting as intermediary financial institutions in the payment chain;

Yes.

(ii) what financial institutions do if they get a hit;

Reject the transaction.

(iii) if beneficiary information were included in the payment message, how the current processes might differ with respect to hits on beneficiary information as opposed to hits on originator information;

It is the same process.

(iv) when screening wire transfers, whether financial institutions detect incomplete data fields and, if so, how they respond when incomplete data fields are detected (e.g. file a suspicious transaction report, process the transaction, suspend the transaction, request complete information from ordering financial institution, etcetera)?

If the missing or incomplete information is not part of the mandatory data to process the transaction, the wire transfer follows the regular process. If the missing or incomplete information is part of the mandatory data to process the transaction, we return the wire transfer to the ordering financial institution.

Paragraph 50

(i) considering whether there are sound reasons for making distinctions as to how these requirements should be applied in different market contexts (e.g. in cases where the payment service provider of the originator is also the payment service provider of the beneficiary);

We believe that are reasons that justify distinctions and they are related to the level of risk of the wire transfer. Some reasons are related to geographic risks, amount and type of wire transfer, counterparty, etc.

(ii) Whether additional guidance may be needed to assist jurisdictions in applying SR.VII to new payment methods.

We believe that the current guidance is clear.

Consultation Paper

The Review of the Standards Preparation for the 4th Round of Mutual Evaluations

Comments by CNSeg - National Confederation of the General Insurance, Private Pension and Life, Supplementary Health and Capitalization Companies (Brazil)

Presentation

CNSeg is the Institutional representative body of the general insurance, private pension and life, supplementary health and capitalization companies in Brazil.

Foreword

According to the Consultation Paper, by February 2011 all of FATF's members will have been assessed, and the eight FATF-Style Regional Bodies are also near to completing evaluations of their members, using the common AML Methodology.

As FATF is currently conducting a review of the 40 + 9 Recommendations, to ensure they remain up-to-date and relevant, follows some views about the proposals.

General Comments

1. Risk Based Approach
 - 1.1. The risk-based approach matches perfect with International Practices such as the Supervision Focus on Risk that many Regulators are applying nowadays.
 - 1.2. Concepts like regulation by directives (principles) rather than by rules and risk management have heated the discussion on themes like the New Capital rules and the new Solvency Framework for the European insurance market – Solvency II and have demanded the creation of a new model of supervision known as risk-based supervision. This model has been employed by a considered number of countries in both the banking and the insurance industries. In a Supervision Focus on Risk, Regulators may focus on more in controls industries have in place to mitigate risks categorized as medium or high (risk matrix = impact x likelihood) than evaluating if all written policies and directives are being followed.
 - 1.3. Have said that, there are two points mentioned that really should be considered in the FATF's principles changes:
 - 1.3.1. Risk based approach: Industries should take appropriate steps to identify and assess the Money Laundering risks for the business. For High Risks, industries should ensure there will be in place controls and measure to mitigate or control those risks. For Low Risks, it should have been possible to apply simplified measures for certain recommendations, such as those related to minimum customer information and UIAF's communication.
 - 1.3.2. Considering that it will be possible to apply the RBA approach in the FATF Standards, we consider that it is more than welcome having simplified customer due diligence measures for lower Money Laundering risks.

Comments on section 2: Recommendation 5 and its interpretative note

Item 2.3: Life Insurance Policies

1. We completely agree that final beneficiaries may not be identified until the end of the business relationship. It is allowed to change the name of the beneficiaries during the period in force.
2. We consider that becoming mandatory that insurance companies collect the name of the beneficiary (ies) or obtain sufficient information concerning the beneficiary (and also determine whether the beneficiary is a politically exposed person – PEP) during the policy period in force, would bring to the insurance industry procedures implementation needs for tracking changes in the beneficiary status.
3. Quite often insurance companies would have to identify beneficiaries (and if they are PEP) more than once for each policy and probably the final beneficiary would be different from those previously identified.
4. Our suggestion is that beneficiaries for life insurance policies should be identified at the time of the payout, which is in line with the proposals for the standards review.

Comments on section 3: Recommendation 6: Politically exposed persons

Item 3.2: Beneficiaries of life insurance policy

1. Under the FATF 40 Recommendations Glossary, “Political Exposed Persons” are defined as those “individuals who are or have been entrusted with prominent public functions in a foreign country...”
2. Different approaches are being proposed when the beneficiary is either a “foreign PEP” or a “domestic PEP”. We suggest that further clarification be given on the definition of a “foreign PEP” and “domestic PEP”, since, under PEP definition, the first is a kind of redundancy and the latter probably inexistent.

Comments on section 8: Usefulness of Mutual Evaluation Reports

1. The structure of Mutual Evaluation report could be separated by market sectors, for example, one chapter for Banking, another for Insurance and so on.

Set up in 1960, the European Banking Federation is the voice of the European banking sector (European Union & European Free Trade Association countries). The EBF represents the interests of some 5000 European banks: large and small, wholesale and retail, local and cross-border financial institutions. The EBF is committed to supporting EU policies to promote the single market in financial services in general and in banking activities in particular. It advocates free and fair competition in the EU and world markets and supports the banks' efforts to increase their efficiency and competitiveness.

EBF position on FATF consultation paper- Review of the Standards

Key Points

The European Banking Federation (EBF) would like to thank the Financial Action Task Force for the fruitful exchanges it had on the issue of the review of the standards over the last few months.

The EBF also welcomes the opportunity to intensify the discussion through this written consultation on the potential changes to the FATF recommendations and hope to continue this close cooperation in the future.

The EBF generally welcomes some of the concrete proposals made by the FATF and the efforts made to clarify the key concept of the Risk-Based Approach.

1. THE RISK-BASED APPROACH

The EBF welcomes the discussion on the Risk-Based Approach (RBA) that allows the best allocation of resources to the fight against money laundering. We agree that there should not be a “one-size-fits-all” approach, which should be stated at the beginning of the section.

More clarification is welcome, but not more detailed rules on RBA.

It could be useful to include examples and risk variables in a single FATF comprehensive statement on the Risk-Based Approach, as long as they are applicable in the banking practice.

EBF position on FATF consultation paper- Review of the Standards

However the EBF would like to recall that the notion of risks is in constant evolution. Entering into too many details of the risk-based approach is therefore not recommended. It is indeed almost impossible to propose an overall prescribed risk-based approach covering all possible forms of banking situations in day-to-day practice. Each credit institution will have to make its own individual risk assessment and this assessment based on objective criteria will vary depending on the business activities of the bank. Moreover, these risks criteria with their assessment will have to evolve rapidly given the fast moving environment in which credit institutions operate. Finally, it is important that the elements to be listed by the FATF remain examples and that they are not generalised as indicators. Instead of listing static examples that could become rules, it seems to be more fruitful that the FATF typologies working group publishes papers of new typologies.

We would finally welcome more clarification on the current proposal to add to Recommendation 20 other types of financial activities than those listed in the current FATF standard types. This seems important to ensure the practicability and acceptance of the future standard.

2. RECOMMENDATION 5 AND ITS INTERPRETATIVE NOTE

The clarification of requirements regarding legal persons or arrangements proposed by the FATF describes actually already the course of action followed by European banks.

The third EU AML Directive¹ defines a beneficial owner as the person who ultimately owns or controls more than 25% of the shares or voting rights. European banks widely apply a Risk-based-Approach but in this case, a rule based element, i.e. the threshold of 25% is helpful as objective criterion that gives a clear view on control. It is adequate and practicable and is the only level as of which EU credit institutions are able to comply with.

As discussed at the FATF consultative meeting of 22 and 23 November 2010 in Paris, the extension of beneficial ownership to “mind and management” structures and even external advisers is not practical. Management has generally a different-more short term/day to day-type of control. This has to be differentiated from ownership as it is actually done in many countries. The identity of CEO’s and authorised representatives is often checked and documented on the basis of their role as executive officers. These two different approaches should not be mixed up. Identifying external advisers of customers is generally impossible for banks.

We have to acknowledge the difficulties encountered by employees to identify the ultimately controlling natural person of a legal person. Such tasks require specialized research, which can be problematic when in some EU Member States, legal persons are under no statutory obligation to disclose natural persons or to register their names into publicly available accessible registers. Credit institutions thus have to rely exclusively on the information given to them by the person opening the bank account for and on behalf of such legal persons. The

¹ Directive 2005/60/EC of 26 October 2005

EBF position on FATF consultation paper- Review of the Standards

most practical solution would be for EU Member States to grant access to public registries which must provide reliable shareholding information on non-listed companies. But such a solution would inevitably require substantial and costly changes in Member States Company Law.

3. RECOMMENDATION 6: POLITICALLY EXPOSED PERSONS

§ 27-29 Enhanced CDD measures are already in place for foreign Politically Exposed Persons (PEPs). EBF members agree to recognise that reasonable measures have to be undertaken to determine whether customers are domestic PEPs since they could be considered to be higher risk. Credit institutions themselves should indeed be able to identify on a risk-based way their domestic PEPs. Enhanced CDD measures for domestic PEPs could consequently be required in case of higher risk.

§ 30 The FATF proposal to review the obligation with respect to family members and close associates of PEPs who are beneficial owner of the account is welcome since it will bring clarity to the current provisions.

4. RECOMMENDATION 9: THIRD PARTY RELIANCE

Financial institutions face complex issues when implementing the current recommendation. Although our members haven't reported important concerns or issues related to the interpretation of the existing Recommendation 9, the EBF supports the reflexions of the FATF to amend the current recommendation 9 which would help a more efficient operation by European financial institutions with regard to CDD measures.

§ 35-36. The EBF agreed in the previous consultation on the issue of Recommendation 9 addressed through the consultative forum that the delineation between third party reliance and outsourcing or agency was not always clear in the absence of legally binding definitions. More clarification on this issue would therefore be welcome.

§ 37-38. The EBF is strongly in favour of the adoption of a more flexible approach for intra-group reliance. The possibility for jurisdictions to be encouraged to require AML/CFT at the group level that applies to all entities within the group instead of applying it at institution level would be welcome.

5. TAX CRIME AS A PREDICATE OFFENCE FOR MONEY LAUNDERING

§40 The EBF generally warns against the extension of the list of predicate offenses, which creates heavy costs and burdens for the industry, and even more importantly dilute efforts to focus on the fight against serious crimes.

EBF position on FATF consultation paper- Review of the Standards

Although we acknowledge the need to fight against all types of crimes, including tax crimes, we are of the opinion that, it may prove difficult to prevent tax crimes by adding those offence categories as predicate offences for money laundering. The transactions related to the laundering of the proceeds of tax crime would have to be reported as suspicious transactions. But in the stage of the transaction, it is not necessarily obvious if there is a tax crime or not. Even the clarification by the customer about the nature of the transaction together with a confirmation by the customer that the transaction will not be used to commit a tax crime offence and he/she will duly pay taxes in the respective country may not be sufficient to clarify the existence of a tax crime offence. One has to keep in mind, that a tax declaration is typically due months or even years after a transaction took place. In fact, the bank cannot exclude or check a tax crime at the time a transaction is processed. Furthermore, not each transaction connected with a low-tax country may be suspicious.

Another major issue concerns the definition of a tax crime, which could be very different from one country to another. This is even more important in the context of cross-borders transactions.

As a result we do support the fight against tax crime, but the designation as a predicate crime would lead to enormous practical difficulties for banks to implement a fitting regime. Only a tax crime with a high range of punishment (serious tax crime) shall therefore be treated as underlying crime falling under the auspices of the present set of requirements.

EU credit institutions would therefore recommend more clarity on the issue of tax crime including in relation with the fulfilment of suspicious transactions reports in case of serious tax crime. The FATF typology report would be an appropriate tool in this respect.

6. SPECIAL RECOMMENDATION VII AND ITS INTERPRETATIVE NOTE

§47. As stated in the FATF decision of 2008² and confirmed by the Basel Committee in its guidance of May 2009³, "The European Union (EU) and the European Economic Area (EEA) are considered here as one jurisdiction". It is of utmost importance from a European banking and payments perspective that the EU continues to be clearly recognised as a single jurisdiction.

The FATF should in particular take note of the fact that the European financial sector has taken substantial steps to establish the Single Euro Payments Area (SEPA) which, once fully operational will account for the bulk (if not the whole volume) of EU payments. SEPA will solve some of the most pressing issues addressed in the proposed FATF amendment as far as the EU as a single payments area and jurisdiction is concerned.

Amendments to Special Recommendation (SR) VII and its Interpretative Note (INSR) should consequently avoid an overly detailed approach and be focused more on general principles.

² See note to assessors under criteria VII.3 of FATF methodology p.54: <http://www.fatf-gafi.org/dataoecd/16/54/40339628.pdf>.

³ Basel Committee on Banking Supervision's document "Due diligence and transparency regarding cover payment messages related to cross-border wire transfers" of May 2009, § 11

EBF position on FATF consultation paper- Review of the Standards

Requiring additional beneficiary information would appear quite difficult from a practical, point of view. The proportionality and usefulness – with regard to the purpose envisaged by some members of the FATF – of requiring further information on the beneficiary is also questioned.

In addition, the EBF believes that requiring additional beneficiary information is not an efficient contribution to the prevention/detection of AML/CFT. It will only lead to additional costs, without any real benefits.

The EBF would therefore recommend a cautious approach on this very complex issue. A thorough and intensive discussion with all stakeholders is needed to ensure a smooth functioning of the global payments system. The FATF has to take into consideration that imposing additional compliance burden on intermediary financial institutions such as checking against sanctions list could make the process inappropriately expensive, seriously slowdown the global system and eventually jeopardize its effectiveness.

7. OTHER ISSUES INCLUDED IN THE PREPARATION FOR THE 4th ROUND OF MUTUAL EVALAUTIONS

§51-53. The EBF took note of the paragraphs on international cooperation, which appear to be in a preliminary stage. It is therefore premature for the EBF to comment, although we already would like to call for a cautious approach, especially when considering a waiver on the double incrimination requirement as this may also have wider impact such as on the rights of the defendants.

8. USEFULNESS OF MUTUAL EVALUATION REPORTS

EBF members and member banks confirmed the usefulness of FATF reports, in particular the typology reports that facilitate the tasks related to compliance.

However, more transparency would be welcome for the list of countries that adequately/inadequately implement FATF standards: a typology table could for instance indicate the criteria needed for a country to be put on the list or not.

The FATF Mutual Evaluation Reports provide useful indicators for the internal risk assessments of financial institutions. Reports are, however, not always clearly formulated and often too long to be really useful.

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European Banking Industry Committee

European Banking Federation (EBF) • European Savings Banks Group (ESBG) • European Association of Cooperative Banks (EACB) European Mortgage Federation (EMF) • European Federation of Building Societies (EFBS)
European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)
European Association of Public Banks (EAPB)

Brussels, 7 January 2011

EBIC RESPONSE TO THE FATF CONSULTATION PAPER ON THE REVIEW OF THE STANDARDS- PREPERATION FOR THE 4TH ROUND OF MUTUAL EVALUATIONS

The European Banking Industry Committee brings together European banking associations with a mandate to provide advice, assure a comprehensive consultation of market participants and ensure a representative view of the European financial industry.

EBIC has been established by the main banking industry federations: the European Banking Federation (EBF), the European Savings Banks Group (ESBG), the European Association of Cooperative Banks (EACB), the European Mortgage Federation (EMF), the European Federation of Building Societies (EFBS), the European Federation of Finance House Associations (Eurofinas)/ the European Federation of Leasing Company Associations (Leaseurope), and the European Association of Public Banks (EAPB).

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First of all, EBIC would like to thank the FATF for the constructive dialogue during the FATF Consultative Meeting with the private sector on 22 and 23 November 2010 in Paris. EBIC welcomes the opportunity to comment on the review of the FATF standards in preparation of the 4th round of mutual evaluations.

We appreciate some of the pragmatic proposals made by the FATF, such as on intergroup reliance of third parties and clarifications made on the Risk Based Approach as well as the efforts undertaken to improve mutual evaluation reports. However, EBIC would like to warn against the general tendency to impose on the private sector, what public authorities are struggling or are unable to provide such as a lists of relevant Politically Exposed Persons, clear information on the Beneficial Ownership (BO) of companies or actionable information on emerging threats such as tax crime. Furthermore, any proposals for new checking requirements on financial transactions should take into consideration technical limits of current international payment systems and should be subject to a thorough cost -benefit analysis before being adopted.

Please find here more specific comments on the issues addressed in the Consultation Paper (CP) dated October 2010.

1. Risk Based Approach

Concerning the Risk Based Approach (RBA), EBIC would like to stress that the RBA has proved to be the most efficient approach. Thanks to the RBA, financial institutions' AML/CFT risk analysis benefits from a more focused search for risky transactions and/or customers. EBIC welcomes that the FATF recognises under no. 17 CP that a "one-size-fits-all" approach is not necessary, especially since the 40+9 Recommendations apply to different sectors with their specificities. In order to emphasize the importance of the risk based approach we, therefore, propose to insert this statement – with some adaptation – at a prominent place right at the beginning of the section and preferably after the first sentence of no. 15 CP.

Moreover, the FATF phrasing on the Risk Based Approach should make clear as stated by the Secretariat during the meeting on 22 November that the scope will not go beyond mere clarification and not introduce more detailed rules on the Risk Based Approach. Therefore, EBIC would welcome a clear endorsement of the Risk Based Approach. In particular, the listing of examples of ML/TF risk factors and simplified and enhanced Customer Due Diligence (CDD) measures carry the risk of becoming hard and static indicators in the eyes of regulators. It is, therefore, important that they remain examples and that they are not generalised and their use as indicators prescribed on a compulsory basis.

2. Recommendation 5: Identification and verification of customers and beneficial owners of legal persons and arrangements

The proposed amendments of the FATF concerning the identification and verification of customers and BOs of legal persons and arrangements in no. 19 et seq. CP unfortunately do not seem to specify or – at least – clarify the measures financial institutions need to undertake to identify the real controlling ownership structure. EBIC believes that the EU Standard should be used as a benchmark at international level. European financial institutions widely apply a risk based approach and the EU threshold of 25 % is helpful as an objective criterion, thus giving a clearer and appropriate picture concerning control from a company law perspective.

As discussed at the FATF consultative meeting in Paris in November the extension of beneficial ownership to "mind and management" structures and even beyond this to external advisers is impractical. The Management has generally a different – more short term/day to day – type of control. This has to be differentiated from ownership in a more

legal sense as the current understanding is in many countries. The identity of CEOs` and authorised representatives is often verified and documented based on their role as executive officers. These two different approaches should not be mixed up. To identify external advisers of customers is generally impossible for banks.

Furthermore, it should be recognized that a financial institution's ability to identify the BO without an explicit statement/ agreement of the legal person representative is limited and therefore, based on whatever reliable information is available to the financial institutions. EBIC would like to stress that for financial institutions to be able to focus on high risk cases the key element consists in relying on public authorities to provide sufficient information for verifying the BO of clients. Issuing harmonised FATF guidelines for the inclusion of relevant and updated information concerning BO in public registries pursuant to the provisions of the national AML/CFT regimes of FATF member jurisdictions would be extremely helpful for financial institutions in discharging their BO identification obligations.

3. Recommendation 6: Politically Exposed Persons

With regard to Politically Exposed Persons (PEPs) EBIC generally agrees with the proposal of FATF to have an approach as outlined in no. 29 CP. Furthermore, we welcome the recognition of the fact that there is a higher level of risk attached to foreign PEPs and that a risk based approach should be taken concerning domestic PEPs. While a rule-based approach is detrimental to the efficient fight against money laundering and terrorism financing it would be useful to have more specific information on objective risk criteria. This would include lists of PEPs.

4. Recommendation 9: Third Party Reliance

EBIC welcomes the approach of the FATF in no. 36 CP to delineate what constitutes third-party reliance through a functional definition by proposing a set of positive or negative elements which describe situations that are characteristic of a reliance context. Moreover, EBIC commends the proposed pragmatic approach of the FATF for reliance where the third party is part of a financial group. This would greatly enhance the flexibility, effectiveness and quality of the CDD process as well as the AML/CFT compliance framework. Reliance should take place based on the Group AML Policy and procedures, in accordance with national (i.e. home country) legislation. A possible element envisaged in such procedures would be the issuance of a "Group Certificate" by a Group Member which has performed the CDD process, upon which all other Group members could rely.

5. Recommendation 1 - Tax crime as predicate offense

EBIC generally warns against the extension of the list of predicate offences as proposed in no. 39 et seq. CP, which creates additional administrative burden and associated heavy costs for the industry. Necessary internal monitoring, research and investigations to combat tax crimes and any other emerging threats cannot be carried out without proper access to hard and reliable information/intelligence from governmental authorities. It is important that financial authorities fulfil their role in detecting and identifying emerging threats. A clear definition of the offence/crime is crucial for the efficient functioning of financial institutions' AML/CFT compliance procedures and operations. Operational difficulties to identify tax crime should be considered, such as the time lapse between a suspicious transaction and the tax payment or the difficult distinction between tax avoidance and evasion. Although we doubt that the AML/CF framework of financial institutions would be the appropriate framework to combat tax crime, those institutions should only be required to focus on serious tax crimes.

6. Special Recommendation 7: Transparency of cross border wire transfers

From a European banking and payments perspective we emphasise that the EU must be clearly recognized as a single jurisdiction as stated in the para. 11 of the Basel Committees guidance dated May 2009. This is of fundamental importance and is one of the defining features of the European Union. In particular the FATF should take note of the fact that the European financial sector has taken substantial steps to establish SEPA which will be fully operational by 2014 and will then account for the bulk (if not the whole volume) of EU payments (based on a EU-Regulation on SEPA). SEPA will solve some of the most pressing issues addressed in the proposed FATF amendment as far as the EU as a single payments area and jurisdiction is concerned

We suggest that any amendments to Special Recommendation (SR) VII and its Interpretative Note (INSR) proposed by the FATF should avoid an overly detailed approach and be focused more on general principles. Moreover, we believe that any amendment to SR VII and the INSR should take into account that

- intermediary financial institutions (FIs) are not in the position to check the correctness of the accompanying information (concerning originator and beneficiary)
- verification of beneficiary information by the originator/ordering FI (OFI) or even intermediaries is by no means possible and
- within the jurisdiction of the EU only sanctions lists published by the United Nations (UN) Security Council and transposed by the EU institutions into EU law (regulations) or autonomously set by the EU are regarded as legally binding.

EBIC cautions the FATF not to proceed on this very complex project with undue haste. It is imperative to conduct a thorough and intensive discussion with all stakeholders and develop a measured and balanced approach to the issue so that a smooth functioning of the global payments system is ensured. Imposing additional compliance burden on intermediary FIs such as the obligation to check against sanctions lists and to ensure a “CDD loaded” processing of wire transfers (with regard to accompanying originator **and** beneficiary information) along the payment chain (as discussed at the Consultative Meeting) would make the process inappropriately expensive, seriously slowdown the global payments system and eventually jeopardize its effectiveness.

7. Other issues/ Usefulness of Mutual Evaluation Reports

Concerning the list of countries that adequately/inadequately implement FATF standards, EBIC calls for more transparency regarding the listing and delisting procedures for countries within the mutual evaluation and the post-evaluation monitoring process. Especially, a typology table should clearly indicate what factors lead to a country being put on the list or not. This is very important, in light of increasing legal references to this FATF list, for example in the pending EU legislation of Alternative Investment Funds.

The FATF Mutual Evaluation Reports can provide useful indicators for the internal risk assessments of financial institutions. Reports are, however, not always clearly formulated and often too long to be really useful. Therefore, an aggregated table reflecting the relative rankings of mutually evaluated FATF Member States and the progress achieved over time by those Member States that were initially awarded a less favourable ranking would represent an additional and very valuable tool for financial institutions to evaluate the AML/CFT specific country risks of their business operations in different jurisdictions. Moreover, FATF should clearly distinguish between FIs’ and Public Authorities’ level of compliance with FATF standards in order to be useful for financial institutions risk assessment.

POSITION PAPER



ESBG Response to the FATF Consultation on the revision of its Standards, the 40 + 9 Recommendations on Money Laundering and Terrorist Financing

European Savings Banks Group Register ID 8765978796-80

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PRELIMINARY REMARKS

The European Savings Banks Group (ESBG) welcomes the opportunity to comment on the review of the FATF standards (the 40 + 9 Recommendations), in preparation of its 4th round of mutual evaluations. In this respect, ESBG wishes to thank the FATF for the open and pragmatic dialogue that was held during the 22 and 23 November FATF Consultative Forum in Paris, which allowed the different stakeholders to provide their preliminary views on the revision of the standards.

ESBG welcomes the ultimate objectives of the revision of the standards, namely the safe-guarding of stability in the standards while addressing new emerging threats, deficiencies and loopholes in the current text. ESBG agrees that the review of the standards has to be conducted in an open and transparent manner, so as to ensure adequate consideration of all the views of the various stakeholder groups.

After careful assessment of the Consultation Paper issued by the FATF, ESBG considers as very positive some of the proposals made by the FATF, namely the future focus on improving mutual evaluation reports, the more flexible approach concerning intra-group reliance, and further clarification regarding the Risk-Based Approach. Nonetheless, ESBG wishes to issue the following specific comments regarding the topics addressed in the Consultation paper, dated October 2010.

The Risk-Based Approach

ESBG welcomes a clear endorsement of the Risk-Based Approach (RBA), as it is widely recognized as the most efficient approach, allowing financial institutions to undertake a more targeted search for risky transactions and/or customers. ESBG also welcomes that the FATF already notes under no. 17 of the Consultation Paper (CP) that a “one-size-fits-all” approach is not necessary, since the 40 + 9 Recommendations apply to different sectors with their specificities. We believe that the FATF should enhance this statement by placing it, for example, at the beginning of the section of the RBA (after paragraph 15).

ESBG welcomes as well that the FATF points out that the future statement on the RBA will seek to clarify the RBA, refraining from introducing more detailed rules on this approach. We refer here to the list proposed by the FATF in its CP on Money Laundering/ Terrorist Financing risk factors and simplified and enhanced Customer Due Diligence (CDD) measures of no 16. It is our belief that this list could be seen by regulators as static indicators. Thus, we encourage the FATF to clarify that this list remains as a list of examples, avoiding any generalization that may lead to applying them on a mandatory basis.



2. Recommendation 5: Identification and verification of customers and beneficial owners of legal persons and arrangements

With regards to the identification and verification of customers, ESBG proposes that the EU standard is used as a benchmark at international level. European financial institutions widely apply a risk-based approach and the EU threshold of 25% is helpful as it provides a clear and appropriate picture concerning control by a company. Moreover, the proposed amendments by the FATF concerning the identification and verification of customers and beneficial owners of legal persons do not seem to sufficiently clarify the measures financial institutions need to identify the real controlling ownership structure.

As regards the BO identification and in order for financial institutions to be able to target their efforts on high risk cases, financial institutions should be able to rely on public authorities' help to provide sufficient information for verifying the BO of clients. In this respect ESBG welcomes that the FATF issues harmonized guidance for the inclusion of relevant and updated information concerning BO in public registries, pursuant to the provisions of the national AML/CFT regimes of FATF member jurisdictions.

3. Recommendation 6: Politically Exposed Persons (PEPs)

ESBG welcomes the FATF proposal as outlined in no. 29 of the Consultation Paper. Indeed Foreign PEPs pose a higher level of risk, thus the FATF requirements related to those should remain as they stand. As regards domestic PEPs, ESBG welcomes a risk-based approach and agrees that financial institutions should be required to take reasonable measures to determine whether a customer is a domestic PEP. Should the customer be a domestic PEP (for the purpose of the FATF approach, the EU should be treated as one country) and should there be a higher risk, ESBG welcomes that enhanced CDD measures are adopted. Although a rule-based approach is not the way forward to adequately carry out the fight against money laundering and terrorist financing, it would be indeed helpful to have more information on objective risk criteria. In this respect, ESBG would welcome that financial institutions are provided with lists of Politically Exposed Persons (PEPs).

4. Recommendation 9: Third Party Reliance

ESBG welcomes the FATF proposals in no. 36 of the Consultation Paper, to delineate what constitutes third-party reliance through a functional definition by proposing a set of positive or negative elements which describe situations that are characteristic of a reliance context.

As regards the proposed approach for reliance where the third party is part of a financial group, ESBG believes that this is the way forward, as it will improve the flexibility, effectiveness and quality of CDD processes and the AML/CFT compliance frameworks. In this respect, the strictest national legislation and a Group AML policy and procedures shall determine how reliance will take place. In order to facilitate such a process, a "Group Certificate" could be issued by a Group Member which has performed the CDD process, and upon which all other Group Members could rely.



5. Recommendation 1 – Tax crime as predicate offense

ESBG certainly supports the objective of combating fiscal criminality. However ESBG cannot but recommend that such criminal offenses would be best addressed both upstream and downstream of the payment system by policy makers, legislators, and police authorities, notably by taking decisive actions with regards to the usage of cash both as payment instrument and store of value.

6. Special Recommendation 7: Transparency of cross border wire transfers

The thrust of the FATF's approach is to “increase the transparency of cross border wire transfers” (including serial payments and cover payments) by mandating financial institutions to perform additional steps with respect to:

- a) beneficiary information
- b) screening wire transfers against financial sanctions lists

It must first be stressed again that for the purpose of this response the Member States of the European Union (and the countries linked to it by the EEA agreement) are to be considered as a single jurisdiction, to the effect that any transaction between an originator and a beneficiary holding accounts in 2 different States is a domestic transaction and thus exempt from dispositions related to cross-border wire transfers.

Second it must be recognized that this is a classical case of balancing security and efficiency. Therefore the principle that the financial institution maintaining either the originator or the beneficiary account, and thus already holding or having access to the relevant information, must be responsible for performing the required checks must be acknowledged.

With respect to the FATF proposal regarding beneficiary information, this means that the beneficiary financial institution holds responsibility for performing the required checks. The originator financial institution may not be obliged to more than ensuring that beneficiary details to execute the transaction are present, and that they are not grossly implausible. Such beneficiary details may vary as a function of payment schemes, banking practices, and legislation, so that no finite list should be imposed by the FATF.

With respect to the FATF proposal to screen all wire transfers against financial sanctions lists, it can be supported provided the obligation applies to either the originator or the beneficiary institution, as the case may be, and not to intermediary institutions.

ESBG would like to stress again that it is essential that the FATF continues to allow for a de minimus threshold under which transactions would be exempt from the obligations of Special Recommendation VII and its Interpretative Note. This de minimus threshold is of particular importance in order to prevent that originators of worker remittances (or: “international remittances”) are further disincentivised from using formal remittance channels as opposed to informal channels – the latter without doubt generating the bigger risks, also from an FT and ML perspective.



However, in order to ensure a level playing field, obligations set by the FATF for financial institutions should apply in the same way to other institutions where and when the latter are executing the payment transactions in scope in lieu of a financial institution.

7. Usefulness of mutual transaction reports

As regards the list of countries that adequately or inadequately implement the FATF standards, ESBG wishes to encourage the FATF to introduce more transparency concerning the listing and delisting procedures for countries within the mutual evaluation and the post-evaluation monitoring process. In this respect, a typology table should indicate in a clear manner which factors determine whether a country is included on the list. Given the increasing references to the FATF list in emerging EU legislation, we consider this matter of utmost importance. The FATF report can, if formulated clearly enough, provide useful indicators for the internal risk assessment of financial institutions. ESBG would welcome more clarity in the issuing of these reports, and more precisely that the FATF clearly differentiates whether the reports refer to financial institutions' or Public Authorities' level of compliance.

In addition, ESBG would like to recommend the setting up of a certification process for mutual recognition. This task would be undertaken by an Independent Review Board, in charge of defining the principles for mutual recognition and of seeing whether countries engage in this exercise of mutual recognition.

8. Other issues

ESBG would like to reiterate its support to the EBIC (European Banking Industry Committee) contribution to the FATF Consultation on the revision of its standards.

In addition, ESBG would like to mention that its sister organization, the World Savings Banks Institute (WSBI) will provide a specific contribution to the FATF regarding the financial inclusion aspects of the AML/CFT framework, specifically the Guidance initiative.



About ESBG (European Savings Banks Group)

ESBG (European Savings Banks Group) is an international banking association that represents one of the largest European retail banking networks, comprising about one third of the retail banking market in Europe, with total assets of over € 6.000 billion, non-bank deposits of € 3.100 billion and non-bank loans of € 3.300 billion (all figures on 1 January 2009). It represents the interests of its members vis-à-vis the EU Institutions and generates, facilitates and manages high quality cross-border banking projects.

ESBG members are typically savings and retail banks or associations thereof. They are often organised in decentralised networks and offer their services throughout their region. ESBG member banks have reinvested responsibly in their region for many decades and are a distinct benchmark for corporate social responsibility activities throughout Europe and the world.



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FEDERATION
BANCAIRE
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FBF ANSWER TO THE FATF CONSULTATION ON STANDARDS REVISION

The French Banking Federation (FBF) represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorised as banks and doing business in France, i.e. more than 500 commercial, cooperative and mutual banks. They employ 500,000 people in France and around the world, and serve 48 million customers.

First of all, the FBF welcomes the opportunity given by FATF to give its views on the different aspects contained in this consultation regarding the review of the Standards – preparation for the 4th round of mutual evaluations. Moreover, the FBF would like to emphasise that French Banks are committed to support all initiatives which will help to keep the integrity and soundness of the whole financial system and protect it against money laundering and terrorist financing.

The risk based approach:

The FBF is in agreement with the FATF proposal of developing a single comprehensive statement on the risk based approach (RBA), which could be incorporated into the FATF Standards to gather all the risk based approach elements in one single place. The clarification given to financial institutions on the obligations and decisions making are also welcome.

Recommendation 5:

The FBF would appreciate to be consulted on the list of examples of lower/higher ML/TF risk factors as well as examples of simplified/enhanced CDD measures, even though we understand those examples have already been presented by FATF in various documents.

On our view, it is unnecessary to create a new concept of “Risk Variable” to express the fact that the level of risk may vary during the time of the business relationship. This could be done by a simple assessment.

The meaning of the terms “mind and management” are not clear and need to be clarified. To meet the enhanced obligations to verify the identity of the natural persons who ultimately have a controlling ownership interest, financial institutions need to have access to reliable and up to date national registers where companies supply that kind of information.

Recommendation 6:

The FBF approves the strengthening of the fight against corruption and the enhanced scrutiny on both domestic and foreign PEPs, as it is described in the paper, i.e. that foreign PEPs are always considered to be higher risk and to require, on a risk based approach, enhanced CDD measures for domestic PEPs only if there is a higher risk. However, we would like to raise the difficulties for financial institutions to determine what reasonable measures they should take to determine whether a customer is or not a domestic PEP. This situation could lead to a troublesome situation where a person would be qualified as a PEP by a financial institution and not by another one.

The quality of the list which are neither complete nor accurate but that financial institutions need to buy on the market to check their data base against the PEPs list is a subject of concern and raise some data protection issues, which will be emphasis by the inclusion of domestic PEPs.

The FBF fully support the reviewing of the obligation with respect to family members and close associates of PEPs which will limit the obligation to situations where a family member or close associate has a business relationship with a financial institution and a PEP is the beneficial owner of the funds involved in such a relationship.

Recommendation 9:

The FBF is positive about the proposal to better delineate what constitutes third party reliance, even though the criteria are not accurate in all situations. For example, mainly in cases involving brokers, a third party may not have an existing business relationship with the customer, but start its relationship with the transaction for which it act as third party reliance.

The FBF also approves the widening of the scope of recommendation 9 to intra group reliance and the new flexibility given to branches and majority-owned subsidiaries reliance and also the opening of the scope of recommendation 9 to entities which are based in countries that do not adequately comply with the FATF standards.

Tax crime as a predicated offence for money laundering:

Tax crime is already included in the scope of the French legislation. However, the FBF would recommend to limit it to large and major tax offences in order not to flowed the FIU with inadequate suspicious transaction reports.

Special recommendation VII and its interpretative note:

Extending the current situation to the serial payment as it is provided by the guidance issued by the Basel Committee on Banking supervision in May 2009 related to the cover payment message format is of the full agreement of the FBF. Financial institutions are in a position to filter cross border wire transfers to check that the originator information are complete and we sustain the proposal of requiring intermediaries and beneficiary financial institutions to ensure that all originator information accompanying a wire transfer is transmitted with the wire transfer.

However, the FBF do not support extending the SRVII requirements to the beneficiary information. Financial institutions are not in a position to verify the beneficiary identification information since they do not have that information. It is very different to check the accuracy of information than the simple filling of specific fields in a wire transfer. Moreover, we do not see the added value of adding beneficiary information: the FBF consider that the cost/efficiency ration is not proportionate, that the efficiency of such measures to fight money laundering and/or terrorist financing is not demonstrated. The FBF is also strongly against the duplication of controls, which is costly and useless.

The FBF would suggest that the FATF explain clearly its objective and why such beneficiary information are needed specifically as FATF paper recognize that the main information, the beneficiary identification information are not in the hand of the ordering financial institution that only request an account or identification number to execute the transaction.

The new obligation to screen wire transfers against financial sanction list contemplated by FATF raise a legal ground concern if, as the FBF understood the paper, all the lists are included in the scope of the obligation, even the national list. The FATF should also consider the fact that a customer could take legal action for damaged against a financial institution that suspended or rejected a transfer on the ground of a sanction list published by a third country. To be efficient, a list shall be international and the FBF would support an international list that would be agreed between all countries or at least all FATF compliant countries.

Other issues:

The FBF requested the FATF to consider the enhance cooperation between FIUs, our main objective being to enable financial institutions to report an international transaction only in one country and to avoid specific request from FIUs for information that have already being reported to the national FIU.

Consolidated Response from Financial Institutions in China to FATF` s public consultation on the Standards for the 4th Round of Mutual Evaluation

With a view to assisting financial institutions in China with understanding the FATF` s initial consideration of the Standards for the 4th round of ME, and receiving full range of opinions from them, the People` s Bank of China (PBC) got the FATF consultation paper translated and distributed to major players in the Chinese financial market and asked for their comments. Based on what have been received, the PBC hereby provide the following consolidated opinions and concerns commonly shared by consulted financial institutions:

- **RBA**-Financial institutions welcome incorporation of the Risk Based Approach in the Standards, which will enable more effective distribution of limited AML/CFT resources.
- **CDD of legal persons and legal arrangements** - Financial institutions are of great concern on the proposed enhanced requirements for financial institutions to identify legal persons and legal arrangements. Due to the absence of effective means to obtain necessary information, they have great difficulty in understanding legal persons and legal arrangements` ownership and control structure, especially in identifying their “mind and management”.
- **Domestic PEPs**- All consulted financial institutions express their concern on the proposal of expanding the definition of PEP to include domestic PEPs. Given the current situation in China, financial institutions expect great difficulties in implementing the new Rec 6 as proposed in the consultation paper.
- **Beneficiary of life insurance**- According to the proposed Standards, financial institutions are required to identify not only the beneficiary of life insurance, but

also the beneficial owner of the beneficiary of life insurance. Financial institutions have common concern on the latter part of the new requirement, i.e., identification of beneficial owner of the beneficiary. In their view, they need to obtain information of potential beneficial owner from the beneficiary with whom financial institutions do not have any business relationship, which make it more difficult to identify beneficial owner of a beneficiary than beneficial owner of a customer.

- **Tax crime as a predicate offence for ML-** According to some of the financial institution consulted, in order to determine whether there is a suspicion of the customer`s involvement in tax crimes, they have to understand the financial status of a customer to an extent more than reasonable and feasible. With a view to helping financial institutions in identifying STRs related to tax crimes, it is proposed by them that the FATF conducted typology study in this regard and provide guideline if appropriate before it added tax crime to financial institutions` reporting obligation.
- **Responses to the questions related to SR VII-** Most of financial institutions consulted are reluctant to support the proposal of requiring more beneficiary information from originating financial institutions, since the originating institutions can hardly verify those information if the beneficiary himself/herself was not a customer of the originating institutions. Some others have another concern on the potential conflict with data protection laws and regulations if additional information is asked by financial institutions abroad.

Dear FATF Secretariat,

The FFSA welcomes the efforts of the FATF advancing global standards for combating money laundering and terrorist financing. We acknowledge the importance of the review of the standards ensuring that anti-money laundering and counter-terrorist financing standards are effective while identifying any shortcomings of the current standards.

Please find our comments outlined below:

The risk based approach (RBA)

The FFSA appreciates that measures to manage risk associated with new technologies and non-face-to-face business should be risk-based. However, we do not support that non-face-to-face business relationships and transactions, including new technologies should be a risk factor.

Concerning the beneficiary, the FFSA welcomes defining "beneficiary" of a life insurance policy as a standalone concept but recommends the FATF to take into account the specific characteristics of the insurance sector. Moreover, regarding the proposal that "where there is a class of beneficiary", insurers should obtain sufficient information concerning the beneficiary", the FFSA stresses that it is very difficult for insurers to obtain this information which can vary until the time of payout.

Recommendation 6: Politically exposed persons (PEPs)

The FFSA is not supportive including domestic PEPs in the current regime. It should be taken into account that domestic PEPs are more numerous than foreign PEPs. Such a proposal would lead to a huge increase of the costs and administrative burden. Currently, domestic PEPs are taken into account within the framework of the RBA. The FFSA believes that current CDD measures are sufficient and that the RBA is enough to detect unusual situations.

Recommendation 9: Third party reliance

The FFSA welcomes the proposed changes as they could improve the current state of affairs and provide greater flexibility in determining third party reliance scenarios.

Furthermore, we highlight that the FATF approach with regards to reliance where the third party is part of a financial group might lead to inconsistency across national legislations. It should be clarified that financial institutions don't have to control the third party. In case where there would be such obligation, the distinction between outsourcing and third party will be impossible.

Best Regards,

Direction des Affaires Juridiques, Fiscales et de la Concurrence

7 January 2011

FATF Secretariat
2 rue Andre Pascal
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FRANCE

Via email: fatf.consultation@fatf-gafi.org

Dear Sir/Madam,

THE REVIEW OF THE STANDARDS – PREPARATION FOR THE 4TH ROUND OF MUTUAL EVALUATIONS ('the Review')

The Financial Services Council (**FSC**) welcomes the opportunity to provide comment on behalf of its members in response to FATF's review of the 40 + 9 Recommendations leading up to the 4th round of mutual evaluations (**Consultation Paper**).

The FSC is the peak body representing Australia's retail and wholesale funds financial services industry for funds management, superannuation, life insurance and financial advice business. The FSC has over 125 members that are responsible for investing more than \$1.4 trillion on behalf of Australian investors.

The FSC endorses the comments made by the Australian Bankers' Association in its submission to the Review. We also note that the Review has made a particular reference in the Consultation Paper to Life insurance policies (sections *2.3 Life insurance policies* and *3.2 Beneficiaries of life insurance policy*) and the issue of beneficiaries of life insurance and other investment related insurance policies. We make the following additional comments in relation to those references.

The Review appears to be considering customer due diligence requirements for both life insurance and investment related insurance policies but has not sought to distinguish the policies in its discussion. In the Australian regulatory context, risk-only life insurance products that do not have a prescribed minimum surrender value are exempted from the AML/CFT requirements of Australian law. The need to include pure risk products in the AML regime was robustly considered at the time the Australian AML legislation came into effect in the jurisdiction. It was accepted by the Government that the exercise of AML checks in respect of pure risk products would not enhance to any worthwhile degree the efforts towards limiting AML activity.

Life risk insurance products present minimal money laundering risk. Significant value can only be extracted from a life risk product at the expense of the financial institution issuing the product. While some form of money laundering may be theoretically possible, the steps and time required to launder money using these products is likely to greatly impair their utility from a launderer's perspective. Such products only pay on the occurrence of a contingency and it is commercially imperative for the insurer to ensure that claims against it are genuine and not manufactured, fraudulent or for an illegal purpose.

With regard to the discussion of beneficial ownership in sections *2.3 Life insurance policies* and *3.2 Beneficiaries of life insurance policy* of the Consultation Paper, we further endorse the strong concerns that the implementation of FATF's proposed requirements for beneficial ownership would impose disproportionately burdensome obligations on financial institutions in addition to that already in place, and would come at a great cost to industry, with no measurable benefit in increased ML/TF detection. In an Australian context any regulatory change must be

supported by a regulatory impact statement. The primary purpose of a regulatory impact statement is to ensure that the economic and social costs and benefits of regulatory proposals are examined fully so that Ministers proposing regulations and members of the community can be satisfied that the benefits of the regulations exceed the costs. The case is not made in the Consultation Paper and no consideration is provided of the potential impacts of the proposed checks.

In summary, the FSC endorses the comments made by the Australian Bankers' Association in its submission to the Review and, in particular, does not support any proposal to introduce CDD measures for requiring the identification and verification of the identity of beneficiaries of life insurance policies.

Should you require any additional information or wish to discuss our submission, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. O'Reilly', with a stylized flourish at the end.

DAVID O'REILLY
General Counsel

Dear Sirs,

As requested in the FATF consultation paper, please find below our comments on The Review of the Standards – Preparation for the 4th Round of Mutual Evaluations, specifically concerning the Special Recommendation VII and its interpretative note.

<p align="center">FATF Consultation Paper: Request for private sector input</p>	<p align="center">Caixa Geral de Depósitos, SA Response</p>
<p>Financial institutions require accurate information on beneficiary names in order to process a transaction?</p>	<p>Accurate information on beneficiary names is not required as this information is not validated in order to process a (wire) funds transfer.</p>
<p>Would it be feasible and useful, in managing the ML/FT risks associated with the beneficiary party, for financial institutions to have additional beneficiary information (i.e. for the purpose of detecting suspicious activity and screening prohibited transactions)?</p>	<p>It is deemed probable that additional beneficiary information would be useful. However this is likely to increase the administrative burden which could impact negatively on the feasibility, and consequently cause significant loss.</p>
<p>What additional beneficiary information could be required that would be feasible, useful to financial institutions, practical for originating parties, and proportionate so as not to push transactions underground?</p>	<p>The beneficiary's name, address, place and date of birth would be useful information. Again the feasibility could be affected due to the additional administrative procedures required to obtain the information and to manage the process. It would also be difficult to estimate when the extent and type of information requested becomes disproportionate.</p>
<p>Do financial institutions screen all wire transfers?</p>	<p>No. Certain exceptions must be taken into account, such as SEPACT transfers, and others which are based in special protocols.</p>
<p>What financial institutions do if they get a hit?</p>	<p>No comments.</p>
<p>If beneficiary information were included in the payment message, how the current process might differ with respect to hits on beneficiary information as opposed to hits on originator information?</p>	<p>An increase of false positives would be expected. We would have to find procedures to obtain relevant data to complete the analysis of the hit. Again, this is likely to increase the administrative burden which could impact negatively on the feasibility, and consequently cause significant loss.</p>
<p>When screening wire transfers, whether financial institutions detect incomplete data fields and, if so, how they respond when incomplete data fields are detected?</p>	<p>In this matter, our institution implemented Regulation (EC) No 1781/2006, which demands financial institutions to screen incomplete data fields regarding originator information.</p>

Best regards,

GFC - Gabinete de Suporte à Função Compliance – NFC-2

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January 7, 2011

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Re: Consultation Paper: The Review of the Standards - Preparation for the 4th Round of Mutual Evaluations

Dear FATF Secretariat:

Introduction

On behalf of the undersigned insurance associations, please accept this joint submission in response to the FATF's Consultation Paper titled "*The Review of the Standards - Preparation for the 4th Round of Mutual Evaluation*" issued in October 2010.

These associations represent the insurance business in North and South America and Europe and reflect the views of the majority of the insurance industry with respect to these important matters.

We welcome the efforts on the part of the FATF to advance global standards for combating money laundering and terrorist financing. We would furthermore like to acknowledge the importance of this review in ensuring that current anti-money laundering (AML) and counter-terrorist financing (CTF) standards are effective while identifying any shortcomings and any new or emerging threats.

We commend the FATF Secretariat for this comprehensive paper and the proposals that flow from it. Please find our comments outlined below.

The Risk-based Approach or RbA

Insurers around the world strongly believe that appropriate risk-based flexibility should remain a core principle of all AML efforts and the FATF Recommendations so that resources (of both supervisors and insurers) can be allocated in the most efficient ways to address the most pressing risks of the global AML/CTF standards. The industry very much appreciates the listing of examples of enhanced customer due diligence (CDD) for higher risks, and simplified CDD measures for lower risks. It is of crucial importance for effectiveness as well as efficiency that a flexible approach to the implementation of the

RbA be adopted by all countries. We fully endorse the FATF's recognition that money laundering (ML) and terrorist financing (TF) risks can vary and that a "one-size-fits-all" approach is not necessary. We recommend that with guidance from the FATF, the worldwide implementation of the RbA, together with its core principle of flexibility, be expanded and made internationally consistent in order to avoid any wrong interpretation of the FATF Recommendations. Where national AML/CTF regimes are not aligned with the global standards, unnecessary costs are incurred by insurers.

Moreover, where monetary thresholds for lower risk are set they should be reviewed regularly by the FATF to ensure they keep up to date with inflation, currency fluctuations and international trade developments as well as other variable factors.

Beneficial Owners of Legal Persons and Arrangements

The FATFs' intention to clarify the measures that are normally needed to identify and verify the identity of customers that are legal persons or arrangements is highly welcomed. However, the FATF proposal would require insurers to obtain details of the "mind and management" of those persons who exercise ultimate effective control over the legal person or arrangement. What constitutes "mind and management" is unclear and without clarification and supporting examples it would undoubtedly vary between countries resulting in additional operating costs. Such a state of affairs is not desirable and should be avoided. Implementation needs to be consistent.

In the absence of a central government registry of legal persons and arrangements, including trusts, it would be difficult and costly for each insurer to conduct a meaningful identification and verification of the "mind and management" for the purpose of understanding, as proposed, the ownership and control structure of legal persons and arrangements.

Under this proposal, regarding "mind and management", insurers would be required to obtain information that they can neither compel customers to provide nor can they independently verify in the absence of government-instituted registries of beneficial owners of legal persons or arrangements. Government-mandated recording of such beneficial owners would make it feasible for insurers to collect this information which, otherwise (as indicated above) would be inordinately costly, and ultimately entirely ineffective, for insurers to attempt to obtain.

Life Insurance Policies

The Consultation Paper rightly states that the beneficiary of a life insurance policy cannot be considered as either a customer or a beneficial owner. We agree with the idea that "beneficiary" should be a stand-alone concept, which should be separately defined in the FATF Glossary. The following definition of a life insurance beneficiary would be appropriate for the purpose of the FATF Recommendations:

Life Insurance Beneficiary - The person who is to receive the insurance proceeds at the death of the insured person.

It should be noted that beneficiaries worldwide do not have vested rights in a life insurance policy. In consequence, they cannot "exercise vested rights" as indicated several times in the Consultation Paper.

The FATF proposes that where there is a class of beneficiaries (for instance, a specified group of heirs) insurers would be obliged to obtain sufficient information concerning the beneficiary to fulfill their AML/CTF due diligence requirements. This additional obligation would impose significant extra costs on insurers in terms of compliance burden and administrative expenses. Moreover, the information collected would be constantly subject to change with changing circumstances and would become totally irrelevant with a new beneficiary designation. We query the need for such a prescribed provision.

If a CDD requirement must apply to life insurance beneficiaries, we strongly agree with the language in paragraph 118 of the FATF RbA Guidance for the Life Insurance Sector: "Normally, and in the absence of indicators of higher risk, the anti-fraud checks regarding the identity of the beneficiary at the time of payout would be adequate." That is, this should be permitted to take place at the time of payout and, as well, normal watch for suspicious transactions during the duration of the policy while it is under the control of the owner should suffice.

Where no suspicious transactions are identified during the life of the policy, we query the need to go back and review, at significant additional costs, the entire history of the policy transactions again if the beneficiary happens to be a PEP. Life insurance policies are often in force for dozens of years, and a new beneficiary may be designated at any time – so it would require a lot of extra work to re-assess the policy owner relationship with the company. Moreover, insurers have no legal grounds on which to withhold or even unduly delay the payment to a valid and legitimate beneficiary. Of course, a suspicious activity report would be filed if suspicion arises at the time of paying out the insurance proceeds.

Pursuant to the Consultation Paper, CDD measures must be applied to "the policyholder and its potential beneficial owner". In life insurance, the policyholder is the customer transacting with the insurer. Where the policyholder is a natural person, that is an individual, the reference to the potential beneficial owner becomes confusing. Clarification of the FATF's thinking would be very much appreciated.

Politically Exposed Persons (PEPs)

The FATF proposal that insurers perform enhanced CDD measures to domestic PEPs, if there is a higher risk, does conform to the globally-accepted interpretation of the RbA. As pointed out earlier, the flexibility provided by the RbA "would allow resources to be allocated in the most efficient way to address the most pressing ML/TF risks". We fully agree with this FATF statement. Flexibility is needed for cost efficiency purposes. Compliance with the existing AML/CTF regime is already expensive.

Not all foreign PEPs are higher risk. Furthermore, since foreign PEPs in one country are domestic PEPs in another country, we are of the view that the RbA should be consistent in its application. Foreign PEPs should not be an exception to the RbA. All ML/TF risks should be assessed individually based on their own set of circumstances and merits. After all, each FATF member country is mutually evaluated using a common methodology. No country is deemed a higher risk without a proper evaluation.

With respect to new technologies and non-face-to-face business, the Consultation Paper does not predetermine higher risk situations. The RbA would be commonly applied to all situations without exceptions. The risk assessment that must be made would be entirely left to the discretion of the insurer with the flexibility to identify and mitigate risks at a level consistent with the insurer's enterprise level RbA program... As part of a common methodology, risk factors would have to be considered and the specific risks (customer, country or geographic area, and product/service/delivery channel) associated with the transaction or business relationship would have to be assessed and mitigated appropriately. The same consistency in approach should apply to PEPs whether they are foreign or domestic.

We believe such a shift in focus is not only more practical but also more cost efficient. It should be retained as an international standard.

Third Party Reliance

The added flexibility provided by the proposal pertaining to intra-group reliance and group compliance programs is welcome. We are referring, in particular, to the FATF proposal to (i) acknowledge compliance with specific standards through an AML/CTF program at the group level if certain conditions are met, and (ii) be able to rely on third parties which need not be based in countries compliant with the FATF standards if there is a group compliance program in place that is effectively supervised at the group level.

We submit that minor differences and variations in the requirements between national AML/CTF regimes should not in any way shape or form, directly or indirectly impair reliance on third parties that are part of a financial group. Differing requirements imposed at the national level would negate the benefits of operating under a group compliance program. We therefore urge the FATF to encourage countries to require financial groups

to have an AML/CTF program at the group level, which would be applicable to all branches and majority-owned subsidiaries regardless of their location in the world.

The proposed intra-group reliance is in sync with (a) the regulators' expectation that all material risks, including ML/TF risks, would be managed by financial institutions on an enterprise-wide basis, and (b) the Insurance Core Principle (ICP) 23 of the International Association of Insurance Supervisors (IAIS) regarding group-wide supervision whereby compliance at the group level would be expected.

Where insurers rely on a third party in scenarios of 'outsourcing' or 'agency' they are able, by means of control mechanisms and contractual arrangements, to effectively implement their AML/CTF procedures. However, in cases of 'reliance' where the third party independently applies its own processes to perform CDD measures, there is no duty on the third party to provide the insurer with information pertinent to risk assessment and risk mitigation. The FATF proposal to frame third party reliance through a functional definition is definitely a step in the right direction. We believe that the new framework should make the third party accountable.

Finally, it must be recognized that insurance is an intermediated business, as mentioned before, and as such has a more frequent use of third parties in the CDD process than other industries. We would welcome an acknowledgement and clarification around this aspect in the guidance going forward and that the use of third party (intermediaries) will not automatically lead to an increased risk for all intermediated insurance business.

Tax Crimes as a Predicate Offence for Money Laundering

We do not oppose the inclusion of tax crimes as a predicate offence for money laundering in the interest of international harmonization. As a result of the FATF proposal, insurers would be required to report as suspicious transactions any transactions related to the laundering of the proceeds of tax crimes. However, with a view to ensuring consistency across countries and effectiveness in reporting, we strongly feel that the meaning of such a broad offence for AML/CTF purposes needs to be clarified. There are far too many types of tax crimes with various definitions among countries. This climate of uncertainty would undoubtedly have adverse implications on efficiency as well as effectiveness.

The most common tax crimes include tax evasion, willful failure to file return or supply requested information, willful failure to collect or pay over withholding tax, preparing false tax returns or submitting false tax documents, making false statements to governmental tax officials, making false claims, perjury, bribery, aiding and abetting in the preparation of false documents, and failure to file currency transaction reports, to name a few. Tax crimes may be charged against individuals, as well as corporate officers, partners, fiduciaries and others involved in the tax reporting chain. Would insurers and their intermediaries be required to report taxpayers that have evaded insignificant amount of income or have claimed unsubstantiated tax deductions? The answer to this question is crucial.

Whereas tax evasion (evading taxes by illegal means) is criminal in most countries, tax avoidance (use of legal means to avoid the creation of a tax liability) is not.

There should be a clear articulation of the concept of tax avoidance so that insurers and other reporting entities do not incur unnecessary responsibility.

Cross-border Wire Transfers

In most cases, if not all, wire transfers involving insurers are conducted on their behalf by banks either on a contractual basis or under the terms of an account. Ultimately, it is the banks that are in the “payment” business, and this is particularly the case for cross-border wire payments. Insurance companies are customers of banks in respect of payment data. As a result, insurers are not directly impacted by the FATF proposals to enhance the transparency of cross-border wire transfers (paragraphs 41 to 50 of the Consultation Paper). However, any delay in paying insurance proceeds as a result of required additional information and/or bank-insurer arrangements would run contrary to the industry's regulatory regimes. Insurers around the world have a legal obligation or a duty of care to remit insurance proceeds promptly upon proof of death or a legitimate claim for benefits.

Usefulness of Mutual Evaluation Reports

In general, insurers make use of the executive summaries of the FATF's mutual evaluations in assessing country risk associated with a particular transaction or business relationship. In addition, the table detailing the level of compliance with each of the international AML/CTF standards has been found to be generally useful to clarify an issue that arose from the summary. In order to be useful in a timely fashion, every mutual evaluation report should be publicly released earlier rather than later. In risk management, time is of the essence. As suggested by the FATF, consideration should be given to shorten the length of the evaluation process.

It would be useful if the FATF's mutual evaluations identified when governments have plainly misconstrued FATF recommendations or guidance and, as a result, have extended their AML/CTF regime where it need not go. An obvious example is the situation noted above in respect of non-life insurance; another may be in very low monetary thresholds imposed for life insurers with respect to suspicious activity reporting. We think that some sort of easy reference would be useful as to the FATF's ultimate conclusions regarding the mutual evaluation. Consequently, the FATF may consider allowing the introduction of a summary or a numeric ranking such as a scale from one to ten. The summary might indicate how many of the FATF Recommendations were in each of the ‘compliance’ categories (i.e., fully, partially, not) irrespective of the FATF subject categories; as well as for subject categories (e.g., customer due diligence).

If this is acceptable, the mandated country risk assessment would be made easier resulting ultimately in greater consistency of use by the private sector and other stakeholders.

It would be beneficial if there would be more focus on the insurance industry in these evaluations as today they are mainly focused on banking.

Conclusion

We appreciate the opportunity to comment on this consultation paper and we thank the FATF for taking the views of stakeholders into consideration. On behalf of our members, we recognize the important role the industry has to play in combating money laundering and terrorist financing. We look forward to working with you as you finalize this standards review. Lastly, we have no objections to the FATF Secretariat making this submission publicly available.

Sincerely,

American Council of Life Insurers (ACLI)
Canadian Life and Health Insurance Association (CLHIA)
European Insurance and Reinsurance Federation (CEA)
Federación Interamericana de Empresas de Seguros (FIDES)
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12th January 2011

Mr John Carlson
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FRANCE

Dear Sir or Madam

On behalf of the International Banking Federation (IBFed), we appreciate the opportunity to submit these comments on various issues as the Financial Action Task Force (FATF) prepares for the Fourth Round of Mutual Evaluations. These are a limited number of issues that the members have identified to update the standards to address new or emerging threats and improve the effectiveness of anti-money laundering (AML) and countering the financing of terrorist activities (CFT) in the most efficient and effective ways.

The review will re-examine specific issues associated with some of the existing Recommendations that FATF has issued to assist countries around the globe with their AML/CFT efforts. FATF's goal for this next round is increased emphasis on effective implementation of AML/CFT requirements in individual countries with a greater focus on risks and vulnerabilities in particular jurisdictions.

The specific issues to be addressed are: (1) the Risk-Based Approach (RBA); (2) Recommendation 1, Scope of The Criminal Offence Of Money Laundering, and more specifically whether Tax Crimes should be included as a designated category of predicate offense for money laundering; (3) Recommendation 5, Customer Due Diligence (CDD); (4) Recommendation 6, Politically Exposed Persons (PEPs); and Recommendation 9, Third Party Reliance. In addition, work is ongoing on Recommendations 33 and 34, Transparency of Legal Persons and Arrangements, and Special Recommendation VII, Wire Transfers.

The Risk-Based Approach

FATF introduced the risk-based approach to permit flexibility in the application of the FATF Recommendations and “allow resources to be allocated in the most efficient way to address the most pressing ML/TF risks.”¹ To address concerns about the clarity of this supervisory policy, FATF is now considering a single comprehensive statement on the RBA and better incorporation into the FATF Standards.

FATF seeks to build upon its *Guidance on the Risk-based Approach to Combating Money Laundering and Terrorist Financing: High Level Principles and Procedures* (June 2007). IBFed supports this starting point and believes it articulates the fundamental elements that continue to guide risk-based AML supervision and compliance. In particular, the 2007 RBA Guidance leverages three major principles that IBFed continues to endorse:

1. Risk-based compliance is priority-focused: It is predicated on the principle “that resources should be directed in accordance with priorities so that the greatest risks receive the highest attention” and proportional response to risk is valid²
2. A risk-based approach encompasses a process of assessing risk and applying mitigating controls that are tailored to each institution’s business structure and operations and allows diverse practices among institutions to fulfill supervisory expectations.³
3. Risk-based supervision respects the reasonable business judgment of financial institutions applying a well-reasoned risk-based approach: Supervisory authorities understand that a risk-based approach does not identify or detect all instances of money laundering or terrorist financing and therefore do not impose zero tolerance expectations.⁴

FATF envisions a section on the obligations of countries that would include five elements associated with the risk-based approach, although two of the five elements would be optional choices for individual jurisdictions. Under these proposed refinements to the risk-based approach, each country would:

1. Develop its own *risk assessment*
2. Ensure that *higher risks* are addressed both at the national and institutional level
3. Permit institutions to apply simplified measures for *lower risks* (optional)
4. Permit an *exemption* from compliance for certain institutions (optional)
5. Ensure appropriate *supervision and monitoring* by competent authorities

As a complement to this change, institutions within a country also would have specific obligations. This would require each financial institution to develop a *risk assessment* based on customers, countries and geographies, products and services and delivery channels; *manage and mitigate* identified risks; adopt *enhanced measures* for higher risks; and possibly apply *simplified measures* to address lower risks.

¹ Review of the Standards—Preparation for the 4th Round of Mutual Evaluations, ¶ 5 (October 2010.)

² FATF Guidance on the Risk-Based Approach, ¶ 1.7 and 1.11 (June 2007).

³ *Id.* at ¶ 1.8 and 1.15.

⁴ *Id.* at ¶ 1.13 and 1.22.

In conjunction with these changes, FATF also would revise other Recommendations. First, new examples of the risk-based approach would be added to Recommendation 5 (Customer Due Diligence). Second, risks associated with other than face-to-face transactions and new products and services, including new delivery channels, would be incorporated into Recommendation 8 (New Technologies). And finally, other types of financial activities that countries should consider in relation to businesses and professions not already covered by the Recommendations would be outlined in Recommendation 20 (Other Financial Businesses and Professions Not Covered).

IBFed members believe that FATF must stay committed to a true priority-focused, risk-based approach. Therefore, items 3 and 4 should *not* be optional. As recognized by the 2007 RBA Guidance, the key to the RBA is allowing institutions to prioritize risks and to apply proportional responses - including simplified measures for lower or de minimis risks. Unless jurisdictions enable a proportionate response to risk, there cannot be a true risk-based approach.

IBFed appreciates the concern that the current RBA guidelines may be difficult for many countries and depository institutions to understand and apply in specific circumstances. This is often the case when principle-based supervision comes into contact with specific factual cases or contingencies and there can be a natural inclination to seek “clarity” in the form of rigid rules. The danger with such “clarity” is increasingly detailed and complex rules. IBFed cautions pursuing such “single-minded” clarity but welcomes the exchange of experience and the interaction of countries and financial institutions in the exploration and articulation of effective supervisory and risk-management practices.

To truly achieve a risk-based approach, both the public sector and the private sector have roles to play: the public sector must provide information on potential threats while the private sector must analyze risks presented by customers and products. For a variety of reasons, including preventing fraud, the private sector already conducts risk-based analyses, but there is a sense that the public sector could do more, especially sharing information about potential risks. Regulatory authorities and law enforcement can and should provide information to financial institutions that help them identify potential risks and help evaluate mechanisms that can control any risks.

It also is important to recognize that there are gradients of risk and that financial institutions have tools that can be applied to mitigate and control possible risks. Identifying a particular risk is only one element – the ability to control that risk is equally significant to the analysis and true risk-based approach cannot work using a check-the-box approach. Overall, maintaining flexibility is important and guidance should not be too prescriptive.

Customer Due Diligence (Recommendation 5)

The revisions being considered for the guidelines for Customer Due Diligence are possibly the most important and the most controversial of all those being undertaken. The primary change to Recommendation 5 and its interpretive guidance would clarify requirements for legal persons

and arrangements, particularly beneficiaries of life insurance or other investment related insurance policies.

IBFed supports the initiatives described in paragraphs 16 and 17 of the Review to add examples of higher and lower risk factors along with examples of enhanced due diligence for higher risks and appropriate simplified measures for lower risks. IBFed commends such a step as a reinforcing application of the RBA to focus resources where they will be most effective.

As for the changes to Recommendation 5 expressed in paragraphs 18 through 21 of the Review, IBFed appreciates that FATF recognizes the ability to control legal persons or arrangements is a key issue and one that needs to be resolved. However, we are seriously concerned that the proposed due diligence improperly shifts the responsibility to generate information about state created legal entities from the public sector to the private sector. The identification of legal entities for ML/TF purposes has always begun with obtaining the *bona fide* credentials that verifies state-bestowed authority. To the extent that such credentials (or the access to public archives that such credentials enable) fail to provide adequate indicators of ownership or control, this is a failure of the state regime and should be cured by the state, not reassigned to the financial sector.

While IBFed recognizes that a risk-based approach places a responsibility on the financial institution to adjust due diligence in the face of circumstances that complicate achieving an operational understanding of one's customer, the components of ownership or control of state created, sponsored or authorized entities should be the responsibility of the state to provide.

Under paragraph 21 of the proposal, institutions should:

- Identify and reasonably verify the identity of natural person who ultimately have a controlling ownership interest, and
- Where that ownership interest is too dispersed to exert control, identify and verify the identity of those who exert or influence control

IBFed believes that the source of satisfying both of these elements should be the state that created the entity in question. Since any legal entity is a creature of the law of a particular jurisdiction, the public sector that created that entity logically bears the responsibility for making information about the entity available. When the state does not have such information or has not taken steps to make the information readily available, it follows that the state has already made a judgment that the risk is acceptable or that the cost for obtaining and maintaining the information exceeds the potential benefits.

This also underscores another important factor that must be recognized: as creatures of the state, these entities often serve perfectly legitimate and worthwhile purposes. For example, shell corporations are often held up as examples of how legal constructs can be abused and yet there are frequently used for quite legitimate purposes; in the United States, the government (the Federal Deposit Insurance Corporation) often uses shell corporations when rescuing a failing financial institution.

Another problem that must be confronted is that not all countries have uniform or well-developed registries where the private sector can turn for information and verification. This will affect the expectations that the public sector can impose. While there is likely to be an ongoing relationship between these entities and financial institutions, it is the public sector that has the authority to take the steps needed to develop and maintain the appropriate data on entities it has created. Presumably, where a corporation is publicly traded, this would apply to senior management, although additional clarity will be needed for large multi-national corporations that are publicly traded and that have large and diverse management structures. For example, the public sector often collects regular fees from these entities to continue their registration. And, these entities are often subject to filing tax returns in the appropriate jurisdiction of record, providing another means for the public sector and governmental authorities to track and update information, possibly by requiring these legal entities to file official forms under penalties of perjury. The private sector can assist with these efforts, but responsibility should not rest solely with the private sector and the private sector requires a useable infrastructure created by governmental authorities to do its part.

IBFed members believe that these elements and expectation that financial institutions obtain and verify the “mind and management” of a legal person or arrangement must be more clearly specified. This should be done through a series of manageable undertakings that reflects the risk presented from providing financial services to such customers. These steps must recognize and acknowledge the many different types of legal entities that have been created to serve public sector needs and more specific guidance should be developed that describes how evaluating differing business-entity customers can provide useful information for risk-based due diligence. Among the items to consider are: account purpose; source of funds and wealth; authorized users of the account; type of business; financial statements and bank references; domicile of the entity; proximity of the entity or individual to the depository institution’s offices; customer’s primary trade area (and whether international transactions are routine); description of business operations, anticipated volume of currency, total sales, major customers and suppliers; and explanations for any changes in account activity.

IBFed members believe that it would be helpful to differentiate between account/relationship opening due diligence and due diligence that occurs in the course of account/relationship management. Attention to these differences is likely to provide better guidance on the practical application of an RBA to customer relationships and the supervisory oversight of such an approach. IBFed, its members and its constituent financial institutions offer to engage in more detailed discussion about how best to pursue this path and incorporate it in a revision of the Recommendations to best accommodate the RBA.

Paragraph 22 of the Review would explicitly require institutions to verify the authority of persons who act on behalf of a customer. However, IBFed believes that normal banking practices include adequate procedures for financial institutions to satisfy themselves that accounts are accessed only by persons who have proper authority. Therefore, we believe that the concerns of Paragraph 22 should be considered satisfied when standard business practices are applied.

Paragraphs 23 through 26 of the Review distinguishes due diligence standards regarding customer or beneficial ownership status from those arising in connection with the beneficiary of life insurance policies.

As proposed by FATF, institutions would obtain enough information to ensure they can identify a beneficiary. At the time of payment under the terms of the policy or when a beneficiary asserts certain vested rights in the policy, a financial institution would conduct appropriate CDD on the beneficiary. FATF is also considering requiring enhanced due diligence where there is higher risk, particularly where the beneficiary is a politically exposed person or PEP.

The IBFed commends FATF for taking this step since it recognizes the unique attributes of this particular type of product and customer relationship. However, this also underscores the fact that there are many different legal entities and each has its own unique sets of risks. Much of the discussion surrounding beneficial ownership and the appropriate customer due diligence has focused on corporate entities, but there are partnerships, pensions plans, trusts, mutual funds, and any number of variations on each one of those types of entities. The public sector must recognize these variations as it has done with life insurance and approach them one-by-one.

As it continues to evaluate and adjust the expectations for what diligence is due, FATF should acknowledge the extensive efforts that have been made by the private sector. However, perfection and zero error levels are impossible.

Politically Exposed Persons (Recommendation 6)

In recent years, jurisdictions around the globe have undertaken renewed efforts to combat corrupt activities of public officials. Abuse of their trust by certain government agents has gained new attention, leading to increased focus on politically exposed persons (PEPs). While FATF does not plan changes to existing Recommendation 6 for foreign PEPs, on the premise that corruption begins at home, FATF is considering adding domestic PEPs as a category subject to enhanced due diligence in cases of higher risk. Under this expanded compliance mandate, enhanced due diligence would always apply for foreign PEPs but the risk-based approach would apply to domestic PEPs.

Domestic PEPs. At this point, it is worth noting that not all jurisdictions distinguish between foreign and domestic PEPs. Therefore, the first step will be to acknowledge that there may be a lack of distinction in the Recommendation. Even so, there is a question whether it is truly appropriate for an international body to provide recommendations on issues that appear solely within the province of an individual nation.

One of the important distinctions between a domestic PEP and a foreign PEP is that individual jurisdictions already have ample authority and powers to address criminal or fraudulent activities of its own citizens. That is purely an internal matter for a given jurisdiction, and the ability of local prosecutors to identify and take steps to punish domestic wrong-doers is different when the perpetrator is from outside the local jurisdiction – especially where the criminal activity may have occurred in another country.

While it is true that the first steps of government corruption may often begin with opening a domestic account, it may not be appropriate to use Recommendation 6 and PEPs as the appropriate tool. Other AML efforts, include standard transaction monitoring, may be better and more efficient. Given limited resources, this is especially important to justify the added regulatory burden that would result from expanding coverage to domestic PEPs.

At this time, IBFed believes that FATF should refrain from compelling all countries to institute a supervisory expectation that formalizes the concept of domestic PEPs. To the extent that FATF finds value in setting a baseline for the RBA in connection with domestic PEPs, IBFed would support the suggestion contained in paragraph 29 of the Review when a country has voluntarily implemented a domestic PEP definition. As with any other customer, not all PEPs are high risk nor should they be treated as all being high risk and therefore subject to enhanced due diligence. And, even if a customer is a PEP, the type of account relationship should also be considered; a simple credit card account presents a far different risk-level than a substantial private banking account.

IBFed supports the proposed changes in approach to PEPs described in paragraphs 30 and 31 of the Review. Eliminating the obligation to determine whether a customer is a family member or close associate of a PEP is worthwhile. Conforming treatment of PEPs with the handling of beneficial ownership is worth exploring in more detail.

Beyond, the specific proposals to modify Recommendation 6 notes that there remains an ongoing challenge for financial institutions worldwide to identify exactly who is a PEP. Some have suggested that it is the position of an individual within a government. However, a high level individual may have little or no authority over government funds while a comparatively low-level administrative clerical functionary can have *carte blanche* authority over government resources. Therefore, the ability and authority to control public funds should be a factor used to identify PEPs.

To facilitate compliance by the private sector, it would help if the public sector provided lists, either names or positions covered. These lists should be easily used and readily accessed by the private sector. Currently, the private sector is compelled to rely on commercially produced lists, but it is not clear that those provide the best and most accurate data and it can be argued that commercial entities have created this information for financial institutions to use because the government has not met the need. And, whether a government list, commercial list, or other resource is used to identify an individual as a PEP, there is the question whether to notify that person or whether, like a suspicious activity report, that information should be kept confidential; this is something that FATF should resolve.

Financial institutions that operate in many jurisdictions also face the problem of determining how to identify a PEP when different countries take different approaches. FATF is ideally positioned to take steps to provide guidance on how these conflicts can be balanced. Similarly, IBFed recommends that FATF take steps to provide guidance for the situation where an individual who is considered a PEP has fled his or her own country to seek legitimate sanction in another country.

Third Party Reliance (Recommendation 9)

Currently, countries have discretion to determine whether a financial institution may rely on a third party (as long as the conditions outlined in Recommendation 9 are satisfied). That would not change but FATF is considering whether to expand the entities upon which a financial institution may rely. The intent is to make the concept more useable and to ensure that companies can better use the concept internally. The IBFed submitted a comment letter to FATF on November 6, 2009 that addressed many of the elements of reliance that are being discussed and those comments are still relevant.

Fundamentally, using the concept of reliance is possible but not an obligation. Generally, though, reliance for customer due diligence is not used across borders; financial institutions do not feel comfortable relying on the customer due diligence performed outside the local jurisdiction. The concept also is not applied consistently. For example, it is not used extensively in either the United Kingdom or the United States. However, as FATF continues to refine the concepts of customer due diligence under Recommendation 5, it is important the reliance be factored into the equation since the two go hand-in-hand. And, reliance can and should be used to complement and ease some of the burdens for customer due diligence.

Outlining regulatory expectations of instances when reliance on an independent third-party is permitted to verify a customer's identity could have a number of benefits. First, allowing a second financial institution to rely on the existing due diligence that has already been conducted by the first financial institution will eliminate duplication of efforts. Second, it facilitates customer service by eliminating unnecessary delays and barriers while initial customer due diligence is undertaken. Third, it helps to streamline the customer due diligence process. As increased emphasis is placed on customer due diligence, failure to increase use of reliance will hamper efficient and effective banking services, both domestically and internationally.

The real problem for financial institutions trying to use reliance for customer due diligence is the question of liability. As a result of recent court decisions, the private sector may be reluctant to rely on other financial institutions. To address this problem and to make more efficient use of resources by letting financial institutions rely on one another and not duplicate efforts, better guidance is needed from the public sector for when reliance can be used. And, in some instances, national data security laws or privacy restrictions may be a barrier, in which case government action is needed to expand the use of reliance.

To avoid the challenge of distinguishing reliance, outsourcing and agency semantically, FATF proposes utilizing a functional approach. IBFed believes this approach has promise and warrants further consideration and elaboration.

FATF is also considering adopting a more flexibly approach for *intra-group reliance*. When two financial institutions are affiliates within the same holding company and provide services for the same customer, allowing them to rely on each other and not replicate efforts for customer due diligence is logical and simplifies the process. Not only does this make better use of resources

but it also permits enhanced customer service. For example, it allows back-office operations to more easily serve customers across affiliates. As proposed, countries would be encouraged to require AML/CFT at the group level that applies to all entities within the group instead of applying it at the institution level. Significantly, reliance would not be limited to entities based in countries that comply with FATF standards as long as there is a determination that the program is applied at the group level and effectively and adequately supervised at that level. IBFed supports further exploration of this proposal in conjunction with handling reliance and related compliance interdependence involving third-parties.

New Payment Systems & Technologies (Recommendation 8)⁵

FATF proposes in paragraphs 11 and 12 of the Review to incorporate non-face-to-face relationship risk considerations into the normal guidance on customer relationships under the new Interpretive Note and refocus Recommendation 8 on new technologies. IBFed concurs in this reformulation. However, while IBFed acknowledges that new technologies often present new risks, they also often provide new risk mitigation options. Accordingly, FATF should recognize that the adoption of new technologies by financial institutions generally includes application of new or existing controls that often adequately address any new risks. After all, financial institutions want to protect themselves against possible loss from fraud and maintain their reputation and the trust of their customers.

At the same time, rigid restrictions that inhibit or become barriers to new technologies can also be counter-productive to AML/CFT efforts. First, these new technologies can also become useful tools for tracking and identifying possible suspicious transactions. Second, these new technologies can also remove barriers that exclude marginal or low-income customers or groups; including these individuals in mainstream banking products and services helps ensure records and documentation exists for a greater number of transactions while simultaneously inhibiting the growth of underground economies which are attractive to criminals and those who want to finance terrorist activities.

IBFed supports the intent of paragraph 12 of the review including the proposal to clarify that countries should share their assessment of the potential risks with their constituent financial institutions so that an informed dialogue between public and private sector leads to efficient and effective risk management practices and supervisory expectations.

⁵ Recommendation 8 addresses *Measures to be taken by Financial Institutions and Nonfinancial Businesses and Professions to Prevent Money Laundering and Terrorist Financing – Customer Due Diligence and Recordkeeping*. Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favor anonymity, and take measures, if needed, to prevent their use in money laundering schemes. In particular, financial institutions should have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions

Tax Crimes as a Predicate Offense for Money Laundering and Impact on Suspicious Activity Reporting (Recommendation 13)

FATF also is considering including tax crimes as a predicate offense for money laundering under Recommendation I (“Legal Systems and the scope of the criminal offense of money laundering”). While Recommendation I lets individual countries adopt different approaches to implementation, countries are urged to carefully consider each of the categories in the Recommendation. And, although some countries have established tax crimes as a predicate offense, that is not universal. Adding tax crimes as a predicate offense could unnecessarily expand the ability of law enforcement to initiate money laundering cases and complicate the suspicious activity reporting process.

According to FATF, the primary change affecting the private sector will be the obligation to report suspicious transactions. In approaching this issue, the IBFed appreciates that FATF recognizes the complexities associated with this issue. Domestic tax laws and regulations are often complex. It is important to understand that it is not always possible for financial institutions to identify indicators of tax crimes. For example, no single financial institution holds all financial information about a customer nor can it confirm that it does. Beyond financial information, though, when considering tax obligations there also are many non-financial elements that determine the tax liability of an individual or entity and this information is often beyond the knowledge of a financial institution holding an account. In many instances, barring specific disclosure from a customer, it is not likely that a financial institution could be aware the customer is committing a tax crime.

Financial institutions employees are not and should not be expected to be specialists in the arcane requirements of domestic tax laws.⁶ More important than domestic tax laws is that it is extremely unlikely that any financial institution will have staff sufficiently schooled in the many different tax laws of foreign jurisdictions (which may conflict or take an entirely different approach than domestic requirements). When this is combined with the lack of knowledge about a customer, it becomes unlikely that a financial institution would be able to determine that a transaction presents domestic, let alone foreign, tax illegalities versus legal avoidance. While suspicious activity reporting standards do not compel a judgment of legal certainty, reporting should not devolve to capture legitimate tax planning activity.

Moreover, it is important that FATF acknowledge that what is considered an offense in one jurisdiction may be perfectly legitimate in another jurisdiction. As a result, FATF will need to address how individual countries are expected to handle the potential conflicts that may arise between different laws and the varying residences of their customers for tax purposes.

IBFed believes that FATF should maintain its current approach and continue to let each country independently decide whether tax crimes are predicate acts subject to suspicious activity reporting.

⁶ The Organization for Economic Development (OECD) has more than 600 mutual tax treaties that are better suited to address this issue.

Cross-Border Wire Transfers

FATF is requesting private sector input on Special Recommendation VII (Wire Transfers) and steps to enhance transparency in cross-border wires. Currently, ordering financial institutions are expected to obtain and include information on the originator of a wire, with the information verified and subjected to appropriate customer due diligence. Intermediary institutions are required to ensure the information received is transferred with the wire. FATF is considering steps to further enhance transparency, including provisions for serial and cover payments; such standards were set forth in a May 2009 paper published by the Basel Committee on Banking Supervision.

As outlined, four areas might be revised: (1) obtaining new information on cross border transactions; (2) obtaining new information on beneficiaries; (3) considering what information that is needed to process the wire transfer; and (4) developing better risk management for beneficiary information. Other areas that may change are the role of intermediaries in screening transactions or whether there are opportunities to include additional information about beneficiaries. Authorities are also considering emerging payment methods and possible differences between different segments of the private sector, e.g., banks and mutual funds.

While the United States continues to stress the exceptional value of this information for authorities, steps are needed to demonstrate its value. Before any changes are undertaken, the underlying rationale for any policy changes must be clearly articulated. The value of these articulated benefits must be measured against the possible costs. As demonstrated by changes implemented with respect to cover payments in 2009 to increase transparency, an extensive cost-benefit analysis is needed since changes are very likely to entail massive costs.⁷ Mere assertions of value are not enough.

For many valid reasons, the private sector and the EU Commission have serious concerns. Not only should the costs be measured against the benefits, mechanisms must be outlined and incorporated to ensure that governmental authorities and law enforcement officials demonstrate and continually certify that the information is being used as intended and in ways that demonstrates the validity of the requirement.

Execution and Screening. It is expected that certain information on the beneficiary of a wire transfer will be collected and transmitted in order to properly execute the transaction. FATF is considering whether to incorporate beneficiary information as part of the international AML/CFT standard for cross-border wire transfers. Unlike originator information, ordering financial institutions are not in a position to verify beneficiary information and FATF is interested in private sector comment on whether financial institutions require accurate information on beneficiary names to process a transaction; whether it would be feasible or useful to require additional beneficiary information; and what additional beneficiary information would be feasible and useful.

⁷ Anecdotal evidence indicates that the new obligations for cover payments caused false positives to increase by 30%, consuming and diverting valuable resources to reconcile.

One issue that affects the ability of the private sector in this area is the ability to verify information that is included. Regulatory authorities in the jurisdiction where a wire originates must bear responsibility for ensuring that financial institutions they supervise comply with requirements to furnish complete and appropriate data. It is also important to consider that intermediary and receiving institutions located in another jurisdiction may not be able to verify or validate the information on an originator located in another jurisdiction.

As FATF moves forward, additional data and understanding of the process is needed. IBFed urges FATF to work with regulatory authorities in each country to obtain better intelligence on how financial institutions apply and screen for sanctions compliance. It is important to obtain data from financial institutions on whether it screens all wires, including those where it solely serves as an intermediary.

It is also important to understand what steps an institution takes when it identifies a positive match through screening, including information on how it resolves possible false positives and how responsive government authorities are in attempts to resolve questions about possible matches. It is equally important that government authorities recognize that delay in payments can constitute a breach in other contexts and so it is incumbent on the public sector to ensure that it devotes sufficient resources to resolve issues as they arise – quickly and efficiently. Lack of public sector resources to respond to inquiries will handicap the system.

Further assessment is also needed on the impact that might be expected if additional information were required on beneficiaries and what burdens and costs might result from screening them. And finally, there is the issue of how to address blank fields in a wire transmission – and what steps financial institutions currently take to address a blank data field, including whether there is a distinction made between certain fields (where a blank in some fields may be critical while a blank in another field insignificant). By the same token, there is a distinction to be drawn between a missing field and an incomplete data field.

When any financial institution screens a wire that originated in another jurisdiction, it is important to provide guidance on which sanctions program should apply. This needs careful analysis and consideration, since there are differences between countries on how and when they apply sanctions, and absent a single uniform international list, financial institutions need guidance in order to properly comply.

In efforts to expand the availability of mainstream banking products and services to more and more individuals through economic inclusion, more small value transmittals are likely. The World Bank has suggested that low value wires should be screened, but this only adds to costs and slows payments processing, and so how further analysis of low value products and the risks and possible mitigating factors is needed. Clearly, there is a difference in the risk presented by a small value person-to-person transfer and a large commercial transfer. The key is determining how those risks should be mitigated. However, better information from law enforcement and governmental authorities is needed.

Usefulness of the Mutual Evaluation Reports

FATF Mutual Evaluation Reports are designed to be used by the private sector and other stakeholders. As a result, FATF also is considering how to make the reports more useful to the private sector. A number of steps are being evaluated, such as whether shorter and more focused reports would help; whether the executive summary could be adjusted to focus on overall compliance, including key strengths and weaknesses; whether to place greater emphasis on risk information; whether the information could be published in a more timely manner; and whether the structure could be improved to make the reports more usable. The IBFed believes that any steps that FATF can take to make the information in these reports more easily accessed – including steps that make information more readily apparent and available – are positive steps and encourages FATF to continue to work towards this goal.

Thank you for the opportunity to comment. As FATF moves forward on these and other issues, IBFed looks forward to a continuing dialogue to develop an efficient and effective set of recommendations to detect and deter money laundering and terrorist financing.

Yours sincerely,



Sally Scutt
Managing Director
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Chairman
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ICSA

INTERNATIONAL COUNCIL of SECURITIES ASSOCIATIONS

January 7, 2011

Luis Urretia Corral
President
Financial Action Task Force
2, rue Andre Pascal
75016 Paris
France

Dear Mr. Urretia:

On behalf of the members of the ICSA Working Group on AML, we would like to thank you for the opportunity to comment on proposed revisions to the FATF 40+9 Recommendations that FATF is currently considering.¹ ICSA members appreciate and strongly support the open dialogue that FATF has established with private sector representatives in order to enhance AML/CFT regimes at both the international and domestic level and look forward to continuing to work closely with the FATF in the future.

Our comments in this letter address many of the issues raised in the Consultation Paper that was issued by the FATF in October 2010. We understand that this is the first phase of the consultation on revisions to the FATF Recommendations, and we look forward to participating in the next phase of the consultation process.

Section 1: The Risk-Based Approach

ICSA members have long supported the use of the risk-based approach in the implementation of the FATF's Recommendations. For that reason, ICSA's Working Group on AML actively participated in the Electronic Advisory Group that developed FATF's *Guidance on the Risk-based Approach to Combating Money Laundering and Terrorist Financing*, which was published in June 2007. ICSA members support the risk-based approach since we consider that individual financial institutions are best positioned to know where their risks are given the products and services that they provide coupled with the control environment that they have developed to mitigate those risks. As a consequence, reliance on a risk-based approach allows for the most efficient and effective use of the firm's AML/CFT resources.

¹ ICSA is composed of trade associations and self-regulatory organizations that collectively represent and/or regulate the vast majority of the world's financial services firms on both a national and international basis. ICSA's objectives are: (1) to encourage the sound growth of the international securities markets by promoting harmonization in the procedures and regulation of those markets; and (2) to promote mutual understanding and the exchange of information among ICSA members. ICSA's Working Group on AML participates in FATF's Consultative Forum as the representative of the global securities industry.

Members of ICISA's Working Group on AML strongly support the FATF's proposal to developing a single comprehensive statement on the risk-based approach, which could be incorporated into the FATF Standards as a new Interpretative Note. However, without benefit of seeing the proposed draft Interpretive Note referenced in the Consultation Paper, we are able to offer only general comments on this issue. We stand ready to provide more tailored comments when the Interpretive Note can be shared with this forum. With this caveat, our comments are as follows:

1. Maintain the flexibility inherent in the risk-based approach

It is critical that any further guidance that is developed regarding the risk-based approach maintains the flexibility that is inherent in that approach. It is important therefore to carefully balance the need to provide clarity against the need to maintain the flexibility the risk-based approach requires in order for it to be meaningful.

As an example, FATF assumes in Recommendation 8 that non-face to face business constitutes a risk per se irrespective of the firm's activities and organisations. We suggest that this assumption is flawed and is not consistent with the application of the risk-based approach. In the wholesale markets, for example, clients are generally legal entities and often enter into business relationships with financial firms without being physically present. Since this is standard practice, it does not create a heightened risk in terms of ML/FT, particularly since the identification and verification diligence of legal entities rests on legal documents such as company incorporation acts and by-laws whose validity can be ascertained without the physical presence of a representative of the company. As another example, FATF assumes in Recommendation 6 that a foreign PEP is always a higher risk. We suggest that assumption is also flawed and is not consistent with permitting financial firms, using their own skill, experience, knowledge and judgement of their client base and the products and services they offer, to adopt a risk-based approach to deter money laundering and terrorist financing.

2. Ensure that the risk-based approach is understood on a practical level by examiners as well as policy-makers

Financial firms have at times experienced a discrepancy between the statements of policymakers, who understand and support the risk-based approach, and the practices of examiners who review firms' compliance with AML regulations and policies. While policymakers often advocate the use of a risk-based approach, examiners are left with the hard task of evaluating a firm's compliance based on principles as opposed to more easily applied prescriptive requirements. This often requires examiners to make judgments about the quality of a firm's AML policies without the benefit of detailed parameters. Such an assessment is difficult to make in many cases because examiners do not fully understand and/or accept that the risk-based approach is not composed of ironclad rules but instead allows for risk assessments and decisions to be made with the full knowledge that reasonably designed procedures may not capture every wrongdoer.

In order for a risk-based approach to AML/CFT to be effective, we suggest that: (a) the public sector must ensure that their staff at all levels is appropriately trained so that they understand the intent and purpose of the risk-based approach; (b) examiners are empowered to make the appropriate assessment of a firm's risk-based approach, once they understand the fundamental premise of that approach; and (c) each examining body (i.e., regulator or governmental agency) has its own "quality control" processes in place to ensure that broadly similar firms are assessed on

a consistent basis with similar judgments arrived at rather than firms being faced with the possibility of idiosyncratic judgments made by one or more individual examiners.

Since there are a number of FATF members that already successfully use a risk-based approach to AML/CFT, we suggest that FATF should take advantage of the experience and expertise that firms and regulators in those jurisdictions have already developed in order to train examiners from other jurisdictions. We are aware that FATF has not in the past undertaken or sponsored training exercises. However, we point to the experience of IOSCO, a sister organization to FATF, which frequently conducts training exercises for its members both at its headquarters in Madrid and in other locations.² We suggest that some type of training similar to that conducted by IOSCO is necessary in order to ensure that the risk-based approach to AML/CFT is applied effectively and consistently both within and between jurisdictions.

According to the Consultation Paper, the Interpretative Note dedicated to the risk-based approach that will be incorporated into the FATF Standards will include a framework for a national risk assessment. Again, our comments are quite general here as we have not yet seen the draft Interpretative Notes. However, we would note the following:

a. Involve private sector participants in all phases of the development of the national risk assessment framework

ICSA members welcome the opportunity to work with FATF members on this issue. We suggest that this must be a collaborative effort between public and private sector in order to harmonize the perspectives and intelligence that each sector brings to the initiative. In particular, in order for this to be a meaningful exercise we urge that the draft Interpretive Note should be published with adequate time for response so that the private sector can make use of it in its own risk assessment.

b. Recognize the diversity of financial firms

We caution that guidance on the risk-based approach cannot be developed at such a high level that it renders the results meaningless. For example there is a wide range of securities firms that operate in any given jurisdiction. These include, at one end of the spectrum, the local securities firm that cater exclusively to local retail clients and trade in relatively ‘simple’ financial products such as equities and bonds. At the other end of the spectrum are the multinational securities firms, including banks, which operate on a cross-border basis and have a broad range of non-retail clients that invest in more sophisticated products with cross-border implications. Given the range of firms that will be impacted by the national risk assessment, we urge an understanding that consistency does not mean “the same as” but instead refers to consistent, high-level principles that can be effectively used by different types of firms, regardless of where they sit on the spectrum.

² In addition to the training that is sponsored by the IOSCO Secretariat at its headquarters and elsewhere, IOSCO’s SRO Consultative Committee (SROCC), which is composed of self-regulatory organizations (SROs) and other similar entities that are affiliate members of IOSCO, also provide training to IOSCO members in various areas.

Section 2: Beneficial Ownership

ICSA members welcome the FATF’s intention to introduce clarity regarding the information that is necessary regarding the identification and verification of the identity of beneficial owners, as this continues to be a significant issue for financial institutions. We have organized our comments on this very important issue around a limited number of high-level principles, which are discussed below.³

In addition to the comments presented here, we would like to suggest that it would be useful for FATF as part of its review of the 40+9 Recommendations to examine whether Recommendations regarding beneficial ownership are truly effective in mitigating money laundering risks. As FATF members are aware, recent research by the World Bank has shown that beneficial ownership requirements in jurisdictions where they have actually been put into effect have not led to enhanced enforcement actions, thereby raising questions about the value of these requirements. Moreover, given the difficulty inherent in obtaining the appropriate data for the identification of beneficial owners, we question if it is appropriate for financial institutions to be responsible for this task and suggest that governments are far more likely to have access to the necessary information for the identification of beneficial owners rather than financial institutions.

Notwithstanding these concerns, if the FATF does decide to retain its Recommendations on beneficial ownership, we would suggest the following revisions:

1. Beneficial owners should be defined in a clear and non-ambiguous manner and guidance should be given regarding how beneficial owners are to be identified in different institutional or corporate structures

One of the problems with the current Recommendations on beneficial ownership is that they are both ambiguous and are interpreted differently in different jurisdictions. In particular, there is an ambiguity in the Recommendations concerning whether beneficial ownership is related to ownership or control. For example, a beneficial owner is defined in the FATF’s glossary as, “... *a natural person who owns or controls a customer and/or the person on whose behalf a transaction is being conducted.*” Beneficial owners are also defined as, “... *those persons who exercise ultimate effective control over a legal person or arrangement*”. The ambiguity in the definition between ownership and control can lead to the identification of different individuals/entities as beneficial owners. This tendency is reinforced because different jurisdictions have different interpretations regarding which individuals/entities effectively meet the FATF definitions. As a result, financial institutions that operate on a cross-border basis find that they cannot consistently apply their AML/CFT group policies.

Given these concerns, we support the proposed text in the Consultation Document which states that beneficial owners refers to natural persons who have, “...a controlling ownership interest.” However, we do not support the second clarification, which refers to situations where the ownership interest is too dispersed to exert control or where there are other persons who have control of the legal person or arrangement. In those cases, according to the Consultation Paper,

³ Additional comments on this issue are contained in the letter that the ICSA Working Group on AML submitted to the FATF on 10 October 2010.

“... it would be necessary to identify and take reasonable measures to verify those other persons that have effective control through other means.” While this clarification is well intentioned, ICSA members stress that financial institutions do not always have the ability to determine which natural persons exert “effective” control over the client in question. We also suggest that the term “effective control” is ambiguous and thereby could be subject to differing interpretations.

Similarly, we do not agree with the final clarification, which states that if no other persons are identified as beneficial owners, “...then in such cases the beneficial owners might be the ‘mind and management’ that has already been identified.” ICSA members find that the concept of ‘mind and management’ is not well defined and therefore does not bring greater clarity to the definition of beneficial ownership.⁴ The concept of ‘mind and management’ appears to refer to the unofficial management of the firm’s client. If that is the case, it is unclear how financial institutions would be able to obtain the necessary information that would allow them to identify and verify the identity of an entity’s unofficial management. Financial institutions by their very nature are not equipped with intelligence systems that would allow them to determine who exerts actual control over a customer, particularly in situations where there is criminal intent as that would often involve a higher degree of concealment.

In addition to the need for greater clarity in the definition of beneficial owners, there is also a need for guidance regarding how financial institutions are to identify beneficial owners in different institutional or corporate structures. For example, the beneficial owners of a trust could be identified as: (1) the trustees, since they have control; (2) the ultimate beneficiary; or (3) the settler/contributor, since they may have an ownership claim. This is particularly an issue when the actual beneficiaries are not known, as is the case in many trusts. Trusts can also be revocable, meaning that the assets of the trust would revert to the settler/contributor. In that case, the beneficiary may not be, in fact, the party of greatest interest. This is just one example, as there are numerous other institutional or corporate structures where guidance is needed regarding the identification of beneficial ownership.

2. The risk-based approach should be used for the identification and verification of identity of beneficial ownership

We strongly support revisions to the Recommendations that would make the beneficial owner due diligence regime, as part of the customer due diligence process, subject to a risk-based approach. Reliance on the risk-based approach would allow the financial institution to determine, as a result of its own evaluation, when and if beneficial ownership information needs to be collected for a specific client and whether verification is warranted, thereby allowing securities firms and other financial institutions to more efficiently allocate their limited AML/CFT resources. For example, it is generally the case that beneficial ownership information is collected at time of the commencement of the relationship. However, in keeping with a risk-based approach, in those relationships that a financial institution deems to be of lower risk in accordance with its own evaluation, we suggest that it would be appropriate for the financial institution to only collect beneficial ownership information when an event triggers the financial institution to place more scrutiny on that specific client. In effect, consistent with the risk-based approach, we suggest that

⁴ Also, in Paragraph 21, there is a distinction made between the second and third bullet that is not clear as it appears that the second bullet already relates to the mind and management.

the identification and verification of beneficial ownership should be event driven rather than automatic at the outset of a relationship.

We make this suggestion for several reasons. First, as referenced above, research by the World Bank has indicated that beneficial ownership requirements even in countries where they have been fully implemented have not been effective. However, the current FATF treatment of beneficial ownership requires financial firms to expend a great deal of energy and resources in obtaining this information despite the somewhat limited benefits. Second, financial firms' ability to accurately identify and verify the identity of beneficial owners is severely constrained by data limitations, which are detailed below. This again argues in favor of applying the risk-based approach consistently and fully to beneficial ownership requirements.⁵

In addition, we suggest that the application of the risk-based approach to the identification and verification of beneficial ownership should include exemptions for particular entity types and ownership thresholds in order to harmonize practices around the world.⁶ The risk-based approach to the identification of beneficial ownership should also include an exemption for the identification of authorized persons who work in trading rooms, as there are other processes in place in the firms to ensure that only authorized persons have access to trading systems, mainly stemming from fraud prevention measures. Requiring these firms to establish and communicate to counterparties lists of authorized traders therefore does not add to the fight against money laundering and creates legal risk for firms, as these lists become obsolete very quickly.

Finally, it would also be useful to have an international agreement regarding the types of legal persons for which beneficial ownership requirements might not be applicable, subject to a firm's risk-based approach. These exceptions could apply, for example, to publicly traded entities, government bodies, as well as regulated financial institutions, pension funds and investment managers.⁷

3. Governments need to make appropriate information available so that financial institutions are able to identify and verify the identity of beneficial owners

There are critical problems concerning the availability of information that would allow securities firms and other financial institutions to appropriately identify and verify beneficial owners. This is one of the greatest difficulties that financial firms face when trying to comply with the FATF's Recommendations on beneficial ownership. There is generally little if any information available from corporate registries in most jurisdictions regarding the actual beneficial owners of companies. Moreover, the information that is contained in corporate registries may not be publicly available,

5 If FATF members are not comfortable applying the risk-based approach to both the identification and verification of identification of beneficial owners, FATF may wish to consider the approach taken by the EU in the Third Money Laundering Directive.

6 Thresholds would also be useful to assess dispersion mentioned in the second bullet of Paragraph 21.

7 Such an agreement could be similar to or based on the current approach in the EU, where the following entities are exempt: (a) regulated financial services firms domiciled in FATF jurisdictions or other states that are deemed to be equivalent; (b) other business domiciled in an EU or equivalent jurisdiction that are subject to ML regulation and/or supervision e.g. lawyers, accountants, tax advisers, etc; (c) corporate entities whose securities are listed on a regulated market in an EU or equivalent jurisdiction; (d) domestic public sector bodies, governments and state owned companies, e.g. cities, provinces, regulators; and (d) supranationals (e.g. UN, World Bank, the European Commission, NATO, etc.).

easily accessible, or independently verified by government and instead is just a repository of information supplied by the entity itself. For example, a company could be formed by a law firm or a company formation agent who list as officers or directors the names of individuals that are in fact employees of the firm forming the company.⁸ The only written records of ownership may be in the offices of the company's lawyers, where they are subject to the restrictions of legal privilege.

The scarcity of information and failure to require disclosure in filing requirements make financial institutions dependent on the representations of clients or their legal representatives as to the ownership structure. The ownership structure may likewise be dynamic and thus the information captured represents information at a given point in time. Financial institutions have limited, if any, means to verify that those statements are true. This issue is heightened in jurisdictions where data privacy regulations restrict or severely limit the release of information necessary for the verification of statements made by clients or their legal representatives. Finally, there is no uniformity in requirements in different jurisdictions regarding the updating of corporate information that would allow financial institutions to identify changes in the directors or ownership of a firm.

Given the importance of this issue, we believe it is absolutely essential that the FATF work with governments and other agencies to ensure that financial institutions charged with identifying and verifying the identity of beneficial owners have access to the necessary, current and appropriate information that would allow them to perform those functions. The failure of governments to make that information available severely restricts the ability of financial institutions to take reasonable steps to identify and verify the identity of beneficial owners or understand the ownership/control structure of a legal person.

Specifically FATF should encourage the development of more robust and publicly available corporate registries with enhanced beneficial ownership information while also encouraging more rigorous enforcement of filing requirements.⁹ We believe that any privacy concerns raised by the availability of such information could be resolved by imposing controls limiting access to those firms with bona fide reasons to obtain the information, including for AML/CFT purposes.¹⁰ If

⁸ This can be done for immediate use or registered companies with no real owners or assets can be kept on the shelf for later needs. In many countries ownership is not registered initially or in subsequent filings.

⁹ We are aware that this would require considerable effort on the part of governments and other entities. However, in some cases corporate registries already exist and would only require a relatively modest change in order for them to be useful for AML/CFT purposes. For example, companies in the UK, have to publicly file their annual financial statements at the UK corporate register, Companies House. In accordance with the Companies Act of 2006, companies are required to identify in the Notes to the Financial Statements their ultimate parent company or ultimate controller. This information is subject to review by independent auditors. Although the definition of "ultimate parent company" and "ultimate controller" for the purposes of the Companies Act of 2006 differs from the concept of ultimate beneficial owner in AML/CFT terms, it would be possible for the definition in the Companies Act to be harmonized with the FATF requirements. In that case, financial institutions seeking to verify the identity of the ultimate beneficial owner(s) of UK based firms would be able to rely on the firms' audited financial statements. This process could then also serve as a model for other jurisdictions.

¹⁰ Regarding the specific case of hedge funds, IOSCO's Task Force on Unregulated Financial Entities has published a set of global standards for the regulation of hedge funds, which includes the recommendation that regulators should require all hedge funds active in their jurisdictions to be registered. It is possible that the information in the registries on hedge funds that will be set up by regulators in different jurisdictions could be used by financial firms for the identification of and verification of identity of the beneficial owners of hedge funds. However, that would only be possible if regulators allow financial firms access to the hedge fund registries for AML/CFT purposes.

such registries cannot be developed, FATF should acknowledge that financial institutions will rely on a customer's representatives or officers as to its ownership.

In this context, we welcome the recent proposal by the European Commission to make more information about beneficial ownership available to financial institutions.¹¹ We also welcome and support the work being done by the OECD on tax transparency. As FATF members are aware, the aim of this work to enable governments to ascertain where their nationals are evading tax by operating via companies, trusts, foundations, and other entities that are based in outside of their home jurisdiction. ICSA members support this work as it would allow financial institutions to have access to more timely information on beneficial ownership, which is absolutely critical in the fight against ML and TF. However, that will happen only if governments share the information with financial institutions on a timely basis.

In order to encourage governments to provide information about beneficial owners to financial institutions, ICSA members recommend that Recommendations 33 and 34 should be modified. Those Recommendations both state that FATF members, "...could consider measures to facilitate access to beneficial ownership and control information to financial institutions undertaking the requirements set out in Recommendation 5." In light of the discussion above, ICSA members strongly suggest that Recommendations 33 and 34 are rewritten to state that FATF members, "...should facilitate access to beneficial ownership and control information to financial institutions undertaking the requirements set out in Recommendation 5." This change alone, while probably not sufficient, would still go a great way toward ensuring that financial institutions have the information that they need in order to comply with FATF's beneficial ownership requirements.

4. Specify a consistent percentage for the identification of beneficial ownership

Different jurisdictions have put in place different thresholds for identifying and verifying the identity of beneficial owners. In order to ensure greater consistency on a global basis, the FATF should formally establish in its Recommendations standard thresholds for ownership interests both for lower risk and higher risk relationships.¹² We suggest in addition that the Recommendations should also provide for some specific exemptions, which each financial institution could make use of in accordance with its own risk-based approach.

Section 3: Politically Exposed Persons

ICSA welcomes the FATF's proposal to include domestic PEPs within the scope of Recommendation 6 in order to support the United Nations Convention on Corruption 2003 (UNCAC). Furthermore, ICSA acknowledges that many of the high profile cases of grand

11 Specifically, on 22 November 2010 the European Commission published its Internal Security Strategy. Although the EU proposals focus on an anti-crime agenda taking in such matters as organized crime gangs, terrorism, cybercrime and border controls, on page 5 of the document the Commission notes that, "Understanding the criminal source of finances and their movements depends information about the owner of companies, as well as trusts that those finances pass through. In practice, law enforcement and judicial authorities, administrative investigative bodies such as OLAF and private sector professionals have difficulty in obtaining such information." The document then states that the EU, "... should therefore consider by 2013, in the light of discussions with international partners in the Financial Action Task Force, revising the EU Anti-Money Laundering legislation to enhance the transparency of legal persons and legal arrangements."

12 ICSA members suggest the level should be 25% but are open to alternatives.

corruption in recent years have been facilitated by PEPs using domestic financial institutions within their own jurisdictions to acquire the proceeds of corruption before transferring those funds to institutions in overseas jurisdictions.

ICSA endorses FATF's proposed approach as to how financial institutions treat domestic PEPs in that financial institutions should take reasonable measures to determine whether a customer is a domestic PEP and then take enhanced CDD measures if a domestic PEP is deemed to be higher risk, particularly as a financial institution is likely to have a greater appreciation of the money laundering risks in its own domestic jurisdiction.

In addition, we propose the following principles for the revision of Recommendation 6:

1. The definition of “domestic PEP s” should focus on individuals and associated persons who hold political positions at the national level

Given the number of political office holders, be they at national or local levels together with the number of officials employed in national and local governments to support the office holders, ICSA proposes that FATF provides a clear definition as to level of government at which the definition of domestic PEP applies. To adopt a definition that encompasses office holders and officials at all levels of local government, ICSA feels would be disproportionate, bearing in mind the risk reward analysis would not support the use of resources based on the risk mitigated. Accordingly, ICSA proposes that any definition of domestic PEPs adopted by FATF focuses at the national level of government.

2. The risk-based approach should be used for the treatment of all PEPs

ICSA respectfully does not agree with FATF's proposal to leave Recommendation 6 unchanged in regard to foreign PEPs, as this would mean that all foreign PEPs are always considered to be higher risk, which is inconsistent with the application of the risk-based approach. It is worth noting that FATF Recommendation 6, introduced after the Abacha scandal, was adopted prior to FATF's endorsement of the risk-based approach. Therefore, it may be argued that to deem that all foreign PEPs are always higher risk contradicts the risk-based approach supported by FATF. Accordingly, ICSA recommends that FATF require financial institutions to identify whether their customer is a domestic or foreign PEP and subsequently undertake enhanced CDD **only** if the financial institution deems a specific PEP, whether 'foreign' or 'domestic', to represent a higher risk.

If FATF adopts ICSA's proposal to treat all PEPs in a similar manner, be they domestic or foreign, FATF would thus provide greater clarity for financial institutions operating on an international basis as this change would allow those firms to have a harmonised group policy and a consistent approach towards PEPs. Such a change would also help to eliminate possible confusion when such financial institutions are dealing with a multiplicity of national regulators.

Furthermore, ICSA welcomes the clarification provided by FATF in regard to the treatment of cases where a close family member or close associate has a business relationship with a financial institution and a PEP, be they domestic or foreign, is the beneficial ownership of the associated funds or assets.

3. Recommendation 6 should be enhanced to require governments to publish information on their PEPs

We note that financial institutions, under the threat of regulatory sanctions, have processes in place currently to identify PEPs and subject them to enhanced CDD as appropriate, whilst national governments are under no obligation to assist financial institutions by publishing information about their PEPs. FATF could assist financial institutions in the fight against money laundering and corruption linked to PEPs by:

- Requiring all governments to publish a list of their own PEP positions and the current office holders together with details of their close family and close business associates;
- Publishing a list of those countries that prohibit their PEPs from beneficially owning accounts or assets located in foreign jurisdictions;
- Publishing a list of those countries where their own PEPs are required to file a declaration of assets or wealth with an agency of the government or legislature. ICSA is aware of the Stolen Asset Recovery Initiative (“STAR Initiative”)¹³, organised under the aegis of the World Bank, which notes that 114 jurisdictions require their PEPs to submit such a declaration. The STAR Initiative recommends that financial institutions request a copy of the declaration from a customer who is a PEP from an appropriate jurisdiction, whether or not the declaration is publically available, with failure to meet the financial institution’s request resulting the account not being opened.

Although some may interpret ICSA’s proposals on foreign PEPs as a diminution of current standards, ICSA is not aware of any reliable evidence that foreign PEPs as a class represent a real higher money laundering risk as opposed to the theoretical risk that all foreign PEPs are corrupt. Should FATF adopt ICSA’s proposals outlined above, we respectfully submit there would be a greater opportunity by financial institutions to identify those PEPs that represent an actual higher risk as opposed to a theoretical higher risk, with a consequent greater degree of focus on and resources devoted to the actual risks posed by PEPs, be they domestic or foreign.

In closing, we would like to express our appreciation once again to the FATF for the opportunity to comment on the proposed revisions to the FATF 40+9 Recommendations. Please do not hesitate to contact us if you have any questions about the comments in this letter.

Best regards,



Marilyn Skiles
Secretary General
International Council of Securities Associations

¹³ Theodore S. Greenburg, et. al., *Politically Exposed Persons: Preventative Measures for the Banking Sector*, May 2010 (Washington, DC: Stolen Assets Recovery Initiative and the World Bank).

January 7, 2011

Via email fatf.consultation@fatf-gafi.org

FATF Secretariat
2, rue André Pascal
75775 Paris Cedex 16
FRANCE

Re: Consultation Paper: Review of the Standards – Preparation for the 4th Round of Mutual Evaluations

Ladies and Gentlemen:

The Investment Company Institute ("ICI")¹ appreciates the opportunity to comment on *Consultation Paper: Review of the Standards – Preparation for the 4th Round of Mutual Evaluations* (October 2010) (the "Paper") by the Financial Action Task Force ("FATF"). The ICI and its members are committed to assisting the government of the United States and FATF in deterring and preventing money laundering and terrorist financing. We strongly support FATF's efforts to develop international anti-money laundering ("AML") standards that promote uniformity and efficacy among member jurisdictions while respecting the differences among the sectors within the financial industry. We appreciate FATF's efforts to ensure that the review of the standards is focused, open and transparent and emphasizes the effectiveness of the implementation of the standards.

We provide comments below with respect to the following proposals in the Paper:

- consolidation and clarification of FATF statements regarding the risk based-approach and a new interpretative note, including the incorporation of non-face-to-face contact as a risk factor;
- measures and information for customers that are legal persons arrangements, *i.e.*, beneficial ownership information;
- enhanced measures and domestic politically exposed persons; and
- sectoral coverage and third-party reliance.

¹ The Investment Company Institute is the national association of U.S. registered investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$12.31 trillion and serve over 90 million shareholders.

Risk-Based Approach (“RBA”)

In the United States, mutual funds are required to develop and implement an AML program reasonably designed to prevent them from being used to launder money or finance terrorist activities.² The legislative history of the US law requiring financial institutions to develop such programs acknowledges that the law is not a “one-size fits all” requirement, and that financial institutions must have the flexibility to tailor their programs to fit their business, size, location, activities and risks or vulnerabilities to money laundering. When formulating the AML program rule for mutual funds, US regulators explicitly recognized that mutual funds operate through a variety of business models, and that one generic AML program for mutual funds was not possible.³ Similarly, the US customer identification program rule for mutual funds also specifies that mutual funds utilize risk-based procedures for verifying the identity of each customer that opens a new account. Mutual funds therefore very much understand the requirements and demands of the RBA to implementing effective AML programs.

FATF is proposing to consolidate and clarify its statements regarding the RBA through a single comprehensive statement which would be incorporated into the standards as a new interpretative note on the risk-based approach (“INRBA”). The Paper only generally describes the INRBA - no specific text is set forth. However, the Paper sets forth certain concepts to be included in the INRBA, including an obligation to develop national risk assessments and a proposal to incorporate the issue of non-face-to-face business into the INRBA.

Clarifications

FATF states that its current text on the RBA may lack sufficient clarity and is referenced in different parts of the standards. FATF also believes that many of the components are brought together more clearly in RBA Guidance developed in 2007 with participation by certain members of the financial industry.⁴ The RBA Guidance is not part of the FATF standards. It is not clear whether FATF intends to incorporate the full text of the RBA Guidance or only portions into the INRBA. While we appreciate FATF’s goal to clarify and consolidate statements regarding the RBA, we urge FATF to proceed cautiously.

² 31 CFR 103.130 (2010)

³ See Department of Treasury, Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Mutual Funds, 67 FR 21117, 2119 (April 29, 2002).

⁴ FATF Guidance on the Risk-Based Approach To Combating Money Laundering and Terrorist Financing – High Level Principles and Procedures (June 2007) (“RBA Guidance”). Annex 5 of the RBA Guidance includes a list of the members involved in the development of the RBA Guidance. No representative of the mutual fund industry is specifically identified as a member.

The RBA Guidance is quite detailed and is more than 40 pages. It was intended to: (1) support the development of a common understanding of what the RBA involves; (2) outline high level principles involved in applying the RBA; and (3) indicate “good public and private sector practice” in the design and implementation of an effective RBA.⁵ The FATF standards set forth minimum standards for jurisdictions to implement with detail according to their particular circumstances and constitutional frameworks.⁶ We believe the RBA Guidance and the FATF standards serve complementary but different purposes. Accordingly, we believe that any clarifications of the RBA in the FATF standards must remain sufficiently high-level to continue to afford a broad range of financial institutions around the world with sufficient flexibility to tailor their programs to their business and circumstances.

Any clarifications should not narrow or otherwise circumscribe the ability of firms to design, change and implement an effective AML program that takes account of the varying and changing risks associated with the different types of businesses, clients, accounts and transactions it handles. It is very important that regulators continue to appreciate that an RBA necessarily means firms in the same financial services sector face varying risks and may legitimately have different risk-based AML programs. As acknowledged by many experts in both government and industry, the RBA is a cornerstone of efficient and effective AML programs and makes it more likely that financial institutions can deploy their AML resources to focus on those customers and transactions that are most susceptible to money laundering and terrorist financing.

National Risk Assessments

In the Paper, FATF proposes that countries be obligated to develop a risk assessment that assesses the money laundering/terrorist financing (ML/TF) risks of their country. Depending on whether specific risks are identified as high or low by a country, financial institutions would be expected to apply enhanced or simplified measures, as appropriate. Since these assessments will have a fundamental impact on the AML programs of financial institutions, we agree with FATF that these assessments should be developed with industry input.⁷

Non-Face-to-Face Contact

Under section 1.2.2 of the Paper, FATF states that it has reviewed Recommendation 8 and considers that “non-face-to-face” relationships and transactions should be a ML/TF risk factor to be

⁵ RBA Guidance, paragraph 1.3.

⁶ FATF Standards, FATF 40 Recommendations (June 20, 2003, incorporating amendments of October 22, 2004), Introduction.

⁷ See RBA Guidance at 11 (recognizing the important role of the private sector in the development of these national assessments).

considered by financial institutions when assessing the specific risks associated with a relationship or transaction. FATF states “[t]he issue of non-face-to-face business will be incorporated into the INRBA.”

We support the approach currently set forth in Recommendation 8. Recommendation 8 states that “financial institutions should have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions.” We agree that measures to address the risks that may arise in non-face-to-face contexts should be premised on an RBA, allowing firms to assess the risks of such arrangements in light of their business and customer circumstances rather than establishing any presumption regarding the risk of such a form of business.

We see no reason why anything different from the standard currently set forth in Recommendation 8 should be included in the INRBA. There should be no suggestion that non-face-to-face contact results in a higher risk of money laundering or terrorist financing. Non-face-to-face account openings, such as accounts established by or introduced through financial intermediaries, are well-accepted and common throughout the mutual fund industry, and many mutual funds have reasonably determined that relationships with customers introduced through regulated intermediaries may pose lower risks than certain direct customer relationships.

Legal Persons and Arrangements – Customers and Beneficial Owners

FATF states that a number of changes are being considered for the interpretive note to Recommendation 5 (INR5), including to make clearer that details of the beneficial ownership, including the “mind and management” of a legal person or arrangement, must be obtained by financial institutions. FATF states that greater emphasis will be placed on the obligations of institutions to understand the ownership and control structure of legal persons and arrangements. For example, FATF discusses revising INR5 to mandate that firms identify and verify natural persons who ultimately control a legal person. Where ownership is widely dispersed, the Paper proposes revising INR5 to require financial institutions to identify and verify those other persons that have effective control over a legal person through other means (*e.g.*, by exerting influence over the directors of a company).

With regard to customer identification, we do not believe that it is necessary for FATF to propose changes for INR5 regarding additional beneficial ownership information to be collected by financial institutions for the identification of customers that are legal arrangements. FATF states that it is seeking to clarify that the information needed varies according to the ownership and control structure. Consistent with an RBA, financial institutions already recognize that the “information needed varies” and that additional or different customer information may need to be obtained, including beneficial ownership information.

One of the hallmark characteristics of the RBA is the ability of firms to design, change and implement an effective AML program, including a customer identification program, that takes account

of the varying and changing risks associated with the different types of businesses, clients, accounts and transactions it may handle now and in the future. We therefore urge FATF to not specify any additional information to be collected in this context.⁸

With respect to “verification” of beneficial ownership, we believe it is imperative that FATF further evaluate this proposal in light of the inability of many financial institutions to reliably verify beneficial ownership information with relevant authorities. For example, while there have been recent proposals in the United States to require states to obtain a list of beneficial owners of most corporations and limited liability companies formed under their laws, there are no such official listings to date. These US proposals also do not address the issue of beneficial ownership in the context of other entities such as partnerships or trusts. Accordingly, it is essentially impossible for financial institutions (wherever located) to reliably verify beneficial ownership information for most US entities.⁹

Without a means for reliably verifying beneficial ownership information, we question whether such information is truly helpful to financial intelligence units or law enforcement. In addition, given these substantial verification problems, we do not believe that this proposal can be viewed as meeting FATF’s own objective to ensure an effective implementation of the AML/CFT standards. We therefore recommend that FATF not make the proposed changes and that firms be allowed to continue to utilize risk-based procedures for identifying and verifying the identity of their customers.

Politically Exposed Persons (PEPs) – Domestic PEPs and Proposal for Enhanced Scrutiny

FATF is considering requiring enhanced measures for domestic PEPs “if there is a higher risk.” We believe that such a requirement would be duplicative of existing policies and procedures under the RBA and therefore that no change is needed. For example, in specified circumstances, US law requires enhanced due diligence of accounts with senior foreign political figures; however it is also clear that an RBA would contemplate different procedures for customers identified as higher risk, which could include a domestic PEP in some circumstances.

Given the existing RBA, as well as the wide range and variety of persons that could be categorized as domestic PEPs, we think the RBA approach is the appropriate mechanism for the consideration of a customer’s status as a domestic PEP.

⁸ We also have concerns with FATF’s more specific proposals regarding the information needed, including obtaining information on the “mind and management” of a legal arrangement or persons that have “effective control through other means.” The breadth and ambiguity of such proposals are highly problematic. It is important that any information requirements regarding the “customer” of the financial institution be sufficiently straightforward to enable a wide range of financial institutions around the world to understand and effectively implement them.

⁹ We understand that similar challenges exist in other jurisdictions. In addition, there also can be challenges accessing such information, if it exists, as there may be limits on its availability to the public.

Third-Party Reliance

We support FATF's consideration of extending a jurisdiction's discretion regarding the types of entities that can be relied upon (*e.g.*, to allow reliance on businesses other than in the banking, securities or insurance sector as long as they are subject to AML rules and effective supervision). However, consistent with FATF's objectives to promote global standards for combating money laundering and terrorist financing, we believe that FATF should strongly encourage jurisdictions to permit reliance with respect to firms that are subject to supervision and AML requirements in other FATF jurisdictions. We believe such an approach would recognize the global nature of financial markets while also supporting FATF efforts to promote global AML standards.

Very truly yours,

A handwritten signature in black ink that reads "Susan Olson". The signature is written in a cursive, flowing style.

Susan M. Olson
Senior Counsel – International Affairs

7 January 2011

FATF Secretariat
2 rue André Pascal
75775 Paris Cedex 16
France

Sent by e-mail to: fatf.consultation@fatf-gafi.org

Dear Sir

**The Review of the Standards -
Preparation for the 4th Round of Mutual Evaluations**


The IMA represents the asset management industry operating in the UK. Our Members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of around £3 trillion of assets, which are invested on behalf of clients globally. These include authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. Our Members also represent 99% of funds under management in UK-authorised investment funds (ie. unit trusts and open-ended investment companies).

We are grateful for the opportunity to comment on the current proposed changes to the FATF's 40-9 recommendations.

Broadly, we welcome the proposals in principle, albeit with a degree of reservation in some areas. These reservations are highlighted among our comments, which are annexed to this letter.

If you wish to discuss further any of the points we have raised, please do not hesitate to contact me.

Yours faithfully



David Broadway
Senior Technical Adviser

ANNEX

IMA COMMENTS ON THE FATF'S REVIEW OF THE 40+9 RECOMMENDATIONS (OCTOBER 2010)

1. Risk-based approach

1.1 *Interpretive Note on the Risk-Based Approach (INRBA)*

We support the development of the INRBA as a single comprehensive statement on the RBA and agree with the proposed separation between the obligations placed on countries and those for practitioner institutions. In addition, we believe that countries should be required to publish the results of their own risk assessments.

1.2.1 *Recommendation 5 and its Interpretive Note*

We welcome cautiously the proposal to provide a more detailed list of example risk factors in Recommendation 5 and its Interpretive Note, but urge that in doing so the FATF must recognise that the ML/TF risk in any situation is a product of multiple factors, in particular issues that may surround the customer and those associated with the nature of the product/service/transaction concerned. Care should also be taken to ensure that the result is not prescriptive in itself, thus undermining the basic principle of RBA.

1.2.2 *Recommendation 8*

We agree that business conducted on a non-face-to-face basis should be addressed in the INRBA, rather than in the Recommendations themselves, and that Recommendation 8 should focus on the management of the risks associated with developing technologies and business practices.

1.2.2 *Recommendation 20*

We agree in principle that Recommendation 20 might be extended to require countries to consider applying their regimes to "other types" of financial institutions/activities alongside designated non-financial business and professions, although it is not clear at this stage what the FATF has in mind in this respect.

2. Recommendation 5 and its Interpretive Note (INR5)

2.1 *Impact of the risk-based approach*

We agree strongly that customer due diligence should be commensurate to the ML/TF risks and welcome the proposed stipulation of this in INR5

We are cautious, however, about the likely strength of the example risks to be provided and how they will be portrayed - if they are too granular, they will have limited applicability across the breadth of institutions at which the AML/CFT regime is targeted.

We are also cautious about the prospect of including example enhanced and simplified due diligence measures - such measures will depend greatly on the nature of the business that is being conducted and the combination of multiple and perhaps compensating factors. Moreover, flexibility must be retained for institutions to decide to apply a broadly one-size-fits-all approach within a particular business context, subject to them giving consideration to specific situations and tolerance thresholds that should trigger (or permit) enhanced (or simplified) due diligence measures.

2.2 *Legal persons and arrangements*

We welcome the proposal to provide further clarification regarding the verification of identity for legal persons etc. and their beneficial owners. We agree that there should be particular focus on understanding the ownership and control structure, but this needs to be considered in the light of the RBA.

2.3 *Life insurance policies*

We have no comment to make on the specific proposals with regard to life insurance sector, which does not fall within the IMA's domain.

3. Politically Exposed Persons

3.1 *Reference to the United Nations Convention Against Corruption*

We agree with the proposal to include the Merida convention under Recommendation 35.

We agree that there should be no distinction between domestic and non-domestic PEPs. However, we also believe the risk assessment of a PEP might vary according to the country in which they hold their position irrespective of whether or not they are domestic to the institution, and we recommend that this be recognised in Recommendation 6.

An overarching issue with PEPs is the basic challenge that institutions face in identifying them - there are no official lists, which means they are reliant upon a limited number of service providers or on their own internal capabilities to mine a vast array of information sources - Recommendation 6 should acknowledge this. As with any risk factor, the fact that a customer may be identified as a PEP might be mitigated by other factors surrounding the nature of the product etc. and we believe it is wholly disproportionate to require firms to apply valuable resources to this where the overall risk assessment of a particular business relationship or transaction is low. Furthermore, even where it is appropriate to establish whether or not the customer is a PEP, we believe this should be on a "reasonable endeavours" basis commensurate with the overall risk assessment.

We do not agree that relatives and associates should only be considered where the PEP is a beneficial owner. There will be instances where either the relative or associate is themselves the beneficiary of the corrupt actions of a PEP or deliberately will not have established a formal or identifiable relationship under which the PEP is the beneficial owner. We believe this proposal will serve to complicate further an already difficult aspect of the Recommendations in practice with no obvious benefit.

3.2 *Beneficiaries of life insurance policies*

We have no comment to make on the specific proposals with regard to life insurance sector, which does not fall within the IMA's domain.

4. Third party reliance

4.1 *Sectoral coverage*

We agree that Recommendation 9 should, given national discretion, extend to permit reliance upon any person or body that is subject to effective supervision against appropriate AML/CTF requirement.

4.2 Delineation between "reliance" and outsourcing or agency

We are concerned that the FATF's proposals to provide specific positive and negative features to determine whether a situation is "reliance" or outsourcing/agency will complicate the distinction between those activities unnecessarily.

We believe "reliance" can be defined simply as when an institution relies on a third party to meet that party's own prior obligation in relation to a common customer for the same relationship or transaction. In contrast, with both outsourcing and agency the third party is appointed by the institution to carry out functions on its behalf and in so doing logically should be regarded in either case as an extension of the institution for those purposes. As such any customer due diligence activities undertaken by an agent or outsourcing provider in that capacity should be seen as integral to the institution's own controls.

The distinction is that in cases of "reliance", the institution relies on the obligations placed on the third party under the regime applicable to that party, whereas in cases of outsourcing or agency the institution must itself determine the requirements placed upon the provider or agent according to the institution's own obligations.

4.3 Intra-group reliance

We welcome the proposal to provide greater flexibility for intra-group reliance without obtaining further assurances from the third party, where there is an effective group-level policy in place. We also agree that this should be capable of operating irrespective of the jurisdiction in which the third party is located, subject to their adoption of the group policy.

5. Tax crimes

We agree with the proposed changes to the list of designated predicate offences.

6. Special Recommendation VII and interpretive note

6.1 *Beneficiary information*

The issue of originator and beneficiary information in wire transfers is one of interest to institutions that are not themselves payment institutions to which national implementations of SRVII apply directly, but nonetheless are subject to AML/CFT requirements and therefore are interested in establishing the source and destination of the funds concerned as part of their own customer due diligence process. For example, an investment firm may receive a payment to its own account in relation to the purchase of an investment by its customer, or be asked by the customer to remit the proceeds of a sale to an account elsewhere. In these instances, we the firm should be able to establish whether the originator/beneficiary account belongs to their customer or to a third party on whose behalf they may be acting.

In particular, where the firm is the *originator* (on the request of its customer) it should be able to include the details of who it believes is the beneficiary in the knowledge that the beneficiary institution will validate that information against the beneficiary's account number. To this end, provided the obligation on the originator institution to include the beneficiary information is matched by an obligation on the beneficiary institution to validate it, we believe there would be value in the proposal.

We are also concerned, however, that the concession given currently in relation to domestic payments - allowing full originator information to be provided on request subsequently - deprives an investment firm that is the beneficiary of a domestic wire transfer the opportunity

to confirm the originator of the payment without making further enquiries. We therefore recommend that consideration be given to withdrawing this concession.

We appreciate that these changes would require an appropriate lead time and the application of resources on the part of the payments industry. However, we believe appropriate enhancements to SRVII would provide much-needed influence on the future development of payment systems in these respects.

6.2 Screening of wire transfers for financial sanctions

The IMA does not represent institutions to which the implementation of SRVII applies directly, so is not in a position to respond to the questions posed in this section.

6.3 Other issues

We have no further comments to add in relation to SRVII or wire transfers.

7. Other issues in preparation for the 4th round of mutual evaluations

We have no comments in relation to this section.

8. Usefulness of mutual evaluation reports

We believe mutual evaluation reports provide valuable resources for financial institutions to understand the regimes of other countries and their effectiveness, and assist in those firms' own assessment of the ML/TF risk of particular business scenarios. They find the rating summary particularly helpful as a quick reference and easy to find. We note that one of the key principles for mutual evaluations and assessments is that all the reports are published and it is essential that the FATF remains true to this principal.

We believe all the proposals suggested in the consultation paper would be valuable, especially the one to produce a more succinct executive summary. In addition, we recommend that less focus be placed on the detail of a country's legal/regulatory regime and that more emphasis be given to its effectiveness in practice. We also believe the reports should incorporate a section that describes the country's specific assessment of its ML/TF risk (as proposed in section 1.1) supplemented by any additional findings of the FATF's own assessment team.