



Consultation on Proposed Changes to the FATF Standards

*Compilation of Responses from the Financial
Sector*

PART TWO

Table of Contents

<i>AFI Financial Integrity Working Group (FINTWG)</i>	5
<i>Association of Foreign Banks in Germany</i>	15
<i>Association of German Banks / Bundesverband deutscher Banken (BdB)</i>	18
<i>Association of German Public Sector Banks (VÖB – Bundesverband Öffentlicher Banken Deutschlands)</i>	24
<i>Australian Bankers' Association</i>	32
<i>Australian Finance Conference (AFC)</i>	39
<i>Austrian Federal Economic Chamber – Division Bank and Insurance</i>	42
<i>Blom Bank – Jordan</i>	44
<i>British Virgin Islands Bank Association & British Virgin Islands Association of Registered Agents</i>	46
<i>Canadian Bankers Association (CBA)</i>	54
<i>CEA Insurers of Europe</i>	62
<i>Chilean Banking Association</i>	66
<i>CNSeg (National Confederation of the General Insurance, Private Pension and Life, Supplementary Health and Capitalization Companies - Brazil)</i>	70
<i>European Banking Federation (EBF) aisbl</i>	72
<i>European Banking Industry Committee (EBIC)</i>	77
<i>European Savings Bank Group (ESBG)</i>	81
<i>Fédération Bancaire Française</i>	87
<i>Financial Institutions in China</i>	90
<i>FFSA</i>	92
<i>Financial Services Council (FSC)</i>	93

<i>GFC - Gabinete de Suporte à Função Compliance – NFC-2</i>	95
<i>Insurance Associations- Joint response from: 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), and Insurance Bureau of Canada (IBC)</i>	96
<i>International Banking Federation (IBfed)</i>	103
<i>International Council of Securities Associations (ICSA)</i>	116
<i>Investment Company Institute (ICI)</i>	126
<i>Investment Management Association (IMA)</i>	132
<i>Italian Banking Association (Assoziazione Bancaria Italiana (ABI))</i>	137
<i>Japan Post Bank Co., Ltd</i>	147
<i>Japanese Bankers Association (JBA)</i>	149
<i>Leaseurope</i>	154
<i>Mouvement Desjardins</i>	160
<i>Orbis Investment Management Limited</i>	164
<i>Russian Electronic Money Association (AED)</i>	165
<i>Skagen Funds</i>	168
<i>Swedish Bankers' Association</i>	172
<i>SWIFT Standards & Secretariat to the PMPG</i>	174
<i>Swiss Bankers Association (SBA)</i>	176
<i>Switzerland's Leading Economic Associations – Joint Response from Swiss Bankers Association (SBA), Swiss Insurance Association (SIA), Swiss Holdings and Forum SRO MLA</i>	182
<i>The Administration Sub-Committee of Bermuda</i>	189
<i>The Banking Association South Africa</i>	190
<i>The British Bankers Association (BBA)</i>	207
<i>The DTC Association (The Hong Kong Association of Restricted License Banks and Deposit-taking Companies)</i>	217
<i>The Dutch Association of Insurers</i>	220

<i>The Hong Kong Association Of Banks</i>	221
<i>The Life Insurance Association of Japan (LIAJ)</i>	223
<i>The Swedish Investment Fund Association (SIFA)</i>	224
<i>The Wolfsberg Group</i>	225
<i>Title Insurance Industry Association of Canada (TIIAC)</i>	234
<i>Western Union Holdings Inc. (WU)</i>	238
<i>World Savings Banks Institute (WSBI)</i>	245
<i>Zentraler Kreditausschuss (ZKA)</i>	249

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

7 January 2011

General remarks.

ABI – which represents around 1000 members (banks and financial intermediaries) – has willingly accepted the opportunity to participate in the FATF consultation, particularly regarding the focus on the private banking system which has the option of actively participating in the review process for 40 Recommendations on combating ML (Money Laundering) and 9 Special Recommendations on combating International Financing of Terrorism (FT) to adapt the anti-money laundering and anti-financing of terrorism to the changing economic and regulatory scenario.

In general terms, ABI agrees with the updates proposed in the FATF paper and some pragmatic solutions proposed which, in certain areas – e.g. clarification on the Risk Based Approach (RBA) and its impact on Recommendation 5 and the new Interpretative Note to Recommendation 5, or on Recommendation 8 on new technology and customer relations other than face-to-face – appear to be particularly welcome in the context of a constantly growing fight against the phenomena of money laundering and financing international terrorism, which intermediaries are expected to apply at international level. More specifically, ABI fully agrees with the dissemination of examples by the FATF, useful in providing a strong set of cases to identify the greatest risks on which enhanced controls are required and lower risks for which simplified controls can apply.

However, the Italian banking industry expresses doubts about certain aspects of the paper, the implementation of which would in any event have to pass through FATF's preparation stage of support documents for intermediaries in firmly applying the rules. This aim is specifically requested for the hoped-for definition of lists of relevant Politically Exposed Persons and clearer information on means to identify the beneficial owner. Generally speaking, on this aspect it is hoped that there can be a secure reference format for the customer due diligence so as to identify the beneficial owner.

Lastly, please note that any proposal regarding new compliance with control obligations for intermediaries has to take into account the actual systems and be subject to cost-benefit analysis by the FATF prior to implementation. Some remarks on single proposals included in the FATF consultation paper are provided below.

1. The Risk-Based Approach

With reference to the Risk Based Approach (RBA), ABI emphasises the importance of this topic to the application of Anti-Money Laundering criteria given the significant liability of banking operators to identify and monitor customers and the beneficial owner in terms of changes, which realistically

takes into account all changing and significant elements that can occur during a financial relationship.

For this reason, ABI agrees with the content of paragraph 17 of the Consultation Paper, where the FATF discusses the inappropriateness of applying a "one size fits all" criterion as the 40 Anti-Money Laundering Recommendations and 9 Special Recommendations to combat terrorism could have a different operating application depending on the reference sector.

In this context, it is considered appropriate that the FATF illustrates with **examples** the application of the RBA principles, as these guidelines could be useful to banking intermediary handling of daily customer-related activities. Furthermore, these examples should provide support to banking activities and not translate into a binding regulation, which would add more to intermediary obligations, to the detriment of the RBA which instead allows intermediaries to take into account all available information.

The Italian banking system already adopted this approach in 2001, when the Bank of Italy issued its "Operating instructions for the identification of suspect transactions", recently updated and translated to Bank of Italy Resolution no. 6161 of 6 August 2010, "Anomaly indicator measures for intermediaries". Through this measure the Supervisory Authority issued a new, updated set of anomaly indicators to reduce the margin of uncertainty linked to subjective assessment or discretionary action in intermediaries' correct compliance with obligations, namely in reference to reporting suspect transactions.

Then in reference to certain guidelines in the draft "*Interpretative Note on the RBA in the course of their compliance tasks*" (e.g. paragraph 11 of the consultation paper) note that the Italian legislation - and therefore banking operators - has already implemented some of the principles included among the FATF recommendations in specific reference to **non face-to-face transaction** transactions.

Art. 28 (enhanced customer due diligence) of the Italian Legislative Decree 231/2007 on "Implementation of Directive 2005/60/EC on preventing use of the money laundering system and proceeds deriving from criminal activity and the financing of terrorism, and for Directive 2006/70/EC on execution", specifically states that "*When the customer is not present in person, entities and persons subject to this decree shall adopt specific and suitable measures to offset the greater risk, applying one or more of the measures indicated (below)*".

Consequently, since the Italian legislation on such matters already provide for deep monitoring in the sense for the by the FATF, in the context of definition of the RBA it could be useful if there were no impact from additional definitions and binding legislation but rather more open sample

criteria, that can be constantly updated by intermediaries, referring to elements that could emerge as best practices or reference regulations progress.

In any event, the banks confirm their interest in having a list of examples, particularly regarding the application of simplified or enhanced risk criteria on Anti-Money Laundering and on Combating International Terrorism (see para. 9).

2. Recommendation 5 and its interpretative note.

The proposed FATF amendments on the **identification and verification of beneficial owner** (e.g. para 19) do not seem to make substantial changes, especially regarding identification of the control structure (see para 19).

In this respect also it is worth commenting that the Third Anti-Money Laundering Directive defines the beneficial owner of a legal company as the persons with real ownership or control of at least 25% of shares and voting rights. This indication was coherently introduced to Italian Law in that the technical annex to the implementing regulation (Italian Legislative Decree 231/2007) envisages a 25% + 1 investment in the share capital as identifying direct or indirect ownership or control of a legal entity.

This legislation though resulting in some operating difficulties – especially where share capital distribution is traceable to organisations working under several different EU laws with non-harmonised characteristics – is nevertheless an objective reference benchmark which, with widespread adoption at EU level, should provide an outline for the FATF to build a similar case at international level, given its objective nature from a corporate law point of view and the system's widespread use in the banking industry.

As previously stated, the decision to adopt this method is not without operating difficulties that in effect concern the identification of a natural person who has ultimate control or ownership of a legal entity for the matters already demonstrated, and the problems in identifying such persons or obtaining information from them. For this reason it could be useful if banks could refer to information obtainable from public records or other reliable source, available to the public, in addition to the 25% criterion.

3. Recommendation 6: Politically Exposed Persons.

On the issue of Politically Exposed Persons (see para 27-29) ABI agrees with the proposed FATF approach regarding the fact that foreign PEPs can represent a higher Money-Laundering Risk than Domestic PEPs. The Italian

legislation introducing the Third Anti-Money Laundering Directive (Italian Legislative Decree 231/07) included a situation of a much higher risk of money laundering in relation to non-resident PEPs, given the greater risk linked to such entities in view of the stronger likelihood of their being open to corruption phenomena. The provision in question states:

“Article 1, section 2, paragraph o) Politically Exposed Persons

1. Natural persons who holds or have held important public offices shall mean:

a) heads of State, heads of Government, Ministers, Deputy Ministers or Under-Secretaries;

b) MPs;

c) members of the Supreme Court, Constitutional Courts and other higher legal bodies whose decisions are not normally subject to further appeal except in extraordinary circumstances;

d) members of the Audit Court and Boards of Directors of Central Banks;

e) Ambassadors, Official spokesmen and High-level Armed Forces Officers;

f) members of the administrative, management or supervisory bodies of State-owned companies.

No mid-grade or lower-grade officers are included in the aforementioned categories. Categories indicated under points a) to e), where applicable, include offices at European and international level.

2. Direct family members shall mean:

a) the spouse;

b) children and their spouses;

c) persons who in the last five years have lived with persons indicated under the above points;

d) parents.

3. For the purpose of identification of entities with which persons referred to under point 1 are notoriously considered to be closely linked, reference should be made to:

a) any natural person notoriously considered to have joint beneficial ownership of legal entities or any other business relationship with a person indicated in subsection 1;

b) any natural person who is sole beneficial owner of legal entities or persons that are notoriously created for the benefit of a person indicated in subsection 1.

4. Without prejudice to the risk-related application of stringent obligations to adequately verify customers, when a person has ceased to hold important public office for a period of at least one year, the entities expected to comply with this decree shall not be obliged to consider such persons as politically exposed” .

With reference to the extension **to domestic PEPs** – as the Italian legislation applies the higher risk of Money Laundering to non-resident PEPs only - the FATF proposal could represent some concerns. The extension to the domestic PEPs could result in a disproportionate burden in terms of due diligence activities of the intermediaries: the introduction of domestic PEPs

would represent a significant impact on the number of customers that could be compulsorily subject to stringent verification according to the current domestic PEP definitions, pursuant to art. 28, Legislative Decree 231/2007, with barely significant added value in terms of a higher degree of Due Diligence of the customer.

In relation to current intermediary practices, banks are perhaps more aware of domestic PEPs, where considered at greater risk due to the specific activities involved, already covered at the initiative of those entering into contact with such persons, with enhanced customer due diligence where considered necessary, based on application of the Risk-Based Approach criterion.

The proposal included in the FATF Consultation Paper on PEPs family members (para 30), envisaging abandonment of the current definition,, would also introduce a diverging due diligence for financial relations involving a PEP either non-resident or domestic.

For this reason, it would in any event seem more appropriate not to define such rules at international level, but to leave their handling to the discretion of single domestic legislation. What instead appears to be a significant detail to determine PEPs by intermediaries is the option of access to **lists of PEPs** established by public authorities, for example similar to the lists of persons subject to financial penalties (the DG RELEX file, constantly updated) so as to increase system-level awareness and be sure of lowering the risk thresholds.

4. Recommendation 9: Third Party Reliance

ABI appreciates the FATF's approach in paragraphs 35 and 36, which outlines the option of placing reliance on customer and beneficial owner identification on third parties acting on the basis of a functional approach, i.e. not based on aprioristic definitions and therefore offering simpler management of anti-money laundering information especially at Group level, as pointed out in the FATF paper.

This pragmatic and third party-reliant approach for identification by other Group members would lead to greater efficiency, flexibility and quality in the customer due diligence process to combat Money Laundering and a higher degree of compliance in Fighting Terrorism. In any event, these guidelines have to be managed as part of national regulations and according to individual Group policies.

With reference to possible clarification emerging as a side effect of the FATF Consultation, with regard to third party reliance, ABI agrees with the aim to clarify the difference between agency relations (more generic and presuming activities completed on behalf of a party), outsourcing (which by

definition has to be restricted to well-defined limits) and third party reliance.

5. Tax crime as a predicate offence for money laundering

The inclusion of tax crimes in Recommendation 1 (para 39), seems highly delicate in terms of the crimes considered to be Money Laundering and the resulting knock-on effects in terms of reporting suspicious activities.

These are extremely sensitive regulations that go beyond a mere application of rules to combat Money Laundering and International Terrorism, for which a different level of consultation is necessary, targeting institutional entities performing such activities in a more direct manner (e.g. the OECD at international level, and the Agency of Revenue, Ministry of Economy and Finance at national level).

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

The reinforcement of financial transaction trackability for Anti-Money Laundering purposes and to combat the financing of terrorism increases the transparency of financial processes and services, aiding the stability and reputation of the banking system. The Italian banking community is strongly committed to pursuing such objectives. Well aware of the importance of this topic, ABI launched a specific consultation of Payment Systems Working Groups. Regarding the requirements indicated in the consultation paper on information linked to payment beneficiaries as collected from the payer and the screening of sanction list transactions, the following emerged.

Para 47 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/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); (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.

- I. it is common practice for Italian banks to ask the payer for correct details of the name/company name of the beneficiary;
- II. it would be useful if the paying bank (for sanction list transaction screening purposes) had access to information regarding the beneficiary.
- III. it would be useful to have the following beneficiary details: 1) the beneficiary's account number (IBAN code in Europe); 2) name of the

beneficiary; 3) name of the ultimate creditor (where appropriate); 4) **on an optional basis** the address of the beneficiary/ultimate creditor.

Para 49 *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 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)*

- I. Italian banks verify all payments on the sanction list, including those received as intermediary bank.
- II. when a name appears on the sanction list (payer or beneficiary), Italian banks activate an additional control process, which could also envisage action by the customer account manager to check whether this is a "false hit" or "true hit" and then make decisions as appropriate. As a result of such checks the transaction could be denied, funds frozen, requests could be issued for additional counterparty details, with reporting the suspicious nature of the transaction to the relevant authority if necessary;
- III. the process enabled for sanction list hits is the same for both the beneficiary and payer names;
- IV. under current regulations, if payer details are missing the bank can either: a) execute the payment asking the payer bank for the missing information or b) deny payment. For transactions (incoming or outgoing) involving an Iranian party and lacking payer and/or beneficiary details the transaction is always denied.

From a more general point of view, the proposal to incorporate beneficiary details into the SRVII as referring only to cross-border transfers is acceptable. In this respect, note that it is important to continue considering the EU as a single legal authority, in line with the provisions of paragraph 11 on page 4 of the Basel Committee paper "*Due diligence and transparency regarding cover payment messages related to cross-border wire transfers*". This approach corresponds with the initiatives that, under the supervision of the European Commission and the European Central Bank, the European banking system has adopted to create the SEPA.

7. Other issues.

In the consultation paper the FATF announces the review of Recommendations 36 to 39 on international cooperation (para 51), the recommendation on information exchange between Authorities

(recommendation no. 40), the recommendations on Law Enforcement Authorities (no. 27) and the recommendation on Law Enforcement Authority Powers, with the aim of adapting these to the changing economic and regulatory scenario.

With regard to these aspects, ABI feels it would be useful for the FATF to submit any changes for assessment by the private banking systems in order to achieve a review agreed at the highest level possible by banking operators who, in effect, are expected to apply the regulations in question.

8. Usefulness of Mutual Evaluation Reports

ABI is in favour of the FATF's announcement in the Consultation Paper that this inter-governmental body considers contributions from the private system as a further means of improving the definition of mutual evaluation reports.

In this respect, on the suggestions that the FATF has requested from the private banking systems with reference to the list of Countries meeting (or not) the adequacy requirements on Anti-Money Laundering principles, ABI suggests it would be worth the FATF using maximum transparency and information-giving criteria on the inclusion or cancellation of such countries from the lists once the mutual evaluation procedures are completed, indicating which criteria are used as the basis for deciding on the listing or delisting of the countries in question and the rationale behind such decisions.

It is extremely important to emphasise that the FATF Mutual Evaluation Reports can become valid indicators for risk assessment under the various laws and in relation to the real activities of intermediaries. In this sense it is proposed to improve the FATF reports, which still seem extremely complex and in certain cases do not appear to contain sufficient distinction between public authority tasks and those of intermediaries, in effect jeopardising the high level of compliance called for by these measures so that they become truly effective.

On this point, note that Italian intermediaries already use a verification system on Countries considered equivalent for Anti-Money Laundering purposes, based on the provisions of the Ministerial Decree of 12 August 2008 on the "Identification of non-EU Member States and foreign Countries that impose obligations equivalent to those of the European Parliament and Council Directive 2005/60/EC of 26 October 2005 on preventing use of the financial system to launder the proceeds of criminal activities and terrorism financing, and which envisage compliance control in relation to such risks".

Furthermore, in a recent introduction to Italian law, art. 36, Law Decree 78/2010 states:

Based on decisions reached by the FATF, regional groups formed in accordance with the GAFI and OECD formats, together with information resulting from the evaluation reports on national systems to prevent money laundering and the financing of terrorism and the difficulties in exchanging information and bilateral cooperation, by issue of a decree the Ministry of the Economy and Finance, after consulting the Financial Security Committee, a list of countries is identified according to their risk of money laundering or the financing of terrorism or by the lack of an adequate information exchange system, also on tax matters.

In this sense, ABI proposes that with particular reference to subsection 55, paragraph c) the FATF also carefully considers any lists issued by bodies other than the FATF, but which follow a similar line in combating crime, so as to render the reference context for intermediaries as standardised as possible at international level on the various areas which, within a bank, are called upon to fully manage the compliance of combating criminal phenomena.

Dear Sirs,

We, Japan Post Bank Co.,Ltd, would like to send our comments on the Consultation Paper "The Review of the Standards - Preparation for the 4th Round Mutual Evaluations" as follows;

42.

Presently, a cover payment message (MT202) to be transmitted to a bank that handles multi-settlement does not contain any originator information, as it is a bulk message comprising multiple payment messages. However, a payment message (MT103) does contain originator and beneficiary information. As such, verification of payment message (MT103) and cover payment message (MT202) in the recipient country would be sufficient to trace the originator information. FATF INSR. VII, which is currently in effect, provides as follows: "Where several individual transfers from a single originator are bundled in a batch file for transmission to beneficiaries in another country, they shall be exempted from including full originator information, provided they include the originator's account number or unique reference number (as described in paragraph 8), and the batch file contains full originator information that is fully traceable within the recipient country."

Please advise us whether the exemption as mentioned above will remain even after the amendments to SR. VII and INSR. VII.

43.

For domestic wire transfer, the only mandatory information to be provided in the message is the name of the wire transfer applicant of the originator (it is a common rule for domestic fund transfer). The name of the originating account holder is not mandatory.

In principle, the rest of the originator information (i.e. the name and address) can be made available to the competent authorities within three business days.

However, in the case where a single request for disclosure of originator information covering a significant number of payment transactions is made, it may take four business days or more to respond to such request.

Furthermore, where the discrepancy arises between the name of the wire transfer applicant and the name of the originating account holder, and where the wire transfer application was made through an ATM or the Internet, information on the name and address of the account holder can be made available, but not the address of the wire transfer applicant.

47.

(i) A receiving financial institution requires accurate information on beneficiary names in order to verify whether the designation of the recipient is correct.

(ii) In our opinion, it would be useful. However, it is difficult to obtain additional beneficiary information (e.g. the beneficiary's address, national identity number, customer identification number, or date and place of birth) unless such information is required by legislation.

(iii) Information that would enable verification as to whether the beneficiary is the party whose funds and other assets are subject to asset freezing measures would be necessary, including the name, address, nationality, date of birth, and, in case of cross-border fund transfer, the purpose of the transaction.

49.

(i)

- In case of cross-border fund transfer wherein we act as the sender bank/receiving bank : We perform screening to verify that neither the originator nor the beneficiary is the party whose funds and other assets are subject to asset freezing measures.

- In case of domestic fund transfer wherein we act as the sender bank: We perform screening to verify that the originator is not the party whose funds and other assets are subject to asset freezing measures.

- In case of domestic fund transfer wherein we act as the receiving bank: We perform screening to verify that the beneficiary is not the party whose funds and other assets are subject to asset freezing measures.

(ii)

- In case of cross-border fund transfer and domestic fund transfer wherein we act as the sender bank: If we detect the originator to be the party whose funds and other assets are subject to asset freezing measures, we temporarily refuse to accept the wire transfer application. (We accept the application subject to confirmation that such payment has been approved by the competent authority.)

- In case of cross-border fund transfer and domestic fund transfer wherein we act as the receiving bank: If the party whose funds and other assets are subject to asset freezing measures has an account and the beneficiary is found to be such party, an alert message is shown on the computer system, in which case we temporarily refrain from processing the payment. (We process the transfer of funds into the beneficiary's account subject to confirmation that such payment has been approved by the competent authority.)

- For all transactions: If we are visited by any person whose funds and other assets are subject to asset freezing measures, we file a suspicious transaction report regardless of whether any transaction has been completed.

(iii)

In case of cross-border fund transfer: there is no such difference.

In case of domestic fund transfer: there is no such difference, although the handling procedure differs slightly.

(iv)

- In case of cross-border fund transfer and domestic fund transfer wherein we act as the sender bank: We accept the payment application after inquiring with the originator about the incomplete data fields.

- In case of cross-border fund transfer and domestic fund transfer wherein we act as the receiving bank: We inquire with the sender bank about the incomplete data fields. Thereafter, we process the transaction, suspend the transaction, or file a suspicious transaction report, as the case may be.

50.

(i) No comments.

(ii) If the guidance currently in effect is insufficient to provide assistance for new payment methods, additional guidance would be needed.

Best regards,

Financial Crime Office
Operation Management Department
Corporate Service Unit
Japan Post Bank Co., Ltd.

January 7, 2011

Comments on the FATF Consultation Paper, “The Review of the Standards-Preparation
for the 4th Round of Mutual Evaluations”

Japanese Bankers Association

Anti-money laundering/counter-terrorist financing is a very important issue for financial institutions. The Japanese Bankers Association expresses its support for reviewing the FATF Recommendations in order to increase their effectiveness. We also are grateful for this opportunity to submit our opinion from a practical point of view during this review process. Hereafter, we comment on the inquiry items as indicated below, and ask that you kindly examine them. Going forward, we hope that you will continue to grant opportunities for consultation with the private sector regarding this issue.

1. “2. Recommendation 5 and its Interpretative Note”

It is proposed that, taking these elements into account, as well as the ownership or control structure of a legal person or arrangement, financial institutions should:

- First identify and take reasonable measures¹ to verify the identity of the natural persons who ultimately have a controlling ownership interest.
 - Where the ownership interest is too dispersed to exert control or there are other persons who have control of the legal person or arrangement, then it would be necessary to identify and take reasonable measures to verify those other persons that have effective control through other means (e.g. by exerting influence over the directors of a company). (*Paragraphs21*)
-
- A risk-based approach is effective and practical in raising the accuracy of customer due diligence. Therefore, the risk-based approach should be introduced to clarify methods and information for “identifying and verifying beneficial owners of legal persons or arrangements.”
 - When determining the appropriate level of customer due diligence, risk factors,

such as form or location of said legal persons or legal arrangements should be taken into account.

- For example, there is a clear difference in the transparency of flow of funds and money laundering risks between a legal arrangement, whose ownership structure and actual business status is obscure (or is aimed to appear obscure), and of an ordinary company. Due to this, a “one-size-fits-all” customer due diligence should not be conducted.

2. “3. Recommendation 6: Politically Exposed Persons”

(i) to leave the FATF requirements related to foreign PEPs as they are, i.e. foreign PEPs are always considered to be higher risk; (*Paragraphs29*)

- If the revision of recommendation regarding PEPs is to be considered, then the scope of public functions of politically exposed persons (PEPs) must be clarified in the Recommendation. This is because, from a practical perspective, it is difficult to determine said scope.

(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. (*Paragraphs29*)

- The money laundering risks of domestic PEPs varies depending on the corruption level of the respective country. Therefore, Recommendation 6 should accept discretionary powers of each country regarding the customer due diligence to be applied to domestic PEPs. If domestic PEPs are going to be added to the targets of Recommendation 6, then we think that the risk-based approach should be applied in this case. This is so that governments or financial institutions can decide on the scope of domestic PEPs and business relationships, to which the enhanced customer due diligence is applied, in accordance with the actual circumstances of the respective country, such as corruption level.

The FATF is also reviewing the obligation with respect to family members and close associates of PEPs. Instead of requiring financial institutions to determine whether a customer or beneficial owner is a family member or close associate of a PEP, it proposes to focus on the cases where the PEP (either foreign or domestic) is a beneficial owner of the account, i.e. on 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. *(Paragraphs30)*

- In the case of family members and close associates of PEPs, it is especially difficult to confirm whether the PEPs are beneficial owners. In particular, for family members of a single household, there are many cases where it is difficult to determine whether the provider of funds is the PEP who is the head of the household, or the dependent family member who is the account holder.
- For this type of account, rather than a financial institution confirming whether the PEP is the beneficial owner or not at the time of establishing a business relationship by acquiring additional information, etc., it is more effective to conduct monitoring. By monitoring, the financial institution should be able to detect unusual transactions which differ from the normal flow of funds with the family member or close associate and determine whether the PEP is the beneficial owner.

3. “Special Recommendation VII and its Interpretative Note”

(1) “6.1 Beneficiary Information”

(i) whether financial institutions require accurate information on beneficiary names in order to process a transaction; *(Paragraphs47)*

- The originator bank and intermediary bank have no direct points of contact with the beneficiary and is hardly able to confirm beneficiary information with that individual. Thus it is not reasonable to make it the obligation of the originator bank and intermediary bank to confirm the authenticity of the said information, and neither do we think that it is effective.

(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) ; *(Paragraphs47)*

- We think that the holding of (1) beneficiary’s account number, (2) beneficiary’s name and (3) beneficiary’s address (or customer identification number) is feasible. Furthermore, (3) will become feasible in future if legal systems are developed.
- The national identity number is not feasible since there are cases where the beneficiary does not have any.

(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: *(Paragraphs47)*

- We think that requiring “national identity number, customer identification number, or date and place of birth” is either unfeasible or will place inordinate burdens on parties to the transaction, and that it would not be practical for the originating side.

(2) “6.2 Obligations to screen wire transfers against financial sanctions lists”

(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)? *(Paragraphs49)*

- We will be able to detect “incomplete data,” if this indicates that required fields for originator information or beneficiary information is completely missing. If that is the case, we would discontinue processing the transaction and demand complete information from the originator bank.
- If “incomplete data” refers to questionable originator information or beneficiary information, then it would be difficult to detect whether the information is indeed incomplete or to respond. This is because the originator bank has no points of contact with the beneficiary, the intermediary bank has no points of contact with the originator or beneficiary, and the recipient bank has no points of contact with the originator.

(3) “6.3 Other Issues”

(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); *(Paragraphs50)*

- With regards to the obligation of screening sanctions lists, the handling of screening of domestic wire transfers should be reviewed separately from cross-border wire transfers, including making it outside of the target of Special Recommendation VII. This is because screenings are domestically being implemented effectively based on Special Recommendation III. Furthermore, AML/CFT risks of domestic wire transfers differs from that of cross-border wire transfers and screening needs varies by country depending on its domestic

transfer system.

- For example, the majority of domestic wire transfers in Japan are carried out through the Zengin System. In the case of transfers through the Zengin System, the originator bank screens the originator's account and the recipient bank screens the beneficiary's account pursuant to Special Recommendation III. As a result, the screenings of the sanctions list is functioning effectively. Therefore, in the Zengin System, transfers of funds are not made to or from persons on sanctions lists. Furthermore, there are no intermediary banks in the Zengin System and so speedy tracing after transactions is ensured.
- The obligation of screening is equally placed on a limited number of Zengin System members and who are under the same legal jurisdiction. Under such circumstances, the government's supervision over the screening obligation is being implemented effectively and our screening system is already functioning effectively without having to wait for discussions on Special Recommendation VII.
- When reviewing the screening for domestic wire transfers, the efficiency of settlements must be taken into account. For example, real-time payments and deposits are conducted through the Zengin System and the business custom of Japan is based on such for inter-company settlement. However, in the event that the originator bank is required to screen the beneficiary before executing a transfer, there exists the possibility that transfer processing may be discontinued or settlement may be delayed as a result of having to conduct confirmations, etc. with the recipient bank in tandem with the occurrence of a false positive. Moreover, the convenience of real-time payments and deposits of the Zengin System may be undermined.



The Voice of Leasing and Automotive Rental in Europe

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

Response from:

LEASEUROPE

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About Leaseurope

Leaseurope brings together 47 member associations representing the leasing, long term and/or short term automotive rental industries in the 34 European countries in which they are present. The scope of products covered by Leaseurope's members ranges from hire purchase and finance leases to operating leases of all asset categories (automotive, equipment and real estate) and includes the short term rental of cars, vans and trucks.

It is estimated that Leaseurope represents approximately 96% of the total European leasing market and the firms represented via its member associations granted new leasing volumes of over €330 billion in 2008. Leaseurope estimates that its leasing member associations financed over 6 million cars during 2008 and at the year's end owned a fleet of 16.1 million cars. Close to 40% of new car registrations today has been financed by leasing companies.

The Federation's mission is to represent the European leasing and automotive rental industry, ensuring the sector's voice is heard by European and international policy makers. Leaseurope also seeks to promote the leasing and automotive rental products and produces European level statistics describing the markets it represents.

Opening remarks

Leasing companies operating in Europe generally fall within the scope of the anti-money laundering rules applicable in the EU jurisdiction.

As such we welcome the review of the FATF Standards and we support, in principle, some of the pragmatic proposals made by the FATF, such as on intergroup reliance of third parties and clarifications made regarding the Risk Based Approach as well as the efforts undertaken to improve mutual evaluation reports.

Being a member of the European Banking Industry Committee (EBIC), we fully endorse the EBIC response to this review.

In line with the EBIC response, we warn against the general tendency to impose burdens on the private sector where public authorities struggle to manage. Examples of this include the inability of public authorities to provide lists of relevant Politically Exposed Persons; clear information on the Beneficial Ownership of companies; and actionable information on emerging threats such as tax crime.

In addition to the comments submitted by EBIC on the review of the FATF Standards, Leaseurope wishes to emphasise the low level of AML risk posed in leasing transactions.

Leasing inherently is a low risk transaction

Leaseurope believes that leasing fundamentally is a low risk transaction for AML purposes.

This view is shared as all parties (the banking industry, supervisory authorities and law enforcement officials) consider leasing transactions as posing a lower risk of money laundering compared with most other financial products and services.

This is because a lease agreement does not result in the lessee receiving funds from a lessor. Rather, a lessee receives the use of an asset e.g. a vehicle from a lessor. Hence the initial leasing transaction is unlikely to be vulnerable to money laundering.

The European Commission agrees with this fact as evidenced through the Third Anti-money Laundering Directive 2005/60/EC (the "3rd AML") and Commission Directive 2006/70/EC (the "Implementing Measures") (seen below).

Extract of Recital 9 of Commission Directive 2006/70/EC

"It should be possible to apply **simplified customer due diligence procedures to products and related transactions in limited circumstances**, for example where the benefits of the financial product in question cannot generally be realised for the benefit of third parties and those benefits are only realisable in the long term, such as some investment insurance policies or savings products, or **where the financial product aims at financing physical assets in the form of leasing agreements in which the legal and beneficial title of the underlying asset remains with the leasing company** or in the form of low value consumer credit, provided the transactions are carried out through bank accounts and are below an appropriate threshold..."

The low risk of money laundering that is posed by leasing transactions, whilst reflected in European legislation is also backed up by firm evidence, such as data on suspicious transactions.

Statistics of the German Federal Crime Police Office

Using Germany (one of the largest European leasing markets) as an example, the statistics of the Federal Crime Police Office (BKA) show that there were approximately 40,000 criminal acts reported between 1999 and 2005 in total concerning financial crime. Out of these 40,000 criminal acts, only four of those were leasing related. Thus only 0.01% of suspicious transactions, in the field of financial crime, reported in Germany during that time frame concerned leasing.

Of these 4 suspicious leasing transactions over a six year period in Germany, not one concerned suspected money laundering in a leasing transaction.

Lease instalments

One basic reason why leasing transactions show a low risk of money laundering is due to the payment methods used to reimburse the lease instalments.

Generally speaking, lease instalments are debited from a current account at a financial institution subject to the provisions of 3rd AML and its Implementing Measures.

This means that a potential lessee has already been identified and CDD already conducted by the financial institution holding the lessee's current account i) at the time the current account was opened and ii) as part of the financial institution's ongoing security checks. If these checks are to be repeated for a leasing transaction then this situation results in the repeated customer identification procedures, delays and inefficiencies that the Commission aims to avoid in Recital 27 of the 3rd AML¹.

CDD checks made by another financial institution, and conducted before any lease agreement has been made, ensure that when lease instalments are made in the future from a lessee's account via a direct debit or standing order, as is commonly the case, the 'paper trail' for the lease instalments cannot be concealed. The origin of the lease instalments can thus be traced back without difficulty.

When a lessor then carries out its own CDD measures before the conclusion of a lease agreement, this is the second time that those checks are being made on the lessee². This means that a high level of CDD is built into any given leasing transaction, limiting the need for leasing transactions to be subject to specifically enhanced CDD requirements as described by the 3rd AML and its Implementing Measures.

Furthermore, as a customer is unlikely to have the option to pay the lease instalments in ways other than direct debit/standing order³, it is extremely unlikely, if not impossible, for a criminal to launder money by payment through a large cash deposit in favour of the lessor. This fact in itself acts as a deterrent to criminals wanting to launder money in leasing transactions.

¹ Extract from Recital 27 of the 3rd AML: In order to avoid repeated customer identification procedures, leading to delays and inefficiency in business, it is appropriate, subject to suitable safeguards, to allow customers to be introduced whose identification has been carried out elsewhere.

² As explained above, the first time CDD was carried out it was by the lessee's own bank (i.e. the financial institution holding the lessee's current account).

³ We note that in Germany, 90% of leasing transactions are paid for via direct debit.

As a vehicle for money laundering, leasing is ineffective

The nature of the product itself creates certain “structural” controls/restrictions at the ‘Placement’ and ‘Integration’ stages of the money laundering lifecycle (e.g. (i) leasing agreements do not give access to funds for lessee’s; (ii) there are limitations on the ability of lessee to insert cash (e.g. through lease instalments) into the financial system; and (iii) settlement payments (in the case of a financial lease with an obligation to purchase) are generally required to be denominated in local currency, and therefore the funds used to make the final payment will already have been placed into the local regulated banking system before reaching the lessor.

As shown in the following table, sophisticated preventative measures contribute to making leasing ineffective as a vehicle for money laundering.

A prescriptive regulatory approach for such a low risk transaction is not necessary; lessors have thorough risk management systems in place

All aspects of the product offering must be considered from an AML perspective, as well as controls to mitigate and manage these risks.

For example, lessors:

- verify information through credit bureaux checks to obtain objective information on a lessee;
- check the price paid for a leased asset with independent sources to avoid paying inflated prices for assets thus reducing financial crime risk;
- research suppliers and inspect the leased asset on delivery in order to prevent financing of non-existent assets;
- audit the asset over the lease term to prevent unauthorised disposal of the asset; and
- register the lessor’s title to an asset on a central register to prevent unauthorised asset disposal.

Thresholds

Based upon the AML and its Implementing Measures, a conclusion can be drawn that **for a leasing transaction, where the establishment of a business relationship takes place face to face** (and the value of the transaction does not exceed **EUR 15000 per year**), *provided that* the transaction is carried out through an account of the customer with a credit or financial institution covered by the 3rd AML, or a credit or financial institution situated in a third country which imposes requirements equivalent to those laid down in the 3rd AML, reduced CDD requirements can apply as the activity can be classified as being of ‘*little risk*’.

This threshold appears to be respected in all EU Member States.

Norway applies the provisions of the 3rd AML and its Implementing Measures as an EEA Member State. In Norway, this threshold has not been implemented and leasing transactions are not classified as ‘*little risk*’ under the above-mentioned European legislation.

We believe that the existence of a threshold for low risk⁴ transactions is sensible. For reasons explained earlier in this paper, a leasing transaction should in general be considered as low risk.

That said, the existing EUR 15000 threshold is too restrictive as many leasing transactions have a value of over EUR 15000 per year. As a result, leasing companies cannot take full advantage of the lighter 'little risk' regime set down by the 3rd AML and its Implementing Measures although this regime is designed to cover⁵ leasing transactions.

⁴ Or 'little risk' transactions to use the wording of the 3rd AML.

⁵ See Extract of Recital 9 of Commission Directive 2006/70/EC (stated in full on p3 above)

PAR COURRIEL

Lévis, le 7 janvier 2011

CONFIDENTIEL

Groupe d'action financière (GAFI)
Secrétariat du GAFI
2, rue André Pascal
75775 PARIS CEDEX 16
FRANCE

Objet : Consultation du GAFI : Révision des normes - Préparation du 4^e cycle d'évaluations mutuelles

Madame,
Monsieur,

C'est avec plaisir que nous répondons à votre invitation de soumettre nos commentaires sur le document de consultation concernant la révision des normes. Nous remercions le GAFI de l'opportunité qui nous est faite de transmettre nos avis dans le cadre de la révision de ses recommandations.

Vous trouverez donc ci-après quelques réflexions et commentaires sur certains aspects soulevés dans le document de consultation. Toutefois, nous vous saurions gré de bien vouloir garder confidentiel les présents commentaires.

Veuillez prendre note que les références entre parenthèses sont tirées du document de consultation.

INTRODUCTION ET PRÉSENTATION DU MOUVEMENT DESJARDINS

Avec un actif de plus de 175 milliards de dollars, le Mouvement Desjardins est le premier groupe financier coopératif du Canada et le sixième dans le monde. S'appuyant sur la force de son réseau de caisses, ainsi que sur l'apport de ses filiales dont plusieurs sont actives à l'échelle canadienne, il offre toute la gamme des produits et services financiers à ses 5,8 millions de membres et clients. Le Mouvement Desjardins, c'est aussi le regroupement d'expertises en gestion du patrimoine et assurance de personnes, en assurance de dommages, en services aux particuliers ainsi qu'en services aux entreprises. L'un des plus importants employeurs du Canada et lauréat

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2010 du *Programme des 10 cultures d'entreprise les plus admirées au Canada^{MC}*, il mise sur la compétence de ses 42 200 employés et l'engagement de près de 6 000 dirigeants élus. En 2010, le Mouvement Desjardins a été consacré l'institution bancaire de l'année au Canada par la revue britannique *The Banker*. Pour en savoir plus, il est possible de consulter notre site internet : www.desjardins.com.

L'APPROCHE SUR LE RISQUE

L'approche basée sur le risque se confirme être une bonne façon de gérer la conformité en matière de lutte au blanchiment d'argent et au financement du terrorisme. Cette approche toutefois plus exigeante pour les entités assujetties requiert que les entités soient supportées dans leur évaluation du risque, que ce soit par la mise en place de balises, de guides ou d'exemples. Par conséquent, nous accueillons favorablement les éléments du document de consultation qui vont en ce sens, notamment en ce qui a trait à la Recommandation 5 (paragraphe 9 et 16).

Nous souhaitons d'ailleurs que les précisions annoncées à la Recommandation 8, sur les nouvelles technologies et relations d'affaires *non-face-to-face* (paragraphe 10 à 12), aillent également en ce sens, de façon à donner les outils nécessaires aux entités pour évaluer correctement leurs risques à cet égard.

RECOMMANDATION 5 ET SES NOTES INTERPRÉTATIVES

Les précisions annoncées aux notes interprétatives de la Recommandation 5 relatives aux renseignements requis à l'égard de la vérification des personnes morales et autres entités légales (notamment quant aux bénéficiaires effectifs – paragraphes 18 à 21) font déjà partie de nos pratiques d'affaires. Toute fois, soulevons qu'il peut y avoir une certaine difficulté d'accès à des sources d'informations fiables dans toutes les juridictions.

Quant à la question de documenter l'influence de certaines personnes sur la direction d'une entreprise (paragraphe 21, deuxième point), nous croyons que cette obligation rehausse de façon significative le degré de difficulté de l'obligation pour les institutions financières. Nous sommes d'avis qu'une analyse plus poussée devrait être faite avant d'implanter ces mesures compte tenu des impacts opérationnels et du volume qu'elles pourraient générer. De plus, cela requiert du GAFI, selon nous, des précisions, des exemples ou des indicateurs à surveiller.

Nous sommes d'avis que le concept de bénéficiaire requiert effectivement des précisions étant donné son importance dans le domaine des rentes et de l'assurance vie. Aussi, tel que mentionné dans le document de consultation (paragraphe 23), l'identification du bénéficiaire au moment de l'achat d'une rente ou d'une police d'assurance vie peut généralement être modifiée avant que ne survienne l'événement couvert; en conséquence, les droits du bénéficiaire ne naissent réellement qu'au moment où survient cet événement. La rédaction des désignations de bénéficiaires peut également compliquer de façon significative la tâche de l'assureur vie.

L'obligation de vérification de l'identité des clients et bénéficiaires de produits d'assurance de personnes doit être bien évaluée. Il faut notamment prendre en considération le faible risque de blanchiment d'argent pour certains types de produits

(assurance collective, assurance médicale, assurance voyage, produits enregistrés de placements, etc.)

Par conséquent, nous sommes d'avis que la vérification de l'identité des bénéficiaires devrait être effectuée sur les produits représentant un certain niveau de risque et réalisée au moment de la prestation.

PERSONNES POLITIQUEMENT EXPOSÉES (PPE)

L'ajout de mesures à l'égard des personnes politiquement exposées (PPE) nationales (*domestic*) va nécessairement augmenter les charges des entités à cet égard, d'abord sur le nombre et la fréquence de PPE à identifier en soi, mais également sur le nombre d'analyses soulevées attribuable à la plus grande possibilité d'homonymes sur les nationaux.

Comme le document de consultation le précise, l'ajout de cette mesure dans les normes du GAFI ne devrait pas faire en sorte que l'on doive considérer automatiquement les PPE nationales comme des relations d'affaires à haut risque; ceci ne constitue qu'un élément parmi d'autres au niveau de l'approche basée sur le risque.

Nous sommes d'accord avec le constat sur les personnes apparentées, le focus doit être mis sur les personnes qui sont bénéficiaires effectifs des comptes.

LA NOTION DE GROUPE FINANCIER ET LES LIENS ENTRE ENTITÉS

Le document de consultation fait mention d'une approche flexible sur la question des liens entre entités d'un même groupe financier. Toutefois, le concept de groupe financier doit être en lui-même inclusif et tenir également compte de la réalité des groupes coopératifs comme le Mouvement Desjardins. (Les caisses Desjardins ne sont pas la propriété de la Fédération des caisses Desjardins du Québec; elles font toutefois partie de cette Fédération et font donc réellement partie du même groupe financier. Aussi, des compagnies filiales de la Fédération des caisses Desjardins du Québec, comme Desjardins Sécurité financière, compagnie d'assurance vie, ne sont pas directement la propriété des caisses Desjardins, mais font elles aussi partie du même groupe financier que ces caisses.)

TÉLÉVIREMENTS INTERNATIONAUX

En réponse aux avis demandés aux paragraphes 47 à 50 du document de consultation :

- Nous pouvons vous confirmer qu'il est de notre avis que le nom et l'adresse du bénéficiaire du télévirement devraient être des renseignements obligatoires. Aussi, il devrait y avoir une mention quant à la nature ou au motif du transfert; ce pourrait être fait idéalement au moyen d'une liste préétablie. Toutefois, tout changement de cette nature implique vraisemblablement des coûts et des délais de développement à considérer par les juridictions lors de la mise en œuvre de ces recommandations;
- Actuellement, lorsqu'une personne listée est repérée, nous suivons la législation et la réglementation établie à cet effet, en procédant notamment au gel des fonds de terroristes et aux déclarations et rapports requis;

- Selon nous, il ne devrait pas y avoir de différence de traitement dans le processus de vérification des donneurs d'ordres et des bénéficiaires si les informations sont disponibles, puisque les donneurs d'ordres sont vérifiés régulièrement par l'institution émettrice dont ils sont clients, alors que les bénéficiaires le sont également par l'institution financière destinataire. Toutefois, précisons qu'il faudrait établir une marche à suivre claire quant aux échanges d'informations, aux suspensions et annulations de transactions ainsi qu'à leurs délais;
- Nous sommes d'avis que des précisions devraient être fournies par le GAFI à l'égard de l'application de la Recommandation spéciale VII aux nouvelles méthodes de paiements.

UTILITÉ DES RAPPORTS D'ÉVALUATIONS MUTUELLES DU GAFI

Les rapports d'évaluations mutuelles ou du moins des sommaires exécutifs de ces rapports devraient être construits de façon à pouvoir servir aisément au niveau de l'analyse de risque sur le facteur géographique. L'évaluation du niveau de conformité aux recommandations du GAFI pourrait être réalisée au moyen d'une échelle de maturité.

Le Mouvement Desjardins vous remercie de lui avoir donné l'occasion de vous faire part de ses observations qui, nous espérons, vous seront utiles et vous prions d'agréer, Madame, Monsieur, l'expression de nos sentiments les meilleurs.

Direction principale Conformité réglementaire
 Vice-présidence Risques opérationnels et Conformité réglementaire
 Mouvement Desjardins

ML/

c. c. Ministère des Finances du Canada
 vice-président Risques opérationnels et Conformité réglementaire du Mouvement Desjardins
 directeur des Relations gouvernementales du Mouvement Desjardins

Dear Sirs,

The Bermuda National Anti Money Laundering Committee has informed us of the pending FATF review of standards. Thank you for the opportunity to provide feedback on the FATF review of standards. The proposed clarification of the standards would be welcomed. We believe Orbis' risk based approach to Anti Money Laundering and our good working relationship with Citigroup, the administrator of our mutual funds, put us in a strong position to take on board any detailed recommendations.

The one area of guidance Orbis would welcome clarification upon is country compliance with FATF recommendations. At present it has been left up to firms to make the decision if a country meets the FATF 40 recommendations and nine special recommendations. This is particularly relevant in a global firm when applying simplified due diligence across different regulators. We would welcome FATF publishing a list of countries that comply with the recommendations. We believe this is particularly relevant for Bermuda and other non FATF members who are affiliated through bodies such as the Caribbean Financial Action Task Force.

Regards,

Money Laundering Reporting Officer
Orbis Investment Management Limited

Subject: Some proposals on FATF Recommendations concerning e-money as an instrument for financial inclusion.

Dear Mr. Urrutia

I wish to thank you for invitation of Russian Electronic Money Association to FATF consultative meeting in Paris. We'd like to use your kind invitation to contribute and to explain our attitudes on some moments most principal for e-money industry.

E-money industry is a fast developing segment of high-tech low value/large volume transaction. The industry is important for improving customer payment options and, due to high penetration of mobile communications and e/m-payment low transaction and deployment costs, it is very important to provide wide spread financial inclusion. The huge e-money benefits are a reducing of cash turnover and getting small payments transformed from totally uncontrolled cash to much more controlled account/digital wallets payment forms.

FATF recommendations contain possibilities to create a regulatory environment in which social and business benefits of e-money will develop further. However, we see what due to some general nature, the recommendations often are interpreted by local regulators by a most strict of possible ways.

We see two following AML/FT issues as critical for e-money development and we propose to discuss a possibility of correspondent clarification of AML/FT recommendation in future.

1. **CDD and KYC delegation to the agent.** As most of e-money accounts are open remotely, the industry needs a legal way to get person's credential in non face-to-face mode. For this purpose, an agent infrastructure is the most evident way. We propose the following agent classification:
 - a. Banks and other financial institutions which by themselves have to provide their customers DD by law
 - b. Non-banks and other non-financial institutions which by their business nature are required by law to make customer KYC-like identification. There are general examples, like notary and postal services, or particular classes, as Russian or Indian Mobile Network Operators.
 - c. Other agents, initially of non-KYC providing type, like M-PESA agents, or money transfer agents, which are required to provide KYC on behalf of third party, which is KYC-compliant financial institution.

We propose to recommend

1. to allow all subjects (institutions) of FATF recommendations to use CDD/KYC made by a- and b- types of agents equally to CDD/KYC made by their own. Transferring of CDD/KYC may be done both under special agreement and by implicit way. An example of implicit way is PayPal identifying the client by other banks credit card data provided.
2. to allow institutions to use CDD/KYC made by c-type agent equally to as made by their own, under special agent-institution agreement and under institution responsibility for KYC quality provided this way.
3. to limit #1-2 and, especially, #3 KYC procedures validity by low- and middle-value operations

We see, that this approach in part of a- and b-type agents is in spirit of AML Directive 2005/60/EC - SECTION 4, "Performance by third parties"ⁱⁱ

2. **Low-value threshold for detailed KYC for e-Money and other low-value payment instruments.**
As e-Money accounts/wallets are open remotely, this situation makes difficult the traditional face-to-face KYC approach. Also, for typical e-money operations we see typically low values both for single transaction and account limits. This means low commissions (e.g. typical 1% from \$1000 per year yields \$10 income per year with much smaller profit) and, actually low affordable spending for each KYC. The evident consequence is relaxing of KYC requirements for low-value instruments. As an example of good implementation of threshold concept we see European Directive 2009/110 and its local applications.

Particularly, we do not see a real ML/FT hazard in small transactions even without identification if following requirements are fulfilled:

- a. There is a threshold for no-ID operations
- b. This threshold is defined by set of properties of account, including the situations when
 - i. Account operator is a closed institution (higher) or is an intermediary (lower)
 - ii. Operations are domestic-only (higher) or cross-boarder (lower)
 - iii. Beneficiary of transaction is a legal entity (e.g. merchant), identified physical person, or non-identified physical person.
- c. Account operator keeps track on customer IP-address or mobile phone number/ID and other relevant "technical" details
- d. Account operator monitors transaction suspicious as by operation pattern (e.g. multiply small payment aggregation in one account or long chain payments) and by "technical" details (e.g. opening internet e-wallet using anonymous proxy) and combines these results with threshold monitoring.
- e. Lower KYC requirements have to be applied for e-wallet top-ups under a threshold. Strong (equal to "traditional" bank operations) KYC requirements are to be applied to beneficiary when e-money is transformed to "usual" money on bank account or, especially, cash (withdrawals) . In other words there is an easy input to the closed system, but strictly controlled output.

Some of these ideas may be applied to money transfer as well.

Therefore we propose to underline in Recommendation 5 and others the role of KYC differentiation for different operation types, using of thresholds and track of non-ID KYC parameters like IP addresses, mobile phone IMEIs and other criteria.

Both these sections may be included in INR.5 and in a list of examples.

Probably, these proposals are quite evident, but their explicit inclusion in Recommendations may be very helpful for industry development and more exact risk-oriented approach.

I hope these considerations will be useful.

Best regards,

Russian E-money Association

ⁱ Article 16

1. For the purposes of this Section, 'third parties' shall mean institutions and persons who are listed in Article 2, or equivalent institutions and persons situated in a third country, who meet the following requirements:

(a) they are subject to mandatory professional registration, recognised by law;

(b) they apply customer due diligence requirements and record keeping requirements as laid down or equivalent to those laid down in this Directive and their compliance with the requirements of this Directive is supervised in accordance with Section 2 of Chapter V, or they are situated in a third country which imposes equivalent requirements to those laid down in this Directive.

Stavanger, January 07 2011

FATF

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Sent by email to fatf.consultation@fatf-gafi.org

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

SKAGEN Funds is an independent and partner owned management company with a long and successful history in managing equity and fixed income funds. Since its inception in 1993 the company has grown to become one of the largest investment fund managers in Norway with a growing presence in other Nordic countries. SKAGEN complies with Directive 85/611/EEC (UCITS III) and is regulated by the Financial Supervisory Authority of Norway.

We welcome the opportunity to comment on the FATF's public consultation on the Review of the Standards – Preparation for the 4th Round of Mutual Evaluations.

Broadly, we agreed with the proposal presented in the consultation paper, although we have some remarks. Our comments are highlighted in the document attached to this letter.

Should you wish to discuss further any of our comments, please do not hesitate to contact me.

Best Regards
International
SKAGEN Funds

web:www.skagenfunds.com

Attachment

SKAGEN Funds – Comments to FATF’s Public Consultation

(1) Risk Based Approach (RBA)

1.1 Interpretative Note on the RBA (INRBA)

We support an alignment of the INRBA so it applies to all recommendations related to RBA and fully agreed with the separation of obligations for country and financial institutions.

It would be useful as guidance for both domestic and foreign practitioner institutions if each country publishes the result of its own risk assessment. Said results could eventually be incorporated in the mutual evaluation of each country. The publication could be done in the relevant FIU’s website.

1.2 Impact of the RBA on FATF Recommendation

1.2.1 Recommendation 5 and its Interpretative Note

It is important to avoid a prescriptive detailed list of examples. We should bear in mind that ML/TF risk varies from country to country as well as from the kind of service/product/transaction concerned. In addition we cannot forget that the emergence of new situation that may not be covered by the list of examples proposed.

1.2.2 Recommendation 8: New technologies and non-face-to-face business

We agree with the focus on explicit requirements including the development of new delivery channels (section 12). However the requirements should be presented in a non-prescriptive way to allow their application to technologies that may appear in the future.

1.2.3 Recommendation 20

It is still unclear what other kinds of financial activities/institutions will be covered. Clarification is therefore needed.

(2) Recommendation 5 and its interpretative note

2.1 The impact of the RBA

We are cautions about the use of risk factor examples since ML/TF risk may vary according to the service/product provided by institutions. Even what could be considered a risk factor for one kind of institution may not be applicable in another even when they belong to the same sector due to the nature of the business (i.e. bank against asset management).

The use of “one-size-fits-all” approach should be leaved to the discretion of the institutions, so they can decide on a case-by-case business situation when to use this approach. Consequently examples of enhanced and simplified due diligence should not be perspective either.

We believed that the RBA guidance for the different sectors needs to be updated based on the results of this consultation.

2.2 The legal persons and arrangements

We welcome the inclusion of additional clarification concerning the identification and verification of the identity of customers that are legal persons or arrangements and the beneficial owner.

It is important to make clear what other means can be used when the ownership interest is too dispersed to exert control or there are other persons who have control of the legal person or arrangement (section 21).

2.3 Life Insurance Policies

No comment regarding this section since this is out of the scope of our activities.

(3) Recommendation 6: Politically Exposed Persons (PEP)

3.1 Impact of the inclusion of a reference of the United Nations Convention against Corruption

We welcome the inclusion of the Merida Convention to avoid the differentiation between foreign and domestic PEP.

The beneficial owner of proceeds of crime may not always be the PEP but the close associate or relative. Therefore we believe that associates and relatives should always be considered. Furthermore associates or relatives can be used as “beneficial owners” by PEPs to disguise any illegal proceeds. Even the associate or relative can use his position regarding the relation to a PEP to commit crime and then launder the proceeds of said crime. We should not forget that PEPs, considered the definition in its wider sense, can even benefit from the AML frameworks of different jurisdictions (sort of jurisdiction shopping).

It has been discussed in different AML forums that each country should provide the list of its domestic PEP in particular for FATF and FSRB members. Therefore we believe that this suggestion should be taken into account.

(4) Recommendation 9: Third Party Reliance

4.1 Sectoral coverage

No comments regarding this section.

4.2 Delineation between third party reliance and outsourcing or agency

We are cautious about the use of negative and positive elements to define what shall be considered as reliance, outsourcing or agency. There can be cases that are not covered by such elements and which could well be covered by these activities.

A clear definition of each of these activities will be a better alternative.

4.3 Intra-group reliance

No comments regarding this section.

(5) Tax Crimes as a Predicative Offence for Money Laundering

No comments regarding this section.

(6) Special Recommendation VI and its Interpretative Note

6.1 Beneficiary Information

The source (originator) and destination (beneficiary) have always been a matter of concern for asset managers as we rely on the information provided by payment institutions. We need to establish if the originator/beneficiary account belongs to our customer, therefore said info is needed to comply with AML/TF/KYC and customer due diligence requirements. Among others asset managers always inform customers that proceeds of sales can only be paid to an account managed by the customer, no payment done to a third party.

Due to international wire transfers, it is not always possible to check whether a given account belongs to a customer when investing/divesting for the first time. Certain institutions belonging to the payment sector do not give away information to asset managers regarding account ownership when requested. The only way for these institutions to release this sort of information is to be approached by the customer himself. Therefore the time needed for asset managers to complete the CDD can take more time than expected for investments done by international transfer.

Hopefully the review of the SRVII and its interpretative note would have a positive impact in the payment sector.

6.2 Obligation to Screen Wire Transfers against Financial Sanctions Lists

No comments regarding this section

(7) Other Issues Included in the Preparation for the 4th Round of Mutual Evaluations

No comments regarding this section

(8) Usefulness of Mutual Evaluation Reports

The mutual reports provide information that can be used to assess how AML has been implemented in a give jurisdiction and the compliance of said jurisdiction with FATF Standards.

Ratings of compliance with FATF Standard are easy to find and give a snapshot about the ML/TF risk in certain circumstances. The recommendations about how to achieve compliance with FATF Standards are useful not only for institutions intending to make business in a given jurisdiction but also for any eventual follow up.

We welcome the proposal suggested to make the executive summary more concise. Therefore said summary should focus on the key findings, the rating summaries as well as the strengths and weaknesses regarding the AML system in a give jurisdiction. The section about the legal system should not be part of the summary. As of today this should only be part of the MER. However, if there is no new development in the legal system regarding AML/TF reference to previously published MER could be made as a footnote. The AML/TF risk assessment performed at country level could be incorporated as annex/table.



21 December 2010

Financial Action Task Force (FATF)
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PARIS
Sent electronically to:
fatf.consultation@fatf-gafi.org

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

Dear Sir/Madam

The Swedish Bankers' Association welcomes the opportunity to respond to the FATF consultation on the review of the standards.

The Risk-Based Approach

The Swedish Bankers' Association believes it is of great importance to allow resources to be allocated in the most efficient way to address the most pressing money laundering and terrorist financing risks. The third EU anti-money laundering directive (2005/60/EC) opens for the possibility to allocate resources properly. We do, however, believe that the risk-based approach must be open to allow the most effective approach in each case. We therefore agree with the FATF that the revised Recommendation 5 and its Interpretative Note should provide for a flexible approach. Too much details in regulations may negate so that the purpose is not reached. It is therefore essential that an extended list will be a list of examples.

Furthermore, we believe it is important to make it clear what commitments countries and authorities ought to make. We therefore appreciate the inclusion of a provision that states that countries should also make risk assessments, e.g. of the potential risks that may arise from new technologies and to inform the financial sector. However, we believe that even greater responsibilities can be put on countries when it comes to the assessment.

One such area where countries/authorities can do more is the area of beneficial owners. Due to current national practices it is impossible for a financial institution in Sweden to verify a beneficial owner since there is no public register. A financial institution has thus to rely exclusively on the information given by the customer and there is no meaningful way to independently verify the beneficial owner. One way to handle this issue could be to require legal entities to provide information on beneficial owners to the competent authority in each country, as part of the registration and establishment process, and that the authority is obliged to keep a register on beneficial owners and, furthermore, to provide the information to the



financial sector.

Political exposed persons – PEPs

Concerning the question on domestic PEPs we advocate proposal (i); to leave the FATF requirements related to foreign PEPs as they are. We agree that the obligation to determine whether a person is a family member or a close associate of PEPs should be changed to an obligation to focus on the cases where the PEP is a beneficial owner of the account.

If FATF reach the conclusion that the issue on PEPs should include domestic PEPs we believe it is important that the countries/authorities define who should be considered as a domestic PEP. The country/authority should be obliged to list the domestic PEPs and provide information to the financial sector.

Special recommendation VII

It is important that EU continue to be recognized as a single jurisdiction. We can see no added value of adding beneficiary information. As the FATF states, ordering financial institutions are not in position to verify the beneficiary's identification information because the beneficiary is not the customer of the ordering financial institution. We believe such measure is not proportionate. Further we lack a cost benefit analysis.

According to the current practice the financial sector does not screen domestic wire transfers against financial sanctions lists. With domestic transfers are meant in this context; transfers within the country and not within EU.

Usefulness of mutual evaluation reports

The Swedish financial sector uses the FATF reports for risk classifications of countries. It would however be helpful if the content and structure of reports could give more emphasis to risk factors and how they could be mitigated.

Kind regards,

SWEDISH BANKERS' ASSOCIATION

Kerstin af Jochnick

Åsa Arffman



7 January 2011

Dear FATF Secretariat,

The Payments Market Practice Group (PMPG) is an industry association dedicated to the development of consensus-driven global market practice guidance which, together with the use of message standards, will improve wholesale payments efficiencies by maximizing straight-through processing rates and enhancing the customer service experience. PMPG initiatives include the development of a market practice guidance paper on the original FATF SR VII proposals and a guidance paper to support the introduction of the MT 202 COV. The PMPG welcomes this opportunity to provide comments to Section 6 of the October 2010 consultation paper, which seeks input on proposed amendments to Special Recommendation VII and its interpretative note. As an industry organization with a mission to develop “best-in-class” market practices, the scope of the PMPG comments will be on the potential impact to global payments practices.

The proposed revisions to SR VII will impact global payment practices and potentially have an adverse impact on the efficiency of the global payments system. The PMPG encourages the use of fact-based examples to evaluate the extent to which the current SR VII standards fail to support AML/CTF objectives. Any revision of SR VII should be based on an analysis of the deficiencies identified in this process. The PMPG believes that any revisions to current policy will likely lead to additional “false hits” during the screening process, delay the execution of payments and may create incentives to use alternative payment channels. Given these potential outcomes, the business case rationale to implement revisions to SR VII should be substantial.

Current payments industry standards require that, at a minimum, the beneficiary name, Business Identifier Code (BIC) or other identifier, bank and where available, account number, are required to execute a transfer. The inclusion of additional beneficiary information would be impractical at the point of initiation of a wire transfer as the originator of a transfer would not usually have information beyond the name, account number and bank. The bank originating the transfer does not maintain a relationship with the beneficiary, and relies on its originating customer for beneficiary information. Given the fact that the originating party of the transfer usually does not have additional information beyond the minimum required for the transfer, it would not be feasible to require such additional information. We would also note that the beneficiary bank reviews the information provided about the beneficiary, and the beneficiary bank will determine whether this information is sufficient to execute the payment. The PMPG does not believe that a requirement for additional beneficiary information would be feasible and the requirement for any additional

information, while it may be of limited usefulness, would create significant delays and disruption to the global payments system.

One particular function for potential delay which merits consideration is the requirement to screen against sanction lists. Were additional beneficiary information to be required in a transfer, that information would also be screened; however, the screening of this additional information could have a significant effect on compliance and efficiency. If we consider the implementation of the MT 202 COV messages as a reference point, the result was an increase in false hit rates by about 30 percent. A similar effect can be expected with the implementation of the proposed SR VII changes, with the added complication that the additional beneficiary information provided by the originator may be unreliable and the originating bank will not have any means to validate that information or ensure that it is complete.

Should the FATF make changes to SR VII, the PMPG recommends that the FATF considers the position and comments of the banking industry and of the relevant representative bodies and provides clear guidance which lends itself to uniform adoption. The original implementation of SR VII in the global markets varied greatly where differing processing requirements were developed between and within jurisdictions, creating substantial confusion and disruption to global payments. It would be highly desirable to avoid this confusion in the future by providing more specific guidance related to implementation.

Thank you for the opportunity to comment on the proposed revisions to Special Recommendation VII and its interpretative note. The Payments Market Practice Group remains available to provide further industry assessment of the potential impact to global payment practices, if that would be useful to the FATF's deliberations.

Respectfully submitted,

SWIFT Standards & Secretariat to the PMPG

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Basel, 7. January 2011
PBA, JSC

Comments on consultation paper entitled "Review of the FATF Standards – Preparation for the 4th Round of Mutual Evaluations"

Dear Sir or Madam,

Thank you for giving us the opportunity to comment on the consultation paper entitled "Review of the FATF Standards - Preparation for the 4th Round of Mutual Evaluations". It is our pleasure to comment on the above document on behalf of Swiss Bankers Association (SBA)

Swiss Bankers Association (SBA) is the leading professional association of the Swiss financial centre. Its main objectives are to preserve and promote ideal conditions for Switzerland's financial centre at home and abroad. It was established as a professional association in Basel in 1912, and currently has a total of 355 institutional members (plus 350 Raiffeisen banks) and approximately 16,800 individual members.

1. General remarks

In our view, the proposals put forward in the consultation paper are clearly and comprehensibly drafted. We also welcome the fact that the proposed changes are limited in number and do not amount to a general amendment of the FATF standard. Nevertheless, we wish to state that this review appears to us to be somewhat premature. If we consider that many member states have still not fully implemented the currently applicable standards, the proposed review has to be regarded as rather hasty.

While some specific proposals are worth to be examined more closely and in some cases are to be welcomed (e.g. incorporation of the risk-based approach as a general standard), other proposed adjustments result in immense and largely unjustifiable additional costs for financial institutions. As a general rule, increased expenses caused by such adjustments should always be founded on increased efficiency; unfortunately this is not the case with regard to the proposed adjustments. In addition, it has to be

considered that such additional costs not only affect financial institutions but also their customers, who have to provide the additional information.

The proposed requirements extend well beyond the framework of combating money laundering and the financing of terrorism, and therefore have to be regarded as inappropriate. Furthermore it also appears that certain adjustments of the FATF standards lead to an undesired combination of the fight against money laundering and the financing of terrorism with other issues such as tax offences. The chosen path should not lead solely to formalities and clarifications of international disputes, but reinforce the fight against money laundering and financing of terrorism.

It should also be noted that the very open formulation of some terms is more likely to lead to problems relating to delimitation and interpretation than to effective improvements.

2. Comments on the individual provisions / proposed amendments

Below we offer our comments on specific proposed amendments (the sequence numbering corresponds to that of the consultation paper):

2.1. No. 5 to 14: Risk-based approach

We welcome the consistent implementation and the adjustments in line with the risk-based approach, and above all the reduction in competition distortion that results from the adjustment of Rec. 20.

In Switzerland, a risk-based procedure has already been implemented in the area of general risk assessment (higher or lower risk) and the associated definitions (above all with respect to exceptions and screening). Similarly, a risk-based approach is also consistently applied in connection with contractual relations between absent parties, and new products or distribution channels.

However, two key shortcomings in the proposed amendments need to be noted:

- A. Firstly, as a result of the transfer to an interpretative note, the risk-based approach has little association with the individual recommendations, and this could give rise to false interpretations. All financial intermediaries have to carry out their own individual risk assessments that are tailored to their company and are based on objective criteria for each activity. It is therefore not appropriate to use an interpretative note on the risk-based approach to describe or define too many details or even possible

examples that would quickly become obligatory as a minimum implementation standard.

- B. And secondly, the term “non-face-to-face business” cited in this connection appears to be inadequately defined and can be, or will be, wrongly interpreted as an increased risk per se. A positive implementation in practice would therefore be desirable.

2.2. No. 15 to 26: Rec. 5 and its interpretative note

2.2.1. The impact of the risk-based approach on Rec. 5 and INR. 5

The explicit listing of examples as an implementation aid for the risk-based approach in INR. 5 is rejected, since a list of this nature could be misused as a catalogue of requirements, and thus autonomous implementation in the individual jurisdictions would be restricted.

2.2.2. Legal persons and arrangements – customers and beneficial owners

The proposals to increase transparency with respect to the ownership and beneficial owner structure lead to very complex and disproportionate clarification processes among financial institutions, and can therefore hardly be regarded as targeted proposals. Tasks of this nature require special clarifications. And generally speaking there are no specific principles calling for legal entities to issue the required details concerning natural persons who, for example, exercise effective control over the company, or to enter these details in a publicly accessible register. Those financial intermediaries who are not granted access to the corresponding data would therefore have to “threaten” to reject the transaction concerned, and this would not be acceptable.

In case the provision of information should be expanded for legal entities and asset units, the determination of the owner of such structures and the person having effective control respectively should in any case follow an individual approach for the different structures. Applying a risk-based approach, it should be limited to domiciliary companies.

In addition, the use of a number of very vague terms (“mind and management”, for example, or “effective control”), the insufficiently risk-based scope of application of the measures and the incorporation of several legal systems into clarification procedures give rise to implementation problems for financial intermediaries.

2.2.3. Life insurance policies

The modification of the section on life insurance policies by adding the autonomous term “beneficiary” to the glossary is a welcome move since this

represents a departure from the general term, "beneficial owner". This brings clarity to the question of who has to be actually identified. But in this connection it should be noted that, in keeping with the concept of a global standard that is in line with the risk-based approach, each bank has to meet corresponding due diligence requirements.

Furthermore, in connection with insurance policies the proposal calling for the implementation of CDD measures upon pay-out is also welcomed, since this appears to fit the previously mostly unclear beneficiary structure.

Additionally it has to be noted, that under this paragraph, also the premium payers should be considered.

2.3. No. 27 to 31: Rec. 6, politically exposed persons (PEPs)

The currently valid regulation is applied to foreign PEPs, so no comments are necessary in this connection.

Extending the regulation to include domestic PEPs would not be welcomed, however, since although the proposals are risk-based in theory, in practice they would effectively be rule-based. Furthermore, this modification would require the designation of PEP categories, which would give rise to considerable additional cost both for implementation and for constant monitoring. The rules have to be viewed in a differentiated manner from country to country, but with respect to Switzerland it can be stated that the money-laundering risk is very low. Thus a pragmatic approach should be envisaged here, i.e. the focus should be on a normal risk-based approach without PEP categories.

Should the decision nonetheless be taken to extend the regulations to domestic PEPs, any rules that are incorporated into the FATF standards stipulating who is to be classified as a domestic PEP are to be rejected. Each jurisdiction should be able to decide for itself who is to be regarded as a PEP.

2.4. No. 32 to 38: Rec. 9, third party reliance

We welcome a broadening of the third party reliance concept, especially the increased flexibility within a corporate group. However, the delimitation between the various concepts has to take account of existing national regulations.

2.5. No. 39 to 40: Tax crime as a predicate offence for money laundering

Here it is important to warn in advance that if the list of predicate offences is enlarged again, this will result in higher costs and additional obligations for financial intermediaries. It should not be the duty of the financial intermediaries to ensure that national taxes are paid in the proper manner in accordance with the respective legislation. This especially applies to small and middle-sized financial intermediaries, whose resources are rather scarce. It has to be noted that such a predicate offence ultimately will lead to an undesired combination of money laundering and tax offences.

Regarding the former, an extension of the scope of application has to be avoided and the original goal of the FATF – the fight against organised crime and terrorist financing – has to be reclaimed. It should not be the purpose of the member states' anti-money laundering regulation to guarantee the tax compliance of their citizens.

In case tax crimes would be adopted as predicate offences for money laundering, any adoption of such crimes must have as a precondition, that the term "tax crimes" is defined at the national level, in order to take account of the member states' different legal systems.

Furthermore it has to be noted and considered, that there are various bilateral negotiations in progress that have as a goal to govern the exchange of information between the respective member states in tax-related issues.

2.6. No. 41 to 50: Special Recommendation VII and its interpretative note

2.6.1. Beneficiary information

The proposal that the financial intermediary has to provide additional information about the recipient in the case of cross-border electronic transitions is to be rejected. On the one hand this is not necessary for carrying out the transaction, since recipients of payments have to hold a bank account and are therefore known, and on the other hand the resulting costs are in no way proportional to the benefits in terms of combating money laundering and the financing of terrorism. Attention should also be drawn to the introduced MT202Cov, which – as the Wolfsberg Group has also pointed out – clearly shows how enormous implementation costs can arise that are entirely out of proportion to the effective benefits.

The fact should also be noted that especially with the new payments systems (e.g. SEPA), only an ID number is provided that is also relevant for the credit booking, which would generally contradict the proposed amendment.

2.6.2. Obligations to screen wire transfers against financial sanctions list

The proposal to carry out comprehensive screening against the financial sanctions list for all transactions is also to be rejected. This would slow down the transaction process enormously and disproportionately increase the costs for financial institutions, while in return it would not generate any significant benefits (multiple hits can be mentioned as an example here).

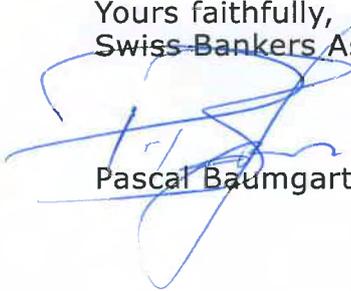
2.7. No. 51 to 53: Other issues included in the preparation for the 4th round of mutual evaluations

The proposals for simplifying legal and administrative assistance, which appear to only be in a preliminary stage, should be regarded in a critical light, especially the called-for waiver of double incrimination. The sovereignty of each country must not be violated. The extraterritorial scope of application of national legal systems would be extended unnecessarily, and fishing expeditions would be encouraged. We are of the opinion that the applicable legislation governing legal and administrative assistance takes sufficient account of the requirements, without disproportionately restricting the rights of accused parties.

The specification in the standards of an expansion of the authorities' competencies and investigative measures is also to be rejected, since on the one hand this would greatly interfere with the sovereignty of the individual jurisdictions, and on the other hand it would affect the fundamental rights of the involved persons.

Thank you for your kind attention to our comments. Please do not hesitate to contact us should you have any questions.

Yours faithfully,
Swiss Bankers Association (SBA)


Pascal Baumgartner


Christoph Winzeler



SwissBanking

ASA | SVV

Schweizerischer Versicherungsverband
Association Suisse d'Assurances
Associazione Svizzera d'Assicurazioni

SwissHoldings

Verband der neutralen- und Dienstleistungskontoren in der Schweiz
Fédération des gros magasins industriels de commerce en Suisse
Federazione di Imp. di Ind. di Serv. Group e Retailer in CH



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Basel, 7 January 2011
PBA, JSC

Comments on consultation paper entitled "Review of the FATF Standards – Preparation for the 4th Round of Mutual Evaluations"

Dear Sir or Madam,

Thank you for giving us the opportunity to comment on the consultation paper entitled "Review of the FATF Standards - Preparation for the 4th Round of Mutual Evaluations". It is our pleasure to comment on the above document on behalf of Switzerland's leading economic associations, and thus its business and financial centre.

The comments below have been prepared on behalf of the following umbrella organisations:

- ❖ **economiesuisse**, the main umbrella organisation of the Swiss economy. As an association of Swiss companies, economiesuisse is supported by more than 30,000 companies of all sizes, with a total of 1.5 million employees in Switzerland.
- ❖ **Swiss Bankers Association (SBA)**, the leading professional association of the Swiss financial centre. Its main objectives are to preserve and promote ideal conditions for Switzerland's financial centre at home and abroad. It was established as a professional association in Basel in 1912, and currently has a total of 355 institutional members (plus 350 Raiffeisen banks) and approximately 16,800 individual members.
- ❖ **Swiss Insurance Association (SIA)**, the umbrella organisation representing the private insurance industry. Its members are small and large national and international primary insurers and reinsurers – in all, 74 insurance companies.
- ❖ **SwissHoldings**, a cross-sector association that represents the interests of major industrial and services companies (excluding the financial sector) that are based in Switzerland and focus on international activities. It is committed to securing favourable business conditions and a liberal economic environment at both the national and the international level. Its corporate members are among the most important direct

investors abroad, and are leading international suppliers of goods and services, as well as major employers worldwide.

- ❖ **Forum SRO MLA**, which is an association of Switzerland's eleven recognised self-regulatory organisations, and thus of the non-banking sector. It comprises more than 5,800 affiliated financial intermediaries, and its main objective is to promote the introduction and implementation of the self-regulation system in Switzerland (primarily in the area of combating money laundering and the financing of terrorism).

1. General remarks

In our view, the proposals put forward in the consultation paper are clearly and comprehensibly drafted. We also welcome the fact that the proposed changes are limited in number and do not amount to a general amendment of the FATF standard. Nevertheless, we wish to state that this review appears to us to be somewhat premature. If we consider that many member states have still not fully implemented the currently applicable standards, the proposed review has to be regarded as rather hasty.

While some specific proposals are worth to be examined more closely and in some cases are to be welcomed (e.g. incorporation of the risk-based approach as a general standard), other proposed adjustments result in immense and largely unjustifiable additional costs for financial institutions. As a general rule, increased expenses caused by such adjustments should always be founded on increased efficiency; unfortunately this is not the case with regard to the proposed adjustments. In addition, it has to be considered that such additional costs not only affect financial institutions but also their customers, who have to provide the additional information.

The proposed requirements extend well beyond the framework of combating money laundering and the financing of terrorism, and therefore have to be regarded as inappropriate. Furthermore it also appears that certain adjustments of the FATF standards lead to an undesired combination of the fight against money laundering and the financing of terrorism with other issues such as tax offences. The chosen path should not lead solely to formalities and clarifications of international disputes, but reinforce the fight against money laundering and financing of terrorism.

It should also be noted that the very open formulation of some terms is more likely to lead to problems relating to delimitation and interpretation than to effective improvements.

2. Comments on the individual provisions / proposed amendments

Below we offer our comments on specific proposed amendments (the sequence numbering corresponds to that of the consultation paper):

2.1. No. 5 to 14: Risk-based approach

We welcome the consistent implementation and the adjustments in line with the risk-based approach, and above all the reduction in competition distortion that results from the adjustment of Rec. 20.

In Switzerland, a risk-based procedure has already been implemented in the area of general risk assessment (higher or lower risk) and the associated definitions (above all with respect to exceptions and screening). Similarly, a risk-based approach is also consistently applied in connection with contractual relations between absent parties, and new products or distribution channels.

However, two key shortcomings in the proposed amendments need to be noted:

- A. Firstly, as a result of the transfer to an interpretative note, the risk-based approach has little association with the individual recommendations, and this could give rise to false interpretations. All financial intermediaries have to carry out their own individual risk assessments that are tailored to their company and are based on objective criteria for each activity. It is therefore not appropriate to use an interpretative note on the risk-based approach to describe or define too many details or even possible examples that would quickly become obligatory as a minimum implementation standard.
- B. And secondly, the term "non-face-to-face business" cited in this connection appears to be inadequately defined and can be, or will be, wrongly interpreted as an increased risk per se. A positive implementation in practice would therefore be desirable.

2.2. No. 15 to 26: Rec. 5 and its interpretative note

2.2.1. *The impact of the risk-based approach on Rec. 5 and INR. 5*

The explicit listing of examples as an implementation aid for the risk-based approach in INR. 5 is rejected, since a list of this nature could be misused as a catalogue of requirements, and thus autonomous implementation in the individual jurisdictions would be restricted.

2.2.2. Legal persons and arrangements – customers and beneficial owners

The proposals to increase transparency with respect to the ownership and beneficial owner structure lead to very complex and disproportionate clarification processes among financial institutions, and can therefore hardly be regarded as targeted proposals. Tasks of this nature require special clarifications. And generally speaking there are no specific principles calling for legal entities to issue the required details concerning natural persons who, for example, exercise effective control over the company, or to enter these details in a publicly accessible register. Those financial intermediaries who are not granted access to the corresponding data would therefore have to “threaten” to reject the transaction concerned, and this would not be acceptable.

In case the provision of information should be expanded for legal entities and asset units, the determination of the owner of such structures and the person having effective control respectively should in any case follow an individual approach for the different structures. Applying a risk-based approach, it should be limited to domiciliary companies.

In addition, the use of a number of very vague terms (“mind and management”, for example, or “effective control”), the insufficiently risk-based scope of application of the measures and the incorporation of several legal systems into clarification procedures give rise to implementation problems for financial intermediaries.

2.2.3. Life insurance policies

The modification of the section on life insurance policies by adding the autonomous term “beneficiary” to the glossary is a welcome move since this represents a departure from the general term, “beneficial owner”. This brings clarity to the question of who has to be actually identified. But in this connection it should be noted that, in keeping with the concept of a global standard that is in line with the risk-based approach, each financial intermediary has to meet corresponding due diligence requirements.

Furthermore, in connection with insurance policies the proposal calling for the implementation of CDD measures upon pay-out is also welcomed, since this appears to fit the previously mostly unclear beneficiary structure.

Additionally it has to be noted, that under this paragraph, also the premium payers should be considered.

2.3. No. 27 to 31: Rec. 6, politically exposed persons (PEPs)

The currently valid regulation is applied to foreign PEPs, so no comments are necessary in this connection.

Extending the regulation to include domestic PEPs would not be welcomed, however, since although the proposals are risk-based in theory, in practice they would effectively be rule-based. Furthermore, this modification would require the designation of PEP categories, which would give rise to considerable additional cost both for implementation and for constant monitoring. The rules have to be viewed in a differentiated manner from country to country, but with respect to Switzerland it can be stated that the money-laundering risk is very low. Thus a pragmatic approach should be envisaged here, i.e. the focus should be on a normal risk-based approach without PEP categories.

Should the decision nonetheless be taken to extend the regulations to domestic PEPs, any rules that are incorporated into the FATF standards stipulating who is to be classified as a domestic PEP are to be rejected. Each jurisdiction should be able to decide for itself who is to be regarded as a PEP.

2.4. No. 32 to 38: Rec. 9, third party reliance

We welcome a broadening of the third party reliance concept, especially the increased flexibility within a corporate group. However, the delimitation between the various concepts has to take account of existing national regulations.

2.5. No. 39 to 40: Tax crime as a predicate offence for money laundering

Here it is important to warn in advance that if the list of predicate offences is enlarged again, this will result in higher costs and additional obligations for financial intermediaries. It should not be the duty of the financial intermediaries to ensure that national taxes are paid in the proper manner in accordance with the respective legislation. This especially applies to small and middle-sized financial intermediaries, whose resources are rather scarce. It has to be noted that such a predicate offence ultimately will lead to an undesired combination of money laundering and tax offences. Regarding the former, an extension of the scope of application has to be avoided and the original goal of the FATF – the fight against organised crime and terrorist financing – has to be reclaimed. It should not be the purpose of the member states' anti-money laundering regulation to guarantee the tax compliance of their citizens.

In case tax crimes would be adopted as predicate offences for money laundering, any adoption of such crimes must have as a precondition, that the term "tax crimes" is defined at the national level, in order to take account of the member states' different legal systems.

Furthermore it has to be noted and considered, that there are various bilateral negotiations in progress that have as a goal to govern the exchange of information between the respective member states in tax-related issues.

2.6. No. 41 to 50: Special Recommendation VII and its interpretative note

2.6.1. Beneficiary information

The proposal that the financial intermediary has to provide additional information about the recipient in the case of cross-border electronic transitions is to be rejected. On the one hand this is not necessary for carrying out the transaction, since recipients of payments have to hold a bank account and are therefore known, and on the other hand the resulting costs are in no way proportional to the benefits in terms of combating money laundering and the financing of terrorism. Attention should also be drawn to the introduced MT202Cov, which – as the Wolfsberg Group has also pointed out – clearly shows how enormous implementation costs can arise that are entirely out of proportion to the effective benefits.

The fact should also be noted that especially with the new payments systems (e.g. SEPA), only an ID number is provided that is also relevant for the credit booking, which would generally contradict the proposed amendment.

2.6.2. Obligations to screen wire transfers against financial sanctions list

The proposal to carry out comprehensive screening against the financial sanctions list for all transactions is also to be rejected. This would slow down the transaction process enormously and disproportionately increase the costs for financial institutions, while in return it would not generate any significant benefits (multiple hits can be mentioned as an example here).

2.7. No. 51 to 53: Other issues included in the preparation for the 4th round of mutual evaluations

The proposals for simplifying legal and administrative assistance, which appear to only be in a preliminary stage, should be regarded in a critical light, especially the called-for waiver of double incrimination. The sovereignty of each country must not be violated. The extraterritorial scope of application of national legal systems would be extended unnecessarily, and fishing expeditions would be encouraged. We are of the opinion that the applicable legislation governing legal and administrative assistance takes sufficient account of the requirements, without disproportionately restricting the rights of accused parties.

The specification in the standards of an expansion of the authorities' competencies and investigative measures is also to be rejected, since on the

one hand this would greatly interfere with the sovereignty of the individual jurisdictions, and on the other hand it would affect the fundamental rights of the involved persons.

Thank you for your kind attention to our comments. Please do not hesitate to contact us should you have any questions.

Yours faithfully,

economiesuisse



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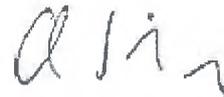


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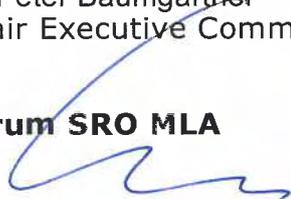


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FEEDBACK RE: CONSULTATION ON PROPOSED CHANGES TO FATF STANDARDS

Page No.	Section	Comment
10	39 & 40	<p>We do not see the need to make any specific reference to Tax Crimes since all types of detected criminal activity (including perceived 'Tax Crimes') should already be reported as a suspicious transaction to the applicable authority.</p> <p>That said, if the FATF are insistent on pressing on with paying special consideration on Tax Crimes, the FATF should agree to the following five principles & assumptions:</p> <ol style="list-style-type: none"> 1. It shall be assumed that Institutions performing due diligence on their prospective customer will generally be unaware of the whole picture relating to the financial affairs of their prospective customer and will not therefore be able to determine what, if any, tax liabilities might exist, and whether or not they have been properly discharged. 2. The Institution conducting due diligence shall be under no general duty to investigate the tax affairs of its customers. 3. The fact that a customer, or potential customer, wishes to route monies to or through the Institutions can of itself raise no grounds for suspicion. Similarly, the fact that a particular transaction may be highly complex is not of itself grounds for suspicion. 4. The Institution conducting due diligence may reasonably assume that its customers will meet their tax liabilities unless there is some reasonably clear reason to suspect otherwise. 5. The Institution conducting due diligence is not required to possess knowledge of the tax or other laws of a foreign jurisdiction.

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4 January 2011.

COMMENT – FATF CONSULTATION PAPER “The Review of the Standards – October 2010”

1. Introduction

This document is in response to the invitation from the FATF to provide written comments on its Consultation Paper of October 2010 entitled “The Review of the Standards – Preparation for the 4th Round of Mutual Evaluations”. It comments only on the proposals made in the paper, and a separate submission is made on the issue of financial inclusion as discussed at the consultative meeting in Paris on 22-23 November 2010.

2. Specific Comments on the Text of the Paper

Para 1.

We support the “increased focus on effectiveness”, but would propose that this be expanded to include evaluation of costs vs. the benefits of existing measures, as many implementation procedures or requirements may have costs that far outweigh any relevant AML/CFT benefits.

Para 7(b) & (c).

A genuine “risk-based approach” should be fair on both sides of the spectrum. However, the text and tone of the FATF Recommendation are biased in favour of mandatory increased obligations for higher risk (“should” or “must”; no empirical proof of higher risk necessary), as opposed to the lower risk scenario (“proven lower risk”, “may allow”). This bias inherently increases the implementation costs of AML/CFT measures, with often limited proven benefit (e.g. regulators implement the mandatory components for perceived higher risks, but are loath to make concessions for the lower risks). We recommend that the text and tone of these risk-based standards be neutralised/balanced, to ensure that the true benefits of the risk-based approach can be attained.

Para 12.

The obligation on “competent authorities” to provide appropriate guidance on the AML/CFT risks arising from new technologies is noted. However, in most instances regulators (or “competent authorities”) tend

to react to market developments, while financial institutions tend to protect their new technologies before implementation. It may therefore be difficult for “competent authorities to assess the potential risks that may arise from new technologies and inform ...of these risks.” The concern would be that such pre-emptive guidance (or rather the lack of) may prove to be a regulatory brake or resistance to the roll out of new technologies. This is particularly relevant to the roll-out of new technologies into the lower-income (or financially excluded) sectors where there is a general lack of understanding of the market characteristics and dynamics anyway.

Para 18.

Most countries probably have a wide court jurisprudence relating to “control” of a legal entity. Such jurisprudence will rely on verifiable and controllable data (shareholding, voting rights, etc.). Given the difficulties already involved in this jurisprudence, it is recommended that the even more unquantifiable and nebulous concept of “mind and management” be deleted from the standard, as this concept will prove extremely difficult to implement consistently in practice, especially in relation to regulatory monitoring and supervision of financial institutions’ efforts in this regard.

Para 19.

The FATF requirements in terms of the identification and verification of “beneficial owner”, and as defined to be a natural person, present challenges to the private sector. At the same time as the AML/CFT regulators impose such “forensic investigation” requirements, there is little to no support from other government structures to facilitate such identification, e.g. corporate registering authorities only require the legal entity’s immediate shareholders to be disclosed. The whole Companies Act has just been rewritten in South Africa, and it proved impossible to get anyone in legislative or regulatory authority to address this “beneficial owner” concept in the new Act, at the same time that the FATF is sharpening its focus on the requirement. This leaves financial institutions with an impossible task. Comments from international regulators that “we all know that the corporate registries will never do this, so we require the financial institutions to share the pain...” are also not helpful. The problem of identifying a legal identity’s “beneficial owner” is a corporate registry one, and should be more appropriately addressed in that space. Financial institutions should not be required to have to determine this *ab initio*.

Para 27.

We note the G20 and FATF intensified efforts to combat corruption. However, selective implementation of such efforts by major countries’ governments (e.g. the UK government’s instruction to the Office of Serious Fraud to halt its investigations into SAUDI-related arms deal bribes) undermines perceived commitment to these lofty ideals. South

Africa has similar lack of commitment by its government to long-stated complaints of arms-deal fraud and corruption. This in essence moves the whole compliance burden to the private sector, whereas the anti-corruption charge should rightfully be lead by government.

Para 29 & 30.

The definition and implementation of CDD measures in relation to so-called "PEP's" remains a challenge. It is stated without any empirical evidence that "foreign PEP's are always considered to be a higher risk", which obviously translates into higher mandatory compliance costs (see point para 7 above). This requirement will be extremely difficult to implement in common trading blocs such as the EU or the Southern African Development Community "SADC" (where equivalent cross-border trading and non-resident conditions are expected, or being developed), as opposed to countries that apply stricter non-resident conditions. It is also unclear what benefits a higher compliance CDD regime for domestic PEP's will bring, as opposed to the significant compliance costs of that regime.

It is inevitable that most financial institutions deal with PEP's (and especially foreign ones) via purchased name lists. These generally do not include family members and other associates. The inclusion of such persons in the PEP's space could also be a contravention of a country's data privacy laws. We recommend that the definition of PEP be restricted to the person concerned only, and that enquiry into sources of income should be sufficient to identify such PEP's family or associated members.

Para 37.

We note and support the recommendation that international groups should develop group-level AML/CFT programmes and policies. However, we are also aware of the comment by a senior central banker to a local subsidiary which admitted to following "Group policy" in this regard, that the foreign entity was a visitor in the host country, and as such should abide by host country legislation. Perhaps the recommendation should be phrased to require compliance with "group policy or local law, whichever is higher". It is our understanding that this compliance standard is common practice amongst regulators.

On the other hand, there should be enough flexibility in implementing group or home country standards to make provision for the realities on-the-ground in foreign countries, e.g. the standard of verifying identity against a photo-enabled document may not be possible in a country that does not have such documents, and that relies on other means to verify its citizens' identity (e.g. personal affidavits from trusted individuals, voters' roll).



Para 40.

The tax regimes of most countries are extremely complex, and usually not understood by non-involved outsiders or third parties. Imposing an international obligation to report suspicious transactions relating to proceeds of tax crimes may therefore present an impossible compliance burden. It should also be noted that in many cases a tax payer has an obligation to pay the correct amount of tax, and it may be impossible to connect any specific financial transaction with that unmet obligation (i.e. it may be impossible to identify the actual proceeds of a tax crime, as opposed to other crimes). The tax complexities also result in long, drawn-out litigation between the tax authorities and tax payers, and it would be difficult for non-involved third parties to take views on the financial proceeds of the taxpayer while such disputes are ongoing. We therefore recommend that any such reporting obligation relating to tax crimes be restricted to domestic transactions only, and then only on the basis of court judgements as to the correctness of the tax crime.

Para 47.

The essential nature of local and international payments systems is to provide secure, efficient and cost-effective payments between originators and beneficiaries. Imposing additional information requirements, especially on intermediaries ("straight through processing") and beneficiary banks (passive recipients of the payments) negatively impact such efficiency and cost-effectiveness, most likely with marginal, if any benefit re AML/CFT.

Different measures should be employed for low volume, high value systems (typically treasury systems) and low value, high volume systems (typically consumer systems). It is our understanding that appropriate information systems exist, or are being developed, in the treasury systems environment. The challenge is therefore not to roll out these costly measures into the high volume consumer systems.

Para 49.

The challenge with any sanctions list monitoring system is not the genuine name matches (of which there are very few, given the impact of such lists to drive the named individuals or entities "below the radar"), but the large number of near (or false) hits. Investigation of these near hits requires considerable skilled human investigation and assessment before they can be reliably dismissed as false. Again, high value low volume treasury systems can handle such list screening and near hit investigation, but this would be impossible in the low value, high volume consumer systems.



Para 50.

The challenge for the private sector in many CFT situations is the political distinction between “terrorists” and “freedom fighters”. It is difficult, if not impossible, for any commercial enterprise to make this distinction. Consequently, there is total reliance on international lists of designated terrorist groups or individuals for any list screening programmes.

3. **Conclusion**

We welcome and support the efforts of the FATF to review the efficacy of the various 40+9 Recommendations, and to amend them as appropriate. Similarly, we found the public-private consultation meeting in Paris of great benefit in exchanging views, expectations and challenges.

We trust that the comments made during that meeting, and the written ones in this document, are of value to the FATF in progressing this important debate.

Please contact us should it be necessary to clarify any of the comments.

4 January 2011.



FATF/Asia Pacific Group on Money Laundering/World Bank work on the implementation of AML/CFT provisions in a financial inclusion context

Topics for the industry/market players sector input

Background information:

The ultimate objective of the international standards on AML/CFT elaborated by the FATF is to promote financial integrity and support the fight against crime. However, there is a recognition that the inappropriate implementation of these standards - especially in developing countries- can play a role in excluding unbanked and low-income people from formal financial services. It can relegate a significant proportion of the population in some countries to the informal world of cash, undermining social and economic advancements, and denying regulators and law enforcement a key means of strengthening financial integrity: the ability to trace the movement of money.

The FATF Recommendations outline measures that countries, financial institutions, and certain other businesses and professions should adopt in order to counter money laundering and terrorist financing. The FATF Recommendations cover a broad range of services and activities, including deposit taking, providing consumer credit, and transferring money or value in the formal and informal sector. The scope of the Recommendations includes financial service providers that serve low-income clients or undocumented clients both in developed and developing countries.

In October 2010, the FATF agreed to the principle of developing FATF Guidance on AML/CFT and Financial Inclusion by June 2011. This project is conducted in partnership with the APG (Asia/Pacific Group on Money Laundering) and the World Bank. Many countries within the APG have done some extensive work in this area; the WB has a very diverse experience that aims to increase the complementarity of AML/CFT and financial inclusion objectives. Other countries will also be closely involved in the project such as Mexico, India, South Africa, Peru, Korea and the US. Experts from the G20 will also be associated with the work to be done. Finally, representatives of the financial industry and market players involved in the provision of banking services to the low end of the market, including through innovative distribution channels (mobile phones, non bank outlets etc) will also be associated to this work.

Please note that the Guidance proposes to target marginalised, disadvantaged and other vulnerable groups, including low income and undocumented groups, in both developed and developing countries, that are more likely to be excluded from the formal, regulated financial sector. It is intended to look beyond the issue of low-income people in developing countries, i.e. to target the broader population of unbanked people.

In order to launch the process and to collect information that helps giving shape to this project, the FATF, the APG and the WB, with the support of the World Savings Banks Institute (WSBI) have elaborated a questionnaire to the attention of the relevant market players.

Your response to this questionnaire should be sent to Rob Rowe, Chair of the International Banking Federation to compile into one submission to the FATF. Comments are due to the FATF Secretariat **no later than 8 January 2011** so please return your response to me by ***Wednesday, 5 January*** to be compiled and forwarded to the FATF.

FATF Secretariat
7 December 2010

Preliminary remarks:

- 1. This questionnaire focuses on financial products and services which are offered to undocumented/marginalized/vulnerable customers or potential customers who are currently financially excluded. In this regard, it focuses on, while not limited to, financial products and services offered by banks and cooperatives for these customer groups including the use of branchless or agent banking, money service providers, remittance companies, mobile money service providers, microfinance institutions, and postal financial services.**
- 2. Please distinguish in your answers the different AML/CFT regimes and challenges you face in the different countries you are involved, if they present useful differences for the purpose of this work.**
- 3. In your answers:**
 - > Please use very concrete examples (names of companies and countries can and should be provided)**
 - > The information provided should be as illustrative as possible and should be very clear (please note that the reader may not be familiar with the issues or the business you describe).**
- 4. Make it clear where you have faced successful experiences and workable models when dealing with financial inclusion (FI) objectives and AML/CFT constraints**
- 5. When describing the difficulties you face in serving unbanked people because of AML/CFT obligations, could you please identify what you could consider as a solution or way forward? In these cases, could you also make clear what your expectations are (i) vis-à-vis national authorities; (ii) vis-à-vis the FATF; (iii) vis-à-vis other businesses involved?**

COMMENTS FROM THE BANKING ASSOCIATION SOUTH AFRICA (Stuart Grobler, 4 January 2011).

Q1. Type of activities contributing to financial inclusion

- 1.1. Provide a description of the products/business lines you have developed *to serve the unbanked in developing countries*. Please also provide a description of the way your business is organized, including the connection and interplay with the banking sector and the use of third parties (such as agents). Your answer can mention different experiences developed in different countries to take into account different regulatory regimes;

In 2003 A FINANCIAL SECTOR CHARTER WAS SIGNED, WHICH INTER ALIA REQUIRED THE EXPANSION OF FINANCIAL SERVICES TO THE UNBANKED. ONE SUCH PROJECT WAS THE DEVELOPMENT OF A LOW-COST BASIC SAVINGS ACCOUNT NAMED MZANSI. THE ORIGINAL INTENTION WAS THAT THIS WOULD BE A NON-COMPETITIVE PRODUCT (and likewise for the insurance and assurance sector products), BUT THE MINISTER OF FINANCE REFUSED TO SANCTION SUCH AN ANTI-COMPETITIVE PRICING STRATEGY. IT WAS DEVELOPED AND LAUNCHED WITH MUCH FANFARE in 2004, BUT OVER THE YEARS THE BANKS HAVE DECLINED TO MAKE ANY FURTHER CONTRIBUTIONS TO ITS CO-OPERATIVE MARKETING, NOR DO THEY DO ANY SUCH COMPETITIVE MARKETING OR PROMOTION THEMSELVES. THEY AND OTHER BANKS HAVE ALSO DEVELOPED IN-BANK COMPETITIVE PRODUCTS, WHICH THEY PROMOTE TO THEIR CUSTOMERS. INTERESTINGLY THE NATIONAL POST BANK, ALTHOUGH NOT A SIGNATORY TO THE CHARTER, WAS INVOLVED IN THE MZANSI PROJECT, AND IN FACT BRANDED ITS STANDARD SAVINGS/TRANSACTION ACCOUNT PRODUCT UNDER THE CO-OPERATIVE BRAND.

WHAT WAS CONCEIVED AS A NO-FRILLS SAVINGS PRODUCT ONLY, HAS HAD TO BE ENRICHED TO PROVIDE FOR CREDIT ORDERS (CREDIT PULL) TRANSACTIONS TO MEET THE PAYMENT NEEDS OF OTHER SERVICE PROVIDERS (E.G. MICRO LOANS, BURIAL INSURANCE POLICIES, ETC).

DURING CHARTER-RELATED DEBATES IT WAS AGREED THAT A CERTAIN PACKAGE OF TRANSACTIONS SHOULD COST NO MORE THAN 1.7% OF A REFERENCE INCOME (R1000 PER MONTH) IN ORDER FOR THE PRODUCT TO QUALIFY AS A LOW INCOME CHARTER PRODUCT (TYPICALLY 3 CASH WITHDRAWALS AT ATM OR BRANCH COUNTER, 2 DEBIT ORDERS)

WHILE STATISTICS VARY SOME 6M MZANSI ACCOUNTS HAVE BEEN OPENED, OF WHICH ABOUT 3M ARE STILL CURRENT/ACTIVE.

THE LIFE ASSURERS AND SHORT TERM INSURERS ALSO DEVELOPED SPECIAL LOW VALUE PRODUCTS FOR THE CHARTER MARKET, BUT THEIR MAJOR CHALLENGE IS THE COLLECTION OF THE LOW MONTHLY PREMIUMS (WHERE THE TRANSACTION COST MAY BE SIGNIFICANT TO THE CONSUMER IN RELATION TO THE LOW PREMIUM)

- 1.2. Does your business serve undocumented people in *developed countries*? What are the challenges you face in these situations while meeting the AML/CFT requirements?

N/A

Q2. Exemption from AML/CFT requirements

- 2.1. In the countries where your products are distributed, have you got examples where your business has been exempted from AML/CFT obligations, for instance on the basis of low ML or TF risks or due to the limited volume of your business. What were the threshold/criteria used to qualify for this exemption? Is this exemption granted by law? Are the exempted activities used to serve undocumented/marginalized/vulnerable group customers?

THE ONLY AML/CFT RELATED EXEMPTION FOR THE SAVINGS/TRANSACTION PRODUCT IS THAT THE RESIDENTIAL ADDRESS DOES NOT NEED TO BE VERIFIED. HOWEVER, THIS CONCESSION IS PREDICATED ON A NUMBER OF ACCOUNT OPERATING RESTRICTIONS, EG. MAXIMUM OF R5000 TRANSACTION VALUE PER DAY, MAXIMUM MONTHLY ACCOUNT TURNOVER OF R30 000, MAXIMUM ACCOUNT BALANCE OF R25000. THE PROBLEM WAS THAT SUCH RESTRICTIONS NEEDED TO BE HARD-CODED IN THE OPERATING SYSTEMS, WHICH WAS A LOW DEVELOPMENT PRIORITY GIVEN ALL THE OTHER IT PRIORITIES

- 2.2. Have you examples to give where the possibility of such an exemption has been discussed with the national authorities, especially in the context of promoting financial inclusion? What was the outcome of this discussion where it has occurred?

THE EXEMPTION ABOVE WAS GAZETTED AS AN AMENDED REGULATION. HOWEVER, OVER THE PAST 8 YEARS WE HAVE REPEATEDLY MOTIVATED FOR A TOTAL EXEMPTION FROM ADDRESS IDENTIFICATION AND VERIFICATION (GIVEN THE REALITIES OF OUR HOUSING SITUATION, AND THE NATIONAL IDENTIFICATION SYSTEM), AS WELL AS A SINGLE TRANSACTION EXEMPTION, TO THE FIC AND NATIONAL TREASURY, TO NO AVAIL. SINGLE TRNASACTIONS WOULD RELATE TO MONEY REMITTANCES.

Q3. Sector Specific AML/CFT Regulations

- Are you subject to sector specific AML/CFT regulations for branchless or agent banking, money service providers, remittance companies, money service providers, microfinance institutions, and postal financial services in the countries where you operate? If so, please provide a short description of the specificities of these regulations.

IN GENERAL THERE IS COMMON REGULATION, ALTHOUGH THERE IS SECTOR SPECIFIC GUIDANCE. THE REGULATORY FRAMEWORK REFERS TO "ACCOUNTABLE INSTITUTIONS", AS DEFINED BY STATUTES, E.G. BANKS, MONEY REMITTERS. THIS RESULTS IN BANKS' CREDIT TRANSACTIONS BEING WITHIN AML/CFT, WHILE PURE LENDERS/MICRO LENDERS ARE NOT SIMILARLY IMPACTED (I.E. REGULATION IS PER INSTITUTION TYPE AND NOT PRODUCT OR SERVICE FUNCTIONALITY). THIS RESULTS IN SIGNIFICANT MARKET DISPARITIES RE THE COSTS OF COMPLIANCE WITH AML/CFT, AND THE HASSLE FACTOR EXPERIENCED BY CUSTOMERS

Q4. CDD (Customer Due Diligence) obligations

- 4.1. Describe the most common CDD process used in your business to (1) identify your customer (please differentiate between permanent or occasional customers); (2) verify the customer's identification data.

KYC REQUIRES NAME, IDENTITY NUMBER (WHICH HAS EMBEDDED DATE OF BIRTH), DATE OF BIRTH, AND RESIDENTIAL ADDRESS. ONGOING CDD WOULD EMBRACE NUMERIC (VALUE BASED) TRANSACTION MONITORING, AND INVESTIGATION OF SPIKED TRANSACTIONS (E.G OVER R50 000). VERIFICATION IS BY REFERENCE TO THE NATIONAL IDENTITY DOCUMENT (PHOTO, IDENTITY NUMBER), AND ADDRESS BY A NUMBER OF OTHER DOCUMENTS. AS NOTED ADDRESS VERIFICATION IS EXEMPTED FOR THE MZANSI AND EQUIVALENT PRODUCTS, PROVIDED CERTAIN ACCOUNT OPERATING RESTRICTIONS ARE APPLIED.

KYC REQUIREMENTS APPLY TO BOTH BUSINESS RELATIONSHIPS AND SINGLE TRANSACTIONS.

- 4.2. CDD verification: have you got examples to provide where the verification of the identity of the customer has been a problem, e.g. because of national legal requirements, type of customers targeted, banking model implemented? 4.3. Have you got examples where a practical and alternative solution has been agreed in consultation with the public authorities? 4.4. What is your timeframe to complete the verification (at the time of the customer acceptance or following the establishment of the relationship)?

THE MAJOR PROBLEM WITH KYC VERIFICATION IS ADDRESS VERIFICATION – MANY INDIVIDUALS ARE UNABLE TO PROVIDE READY ADDRESS VERIFICATION (E.G. NO POSTAL DELIVERIES TO THE STREET ADDRESS, SQUATTER CAMPS, BACKYARD ROOMS OR SHACKS, TRIBAL COMMUNITY-HELD TRUST LANDS, ETC). THE MARKET RESPONSE HAS BEEN TO RELY ON A WIDE RANGE OF OTHER DOCUMENTS, MANY OF WHICH THEMSELVES ARE NOT VERIFIED, EG. TELEVISION LICENCE.

RESIDENTIAL ADDRESS VERIFICATION IN DEVELOPING COUNTRIES IS GARBAGE IN, GARBAGE OUT. PROBLEM IS THAT THE OFFICIAL GOVERNMENT AGENCIES (DEPARTMENT OF HOME AFFAIRS, NATIONAL POPULATION REGISTER) HAVE THE SAME CHALLENGES, SO THE NATIONAL DATABASE OF RESIDENTIAL ADDRESSES HAS BEEN OUTSOURCED TO THE PRIVATE SECTOR, AT GREAT COMPLIANCE COST FOR WHAT IS IN ESSENCE INHERENTLY UNRELIABLE. THE DRIVERS FOR THIS ARE APPARENTLY THE SECURITY AGENCIES, AS THIS OUTSOURCED DATABASE WILL BE THE BEST SOURCE FOR TRACING CRIMINAL SUSPECTS, AS OPPOSED TO THE STATE DATABASE.

ALL VERIFICATION HAS TO BE DONE BEFORE ANY TRANSACTIONS ARE CARRIED OUT

- 4.5. In the models where there are multiple entities and institutions involved in providing the financial service (typically a principal and an agent): (i) how does the CDD process work; (ii) how do you think it could be improved, to be efficient, avoid a duplication of efforts and costs, and be adapted to the particular type of customers targeted?

PRINCIPALS REMAIN AT COMPLIANCE RISK – WHICH IMPOSES COSTS THAT THE MARKET CANNOT ALWAYS BEAR, ESPECIALLY FOR LOW-VALUE TRANSACTIONS OR ACCOUNTS. THIS WILL RESTRICT THE USE OF AGENTS TO THOSE THAT CAN AND ARE WILLING TO COMPLY WITH THE PRINCIPAL’S REQUIREMENTS, WITHOUT EXPOSING THAT PRINCIPAL TO NON-COMPLIANCE RISK (E.G. RELIABLE AND TRUSTWORTHY STAFF, PHOTOSTAT OR SCANNING FACILITIES, REGULAR CONTACT WITH THE PRINCIPAL)

GIVEN THE NATURE OF THE WIDELY DISPERSED AGENCY NETWORKS (INCLUDING INFORMAL HAWKERS AND SHOPS) AND THEIR SENSITIVITY TO IMPOSED COMPLIANCE COSTS IT IS UNLIKELY THAT SUCH COMPLIANCE COULD BE EFFECTIVELY TRANSFERRED FROM THE PRINCIPAL TO THE AGENT

- 4.6. When serving the undocumented/marginalized/vulnerable group clients, do you have policies in place to verify that the customer (the person that asks for a financial service) acts on his/her behalf? If you have doubts, what additional measures do you take?

TYPICALLY ASK AND NOTE THE ANSWER. VERY DIFFICULT TO DETERMINE AND VERIFY IN ADVANCE IF THERE IS FRONTING/”ACTING FOR”. AFTER THE EVENT TRANSACTION MONITORING MAY HIGHLIGHT SUCH ACTIVITIES, ESPECIALLY IN RELATION TO DRUG TRAFFICKING – IT IS A SIMPLE, CHEAP PROCESS TO GET A NUMBER OF UNEMPLOYED INDIVIDUALS TO OPEN SUCH LOW COST ACCOUNTS, WHICH CAN BE USED FOR OTHER PURPOSES THAN SALARY OR BENEFIT PAYOUTS OF THE ACCOUNT HOLDER.

- 4.7. When describing the difficulties you face in meeting the CDD obligations while serving undocumented/marginalized/vulnerable group clients, could you please identify what you would consider as a solution or way forward? In these cases, could you also make clear what your expectations are (i) vis-à-vis national authorities; (ii) vis-à-vis the FATF; (iii) vis-à-vis other businesses involved?

IN OUR CASE WE SHOULD BE ALLOWED TO RELY ON THE OFFICIAL NATIONAL IDENTITY DOCUMENT FOR FULL IDENTIFICATION VERIFICATION. ALL CITIZENS (OVER 16) AND RESIDENTS MUST HAVE SUCH A DOCUMENT TO DO ANY OF A NUMBER OF STATE-RELATED TRANSACTIONS. PROBLEMS ARE ADDRESS VERIFICATION, AND THE NEED TO KEEP A COPY OF THE IDENTITY DOCUMENT

HAVE MADE THIS PLEA REPEATEDLY OVER THE PAST 8 YEARS, TO NO AVAIL. PART OF THE CHALLENGE WOULD APPEAR TO BE THE FATF STANDARDS, THAT SPECIFY THE IDENTIFICATION PARAMETERS, E.G. NAME, ID NUMBER IF ANY, DATE OF BIRTH AND RESIDENTIAL ADDRESS. AS NOTED, THE DATE OF BIRTH IS EMBEDDED IN OUR IDENTITY NUMBER, SO WHY SHOULD THIS DUPLICATED DATA BE REQUIRED? SIMILARLY, THE STATE HAS ISSUED AN OFFICIAL IDENTITY NUMBER AND DOCUMENT, SO WHY SHOULD RESIDENTIAL ADDRESS BE REQUIRED (ALTERNATIVELY – SURELY ANY CONTACT ADDRESS SHOULD SUFFICE??)?

- 4.8 What would be your expectations of the FATF in relation to providing additional guidance on the above areas ?

SIMPLIFY THE SPECIFICATION TO ONE COMPATIBLE WITH A RISK-BASED PROCESS – “ENSURE THAT YOU KNOW TO THE APPROPRIATE DEGREE OF SECURITY/ACCURACY WHO THE CUSTOMER IS, AND HOW TO CONTACT THEM IF NECESSARY”. THIS IS, AFTER ALL, HOW CREDIT MARKETS OPERATED FOR CENTURIES, WITHOUT ANY NEED TO STATE AUTHORITIES TO DICTATE TO LENDERS HOW THEY SHOULD KNOW WHO THEY ARE DEALING WITH, NOR HOW TO CONTACT THEM.

Q5. Reduced/simplified CDD measures

- 5.1. Certain countries may allow financial services providers to apply reduced or simplified CDD measures to certain customers or products based on low money laundering or terrorist financing risk. Have you encountered these situations when offering financial services to undocumented/marginalized/vulnerable group clients? What were the threshold/criteria used to qualify for this reduced regime?

SEE ABOVE COMMENTS RE SAVINGS/TRANSACTION ACCOUNTS

WE HAVE AN ONGOING DISPUTE ON THE INTERPRETATION OF THE CONCEPT “SINGLE TRANSACTION” IN THE MONEY REMITTANCE AREA – ONE VIEW IS THAT THE MONEY IN IS ONE TRANSACTION (NON-CUSTOMER) WHILE THE MONEY OUT IS ANOTHER SEPARATE TRANSACTION (DIFFERENT NON-CUSTOMER, DIFFERENT OR SAME INSTITUTION). THERE IS AN OPPOSING VIEW THAT IT IS ONLY THE MONEY IN LEG THAT IS A TRANSACTION, AND THE MONEY OUT IS JUST THE COMPLETION OF THIS FIRST TRANSACTION. THESE VIEWS HAVE A SIGNIFICANT IMPACT ON KYC/CDD COMPLIANCE RE MONEY REMITTANCES. REQUESTS TO THE AUTHORITIES FOR CLARIFICATION REMAIN UNANSWERED

- 5.2. What types of CDD measures have you been asked to carry out in these scenarios (for instance reducing the frequency of customer identification updates, reducing the degree of ongoing monitoring and scrutinising transactions based on a reasonable monetary threshold, not collecting specific information or carrying out specific measures to understand the purpose and intended nature of the business relationship, but inferring the purpose and nature from the type of transactions or business relationship established, etc.)?

DEBATE STILL OPEN

Q6. Money laundering (ML) and terrorist financing (TF) risks

- 6.1. In the different market places where your company operates and when you serve undocumented/marginalized/vulnerable group clients with new products and new business practices, how do you understand and measure the ML and TF risks?

TF UNKNOWN, ML BASED ON LOW VALUE RESTRICTIONS (MONITORING FOR SUSPICIOUS TRANSACTIONS, LOW DAILY, MONTHLY AND BALANCE VALUE RESTRICTIONS)

- 6.2. What types of risk variables do you take into account (the purpose of an account or relationship, the level of assets to be deposited by a customer or the size of transactions undertaken, the regularity of the business relationship, etc.)?

VALUE AND FREQUENCY OF TRANSACTIONS, SOURCE OF INCOME

- 6.3. Do you get guidance from the national authorities on how to assess those risks, using what factors or indicators?

MAINLY INTERNATIONAL GUIDANCE/TYPOLOGIES; NOT SURE WHETHER NATIONAL AUTHORITIES ARE ENBLED TO GUIDE BANKS ON RISK MANAGEMENT IN GENERAL OR DETAIL.

- 6.4. Do you have specific policies in place to address the terrorist financing risk (by definition financial transactions aiming at financing terrorism may be of very low value)?

SCREENING OF ALL ACCOUNTS AGAINST THE INTERNATIONAL (UNITED NATIONS) TERRORIST LISTS ON A 6 MONTHLY BASIS. HIGH VALUE PAYMENTS SYSTEMS SCREENED AGAINST INTERNATIONAL AND COUNTRY SANCTIONS LISTS.

Q7. Record-keeping

- 7.1. How do you organize the record-keeping of the identification data you get from marginalized/vulnerable clients (i.e. what record retention techniques do you use)? Are you required by some national laws to record a photocopy of the identification data you collect? What are the main challenges you face in this area? Have you examples of successful experiences of maintaining efficient and accessible records of clients' identification data?

IMAGE/COPY OF IDENTITY DOCUMENT, IMAGE/COPY OF ADREES VERIFICATION WHERE REQUIRED. DOCUMENT FILING, RETENTION AND RETRIEVAL PRESENT PROBLEMS, AND DRIVE UP COMPLIANCE COSTS

- 7.2. How do you organize the record-keeping of the transactions carried out by undocumented/marginalized/vulnerable clients? What are the main challenges you face in this area? Have you examples of successful experiences of maintaining efficient and accessible records of clients' transactions?

STANDARD TRANSACTION ACCOUNT RECORDING AND MONITORING; IN GENERAL DATABASE OF SINGLE TRANSACTION MONEY REMITTANCE ORIGINATORS (BUT NOT BENEFICIARIES DUE TO DIFFERENCES OF LEGAL INTERPRETATION NOTED EARLIER) .

- 7.3 When describing the difficulties you face in meeting the record-keeping obligations while serving undocumented/marginalized/vulnerable group clients, could you please identify what you would consider as a solution or way forward? In these cases, could you also make clear what your expectations are (i) vis-à-vis national authorities; (ii) vis-à-vis the FATF; (iii) vis-à-vis other businesses involved?

AS NOTED ADDRESS IDENTIFICATION AND VERIFICATION ARE MAJOR PROBLEMS IN DEVELOPING COUNTRIES. IN THE CASE OF SOUTH AFRICA, WE HAVE A NATIONAL IDENTITY NUMBER AND DOCUMENT, BUT ITS CREDIBILITY IS SUSPECT. THERE IS NO EMPIRICAL EVIDENCE OF THE SCALE OF FRAUDULENT IDENTITY DOCUMENTS, HOWEVER, SO IT IS POSSIBLE THAT THE ALTERNATIVE STRATEGIES ARE EXCESSIVE IN COMPENSATING FOR THE PERCEIVED BUT UNQUANTIFIED PROBLEMS.

AS NOTED THE FATF STANDARDS ARE BIASED AGAINST ANY RELAXATION OF LOW RISK REQUIREMENTS (E.G. USEO F THE CONCEPTS "MAY" AND "PROVEN

LOWER RISK”, AS OPPOSED TO THE MANDATORY, UNPROVEN HIGHER RISK IMPOSITIONS).

USA- AND UK-DRIVEN CONCERNS ABOUT TF (LOW VALUES OF LEGITIMATE MONEY) ARE IMPOSING HIGHER COMPLIANCE BURDENS ON THESE MARKETS, AS OPPOSED TO GENUINE ML RISKS (HIGHER VALUES, PROCEEDS OF CRIME). MAYBE FURTHER DEBATE IS NECESSARY ON THE COST-BENEFIT OF A COMBINED AML/CFT FOCUS, ESPECIALLY ON DEVELOPING COUNTRIES

THE SOUTH AFRICAN IDENTITY NUMBER HAS EMBEDDED IN IT THE DATE OF BIRTH, AS WELL AS MALE/FEMALE INDICATOR, SO ANY ADDITIONAL DATA SPECIFICATIONS IN THIS CONTEXT ARE DUPLICATION.

A MAJOR CHALLENGE IS WHERE A COUNTRY DOES NOT HAVE AN OFFICIAL IDENTIFICATION SYSTEM, OR WHERE THE LOCAL SYSTEM DIFFERS FROM THAT SPECIFIED EITHER INTERNATIONALLY OR BY GROUP POLICIES. COMPLIANCE WITH SUCH SPECIFIED STANDARDS MAY BE IMPOSSIBLE AT LOCAL COUNTRY LEVEL (E.G. THE SOUTH AFRICAN REQUIREMENT IS NAME, IDENTITY NUMBER, DATE OF BIRTH AND ADDRESS – WHICH IS A PROBLEM FOR SUBSIDIARY BANKS IN OTHER AFRICAN COUNTRIES THAT DO NOT HAVE AN OFFICIAL IDENTIFICATION SYSTEM. PROVISION SHOULD BE MADE IN THESE STANDARDS FOR SOMETHING TO THE EFFECT OF “OR OTHER MEANS OF IDENTIFICATION AND/OR VERIFICATION COMMONLY USED IN THE COUNTRY”, E.G. IN SOME COUNTRIES THIS MAY BE BY REFERENCE TO THE VOTERS’ ROLL. UNDER THESE CIRCUMSTANCES COMPLIANCE WITH “GROUP POLICIES OR LOCAL LAW, WHICHEVER IS HIGHER” IS IMPOSSIBLE TO ACHIEVE.

WE HAVE MADE THIS REPRESENTATION TO THE LOCAL REGULATORY AUTHORITIES FOR A NUMBER OF YEARS, ALSO TO NO AVAIL.

Q8. Non bank agents

- 8.1. In many countries, bank and other financial services providers offer banking and payment services through retail outlets including groceries, bakeries, convenience stores, pharmacies, gas stations, rather than using bank branches. Different approaches in the way these agents are covered for AML/CFT purposes exist (e.g. agency or outsourcing relationships). In the countries where you carry out your business, how are agents treated, for example, are agents required to be registered with or licensed by a competent authority; or are principals instead required to submit a list of agents to a competent authority; or are principals required to maintain a list of agents and make it available when requested by authorities? What is the status of these agents under the AML/CFT supervisory regime, their responsibilities, and who is ultimately liable for their actions? How is the delineation of responsibilities between your company and the agents you may use organized, as far as AML/CFT requirements are concerned?

AGENTS MAY PERFORM CERTAIN KYC OBLIGATIONS FOR A PRINCIPAL, BUT THE PRINCIPAL REMAINS LIABLE IN LAW FOR THE CORRECTNESS OF SUCH EFFORTS, RECORDS, ETC. HOWEVER, AN OUTSOURCED SERVICE PROVIDER WOULD HAVE TO MANAGE ITS OWN AML-CFT RISKS AND OBLIGATIONS. TO THE BEST OF MY UNDERSTANDING, THERE IS NO REQUIREMENT IN THE AML-CFT SPACE FOR AGENTS TO BE MONITORED OR SUPERVISED BY THE REGULATORY AUTHORITIES, GIVEN THAT THE PRIMARY RESPONSIBILITY REMAINS WITH THE REGULATED PRINCIPAL

- 8.2. What measures do you take to run the due diligence check of your agents? 8.3. Do you get precise guidance from the public authorities on how to manage your agent relationship? 8.4. In this area, what model would you promote vis-à-vis public authorities that would be workable and efficient?

THE ONUS FOR TRAINING, MONITORING AND SUPERVISING THE AGENTS WOULD REST WITH THE PRINCIPAL, WHO IS LIABLE UNDER LAW FOR COMPLIANCE WITH THE ACT. IN THIS PARTICULAR MARKET AGENTS ARE LIKELY TO BE MORE IN THE INFORMAL SIDE, GIVEN THE NEED TO REACH OUT TO THE UNBANKED WHERE THEY LIVE/WORK (MOSTLY THE MORE RURAL AREAS, TRANSPORT HUBS, BENEFIT PAYOUT POINTS, ETC).

- 8.5 When describing the difficulties you face in your agent relationships while serving undocumented/marginalized/vulnerable group clients, could you please identify what you would consider as a solution or way forward? In these cases, could you also make clear what your expectations are (i) vis-à-vis national authorities; (ii) vis-à-vis the FATF; (iii) vis-à-vis other businesses involved?

IN THIS ENVIRONMENT AGENTS ARE GENERALLY SMALL/MICRO BUSINESSES, INFORMAL TRADERS, ETC AND WOULD HAVE DIFFICULTY IN COMPLYING WITH FORMAL KYC, VERIFICATION OR RECORD KEEPING REQUIREMENTS. THE IMPOSITION OF SUCH REQUIREMENTS WOULD ALSO OUT-PRICE THE SERVICE THAT THEY ARE AGENTS FOR, THEREBY RESTRICTING SUCH CHANNELS AND MAKING ACCESS FOR THE UNBANKED MORE DIFFICULT. THE ESSENTIAL TRADE-OFF IS BETWEEN FACILITATING WIDER AND EASIER ACCESS TO LOW VALUE FINANCIAL PRODUCTS WITH AN ACCPETABLE RISK VS STRICT COMPLIANCE WITH LOCAL AND INTERNATIONAL AML/CFT STANDARDS. AS NOTED ABOVE THE USA/UK DRIVEN CFT PRIORITIES INTERPOSE WITHIN THE AML REQUIREMENTS, THEREBY DRIVING UP THE OVERALL COMPLIANCE BURDEN, AND POSSIBLY FURTHER REDUCING ACCESS.

Q9. Monitoring of transactions (Principal-Agent Scenarios described in Q.8)

- Your company should have appropriate systems and controls to monitor the transactions of each client, and report to the financial intelligence unit any transaction or activity that could be suspected to be related to money laundering or terrorism financing crimes. 9.1. How do you organize this monitoring? 9.2. What challenges do you face in this area? 9.3. Do you get instructions or guidance from the authorities in this area?

MONITORING SYSTEMS WOULD TEND TO APPLY ACROSS ALL TRANSACTION PRODUCT LINES, AND IN CONSUMER MARKETS WOULD GENERALLY BE TRIGGERED BY CASH OR TRANSCION THRESHOLDS. THESE WOULD BE INVESTIGATED (EXCLUDING MANDATORY CASH THRESHOLD REPORTS) FOR SUSPICIOUS OR UNUSUAL ACTIVITY, AND WHETHER A REPORT SHOULD BE MADE. TO THE BEST OF MY UNDERSTANDING THERE IS NO GUIDANCE FROM THE AUTHORITIES IN THIS AREA

Q10. Suspicious transactions reporting

- 10.1. When serving undocumented/marginalized/vulnerable group clients, have you encountered situations where you have identified a suspicious transaction? 10.2 Of what nature?

UNABLE TO ANSWER, BUT POSSIBLE

- 10.3. What process is in place to deal with the suspicion, and in particular who is making the suspicious transaction reporting in the case of an agent model? 10. 4. Are you required to file a threshold reporting? 10.5. If so, what guidance or instructions do you get from the authorities?

AGENTS IN THIS MARKET UNLIKELY TO MAKE SUSPICIOUS TRANSACTION ALERTS, DESPITE THE LAW RE AGENCY REQUIRING SUCH ACTIONS, PRINCIPALS TO TRAIN AGENTS, ETC

CASH THRESHOLD REPORTING HAS JUST BEEN INTRODUCED (DECEMBER 2010), AND IMPLEMENTATION OF CROSS BORDER TRANSACTION REPORTING STILL OUTSTANDING

Q11. Internal controls

- 11.1. As part of the AML/CFT obligations, your business should be required to develop internal control programmes against money laundering and terrorist financing. These programmes should include: (1) the development of internal policies, procedures and controls, including appropriate compliance management arrangements, and adequate screening procedures to ensure high standards when hiring employees; (2) an ongoing employee training programme; (3) an audit function to test the system. Have you developed internal controls of that sort in order to be able to serve undocumented/marginalized/vulnerable group clients? 11.2. What main challenges do you face in this area?

THESE ARE COVERED IN THE NORMAL COURSE OF THE PRINCIPAL'S BUSINESS, AND WOULD NOT BE MARKET SEGMENT SPECIFIC. HOWEVER, WHERE AGENTS ARE USED, ESPECIALLY IN THE MORE MARGINALISED/VULNERABLE GROUPINGS/ GEOGRAPHIC AREAS, IT WOULD BE MORE DIFFICULT, AND NOT NECESSARILY COST EFFECTIVE, TO MAINTAIN SUCH A PROGRAMME THROUGH AGENTS, AS THIS WOULD EITHER RESULT IN NON-COMPLIANCE, OR THE RESTRICTION OF THE AGENT NETWORK TO MORE FORMAL AND COMPETENT OPERATORS

Q12 Licensing and registration of mobile money providers (e.g. cell phones)

- 12.1 Countries must have proper licensing or registration processes for institutions that deliver financial services, including mobile money services. What models have you encountered (for instance, in some countries, mobile money providers other than non-banks institutions may not be allowed to issue e-money on their own and have to partner with an existing bank; in other countries the mobile money services and other non-banks institutions can get a special authorization/license to provide financial services)? 12.2. What model would you promote? 12.3. Do you discuss the issues of licensing or registration with the authorities?

ALL DEPOSIT TAKING IN SOUTH AFRICA MUST TAKE PLACE WITH A BANK OR OTHER EXEMPTED INSTITUTIONS (E.G. POST BANK). OF NECESSITY THEREFORE MOBILE MONEY PROVIDERS MUST BE BACKBONED BY A LEGITIMATE DEPOSIT TAKING INSTITUTION. IN THIS CONTEXT BANKS HAVE BEEN OFFERING CELL PHONE BASED SERVICES FOR MANY YEARS, AND RECENTLY THE CELL PHONE SERVICE COMPANIES HAVE ALSO ENTERED THE FINANCIAL TRANSACTION HANDLING MARKET

A KEY ISSUE IS THE CAPACITY OF THE CENTRAL BANK TO MONITOR THE PAYMENTS SYSTEMS, AND TO PREVENT THE ILLEGAL CREATION OF CURRENCY VIA SOME FORM OF "EMONEY" OVER WHICH IT HAS NO CONTROL.

Q13. Supervision and oversight of mobile money providers

- 13.1. The FATF calls on jurisdiction to have an effective supervisory regime in place to oversee all types of risks, including ML/TF risks and stresses the need for all providers of financial services to be subject to adequate regulation and supervision. As mobile money providers, under what supervisory model do you operate (e.g. from the Central Bank, the Ministry of Communication, the Financial Intelligence Unit, etc.)? 13.2. What model would you promote? 13.3. In the countries where you operate, are some supervisory mechanisms in place and are they effective (have you been inspected, are your books and customer files reviewed, etc.)?

AS NOTED DEPOSIT TAKING IS STRICTLY REGULATED, AND SUCH INSTITUTIONS PROVIDE THE UNDERPIN FOR ANY MOBILE MONEY SERVICE PROVIDERS.

Q14. Dialogue with stakeholders

- 14.1. Are the issues of financial inclusion on the agenda of the countries where you operate and are you involved in the existing discussion? 14.2. Is it your perception that policy makers and regulators understand the constraints that are specific to your business? 14.3. What would be your suggestions and concrete proposals to improve the communication with the competent authorities?

PROMOTING ACCESS TO FINANCIAL PRODUCTS AND SERVICES FOR THE UNBANKED REMAINS HIGH ON THE GOVERNMENT'S PRIORITIES. A KEY ISSUE IS THE PROFITABILITY/SUSTAINABILITY OF SUCH SERVICES, IF PROVIDED BY THE PRIVATE SECTOR.

THE ABILITY TO EXTEND ACCESS IS ALSO DEPENDANT ON THE PREVAILING INFRASTRUCTURE WITHIN THE PERI-URBAN AND RURAL AREAS, IN PARTICULAR ELECTRICITY AND TELECOMMUNICATIONS.

Q15 Please indicate in this section any other issue you believe is relevant in the context of this exercise.

ONE OF THE LEARNINGS FROM THE MZANSI EXERCISE IS THAT WHILE THE BANKS THOUGHT THEY WERE DOING A NOBLE THING TO EXPAND ACCESS TO FINANCIAL SERVICES, THERE WAS A STRONG PUSHBACK AGAINST WHAT WAS PERCEIVED AS AN INFERIOR PRODUCT – I.E. ANY PRODUCT OR SERVICE SPECIFICALLY DESIGNED FOR THE VULNERABLE IS SEEN AS SECOND RATE. ON THE OTHER HAND, STANDARD COMMERCIAL PRODUCTS ARE TOO EXPENSIVE, WHICH TRANSLATES INTO A DEMAND FOR SUCH PRODUCTS TO BE MADE AVAILABLE FREE OF CHARGE, OR AT GREATLY REDUCED CHARGES

BENEFIT TRANSFERS IS A MAJOR ISSUE IN DEVELOPING COUNTRIES, WHERE THERE IS A NEED TO TRANSFER A SINGLE BENEFIT PERMONTH, WHICH IS INEVITABLY WITHDRAWN WITHIN 24 HOURS OF SUCH TRANSFER. STANDARD SAVINGS/TRANSACTION ACCOUNTS ARE GENERALLY NOT PROFITABLE UNDER THIS OPERATING MODEL, WHILE CASH PAYOUTS ARE RISKIER AND MORE EXPENSIVE TO THE STATE. IN SOUTH AFRICA'S CASE THERE ARE SOME 14M BENEFIT TRANSFERS PER MONTH, ABOUT 30% OF WHICH PROBABLY OCCUR THROUGH A BANK ACCOUNT (BALANCE BY CASH).

7 January 2011

The FATF Secretariat

By email to fatf.consultation@fatf-gafi.org

Dear Sirs,

Re: The Review of the Standards

The British Bankers Association (BBA) is grateful for the opportunity to respond to the consultation on the review of the FATF Standards, and the preparation for the 4th round of mutual evaluations. With over 240 member banks from over 60 countries the BBA is the authoritative voice of the banking industry in the UK, representing members' interests in both wholesale and retail markets.

The BBA supports strongly the FATF decision that, in line with good practice, it should re-examine its standards periodically to ensure that they remain relevant and consistent with the implementation and evaluation of the current standards. It is particularly welcome too that the FATF is carrying out this public consultation involving the private sector and indeed all stakeholders. The BBA's members are at the forefront of the UK's endeavours to combat money laundering and terrorist financing, they have extensive practical knowledge and they deploy sophisticated systems to make sure that their compliance is of the highest quality.

We note that the issues to be addressed are the following:

- the Risk Based Approach
- Recommendation 1, and whether tax crimes should be included as a predicate offence for money laundering
- Recommendation 5, Customer Due Diligence
- Recommendation 6, Politically Exposed Persons (PEPs)
- Recommendation 9, Third Party Reliance and
- Special Recommendation VII, Wire Transfers.

In addition, we note that the FATF would welcome comments on the usefulness of Mutual Evaluation Reports.

Our comments on all of the above are attached, and we would be happy to provide further information or comment if required.

Yours sincerely,



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Director Financial Crime

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FATF Proposals on the Risk-Based Approach (“the RBA”) and related Recommendations

Key proposals:

- Assessing the risk based approach
- Developing a single comprehensive statement on the risk based approach
- Clarifying the requirements regarding legal persons and arrangements
- Beneficiaries of life insurance or other investment related insurance policies

BBA Comment

1. We strongly support the recommendation to consolidate the existing RBA standards into one comprehensive statement and also support the inclusion of more detail and granular examples. However, we have a concern that this will provide Competent Authorities in different jurisdictions with the ability to mandate either stricter or lesser requirements through regulation and legislation, which could lead to unequal standards being adopted across the world.

2. There is a link to Recommendation 8 regarding new technologies and specific reference to mitigating risks in developing new products. This would have to be considered regarding any exploitation of e.g. faster payments or prepaid cards. The suggested EDD requirements under new technologies is also welcomed as is the inclusion of applying FATF regulations to other designated non Financial Institutions (“FIs”).

3. We would also point out that our members have welcomed the RBA in terms both of proportionality and in providing some flexibility in targeting their systems and controls where required. But it must be recognised that this means that individual FIs will operationalise their approach, eg by putting in their own policy and standards. A direct consequence of this is that processes and procedures will vary between institutions and will also vary within a single institution depending on the different risk assessment of different business units.

4. In terms of the RBA, it is important too to recognise that managing this approach can, in practice, be highly complex especially for large internationally active banks. It is therefore important for international standard setters and for individual regulators to recognise that such operational standards are unique to each and every FI. This has the potential to cause problems where there are expectations from international standard setters and regulators that all firms will adopt the same standard. The variety of approach to how FIs individually operationalise the RBA standards reduces the opportunities for those who seek to launder funds for criminal or terrorist ends.

Recommendation 1 (tax crimes as a designated category of predicate offence for money laundering)

Key proposals

- Considering including tax crimes as a predicate offence for money laundering
- To include a designated offence: tax crimes – related to direct taxes and indirect taxes

BBA Comment

5. In the United Kingdom and many other jurisdictions, tax evasion is already a crime and therefore would be subject to the usual ML Reporting requirements. However, there will need to be clear definitions of tax crimes to avoid unnecessary reporting where legitimate tax avoidance is allowable.

Recommendation 5 (Customer Due Diligence)

Key proposals

- Assessing in the light of the risk based approach
- Clarifying the requirements regarding legal persons and arrangements
- Beneficiaries of life insurance or other investment related insurance policies

BBA Comment

6. Overall, we support the proposals regarding beneficial owners. The proposed requirement to evaluate the beneficiaries of life insurance policies may be disproportionate to the risk of usage of this kind of product for money laundering or terrorist financing, given the circumstances required to pay out on these types of policy. These requirements could prove challenging from a wider Investment/Trust perspective where beneficial owners may not be identified at inception. Trust products such as Insurance wrappers should also look closely at these proposed recommendations.

7. On the screening of life policy beneficiaries to identify PEPs, taking 2.3 and 3.2 together, it is ambiguous as to when it is expected that screening should be performed. The FATF appears to accept that beneficiaries need not be verified until payment, but if there is to be a requirement that names (where specifically named, ie not a class) are taken up front, does that imply that they should be screened up front? It appears to us that it would be sensible to suggest that it should be within a firm's discretion, based on their risk based approach as to when screening of beneficiaries takes place.

Recommendation 6 (Politically Exposed Persons)

Key points:

- Proposal to include UN Convention on Corruption in Recommendation 35, and this would impact also Recommendation 6 re PEPs
- UN Convention does not distinguish between foreign or domestic PEPs and based on principle that a Convention should be interpreted in the widest sense possible, it is the understanding that enhanced scrutiny on both domestic and foreign PEPs should be required. FATF is considering the following approach:
 1. leaving the requirements relating to foreign PEPs as they are, ie they are always higher risk
 2. requiring financial institutions to take reasonable measures to determine whether a customer is a domestic PEP, and
 3. requiring enhanced CDD measures for domestic PEPs if there is a higher risk.
- The FATF is also reviewing the obligation with respect to family members and close associates of PEPs. Instead of requiring financial institutions to determine whether a customer or beneficial owner is a family member or close associate of a PEP, it proposes to focus on the cases where the PEP (either foreign or domestic) is a beneficial owner of the account, ie on 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.

BBA Comment

8. We support the move to identify domestic PEPs and many of our members have already been doing this for a number of years. We note however that while it is accepted that corrupt PEPs can cause significant damage to the countries they abuse, in some respects, they simply represent another category of higher risk customer. Having a PEP specific regulation, and extending this, means that a significant amount of time and cost can be incurred on additional due diligence on legitimate customers.

9. Our members believe that consideration needs to be given to institutions with multiple presences in different jurisdiction outside of the UK when considering domestic PEPs. A domestic PEP for such institutions will invariably be interpreted in a different context. For the sake of consistency, some of our members take the approach of including all PEPs but they vary the level of due diligence undertaken taking into account the nature of the relationship and risks of the jurisdiction from where the PEP originates. For example, a Russian oligarch who is now settled and has taken UK residency/citizenship could be classified as domestic and therefore not currently subject to PEP due diligence requirements. But our members believe it prudent to consider the country of association of the PEP in such circumstances, ie taking into account where they have undertaken political office, or other positions such as being Chairman of a state owned entity.

10. Subject to our comment above under Recommendation 5, we also support the screening of life insurance policy beneficiaries/beneficial owners, although this does need to be balanced against the risks posed by such products, which could mean that this approach is considered disproportionate.

11. However we are not entirely supportive of the recommendation to focus its identification of family members or close associates to just those 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. We believe that most financial institutions will take a risk based approach in this area according to their assessment of the risk posed by the particular PEP. While it is accepted that foreign PEPs must be treated as higher risk, not all are necessarily “high” risk.

Recommendation 9 (Third party reliance)

Key proposals

- Who can rely on a third party and who can be relied upon – FATF considering extending discretion regarding the types of third parties that can be relied upon and to go beyond the financial sector to include other types of businesses as long as they are subject to AML/CFT requirements and effective regulation and monitoring
- Where are the boundaries between third party reliance and outsourcing or agency – FATF proposes to distinguish what constitutes third party reliance through a functional definition with a set of positive or negative elements with situations or elements characteristic in a reliance context
- Intra group reliance – taking a more flexible approach where the third party is part of a financial group

BBA Comment

12. Whilst the proposal to consider amending Recommendation 9 to extend beyond FIs and include other professional bodies is welcomed, this could require a whole new structure/approach to ensure that any other professions comply with the standards and that the FIs can rely on the supervisory bodies that have the responsibility for oversight. This will not remove the requirement for ensuring that third parties meet FI own standards/requirements but could create issues where the third party provides services to multiple unconnected businesses which each have a different set of requirements.

13. On the positive side this is a move in the right direction and will have benefits as seen in the Channel Islands where, for example, Trust Companies are required to maintain the same standards and are monitored by the regulators and therefore greater use of introductory certificates and reliance, notwithstanding the independent checks that FI and others might want to take.

Special Recommendation VII and its Interpretative Note

Key proposals

The FATF is seeking private sector input with respect to discussions to amend Special Recommendation VII (SR.VII) and its Interpretative Note (INSR.VII) for the purpose of enhancing the transparency of cross-border wire transfers.

- to further enhance the transparency of the international payments system, the FATF is now considering incorporating beneficiary information into the international AML/CFT standard governing cross-border wire transfers;
- the FATF asks whether FIs require accurate information on beneficiary names in order to process a transaction
- whether it would be feasible and useful in managing the ML/TF risks for FIs to have additional beneficiary information
- what 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.

BBA Comment

14. On beneficiary information, our members believe that FIs ought to require accurate information on beneficiary names in order to process a transaction - if payments are processed without a beneficiary name (even though technically they can be) there has to be a significant sanctions risk.

15. However, we have reservations about going any further than name and account number. Would the provision of additional information bring additional responsibilities on the receiving bank which would be incompatible with 'straight-through processing'? In other words would the receiving PSP be expected to check that all the quoted information aligned to what is held on the bank customer database.

16. Indeed, while we agree that it is highly desirable from a processing perspective to include the beneficiary name, we have significant reservations about the wisdom or practicality of making the account number a unique and mandatory identifier. In many cases, the ordering customer will have the beneficiary account number – for domestic or SEPA payments it is effectively mandatory – but this is not always the case for general cross-border payments, where traditionally the ordering customer does not always have the beneficiary's account number available, and these payments can be, and are, made with beneficiary name and address (and probably also the beneficiary's bank). The beneficiary bank then identifies the correct account, or alternatively mails a cheque. Under the proposal, if the beneficiary account number is not available, what unique identifier would the sender be expected to provide, how would the ordering bank enforce this, and how would the beneficiary bank check it? The payment transaction reference number could serve as a unique identifier in these circumstances, but to avoid ambiguity it would be necessary for any new requirements making name + account number/UID mandatory (if that were the outcome) to provide explicitly that where an account number is not supplied by their customer, the sending bank is not required to insist on it and the beneficiary bank can rely on the transaction reference as the UID and does not have to query absence of account number back to the sending bank.

17. We note that the overall objective is for more transparency in the process, indeed to move from supplying just originator to some beneficiary information and cover payments. We would point out that transparency has to be trumped by traceability and it is essential that this principle continues to apply in the projected wider context of originator + beneficiary information. Just as compromises have had to be acknowledged for originator information because of system constraints or differences of interpretation in certain scenarios around what information could or should go into wire transfers, it is essential that any enlarged requirement is grounded in the practical and does not seek to impose rigid and unrealistic information demands.

18. It is recognised that FIs do not own the beneficiary relationship and so could not verify the details. Obtaining full beneficiary details might be difficult for a FI's customers. There might be field restrictions within a FI's systems and potentially SWIFT. More payment schemes now try to route using just ID codes (BICS and IBANS) – SEPA is one example. Routing using numbers rather than names is easier for systems and leads to higher rates of straight through processing, the holy grail of payments. Would the recipient beneficiary bank have to ratify all details, assuming they had them on record? Currently it is believed that FI's do not confirm that account number and name match and just rely on the account number. Whilst account name primacy still exists, a UK legal opinion a few years ago took the view that, if brought to court, the account number would probably be deemed to take primacy over name.

19. Overall, our view is that it would be unrealistic and disproportionately burdensome on FIs to expect them to monitor beneficiary information for accuracy, completeness, alignment of name and number information. It is our strong view that any mandatory requirement for beneficiary information should ideally be limited to name only.

20. Another question that must be addressed is whether FI's would have to consider how to monitor; would they be able/prepared to apply the payment and monitor retrospectively for beneficiary details as they do for remitter details?

21. On the possibility of incorporating into the international standard an obligation to screen all wire transfers in order to comply with the UNSCRs to combat terrorist financing, we would note that standards and the extent of screening do still vary among FIs. Amongst our member banks, the majority report that they do screen wire transfers where there is meaningful information.

22. It would be helpful if the FATF could specify a minimum watch list package so that all financial institutions are looking at the same list and also a list of recommended extra watch lists that may be used.

Usefulness of Mutual Evaluation Reports

Key proposals

- Considering how they could be made more useful under six headings:
 1. focus of mutual evaluations, reports could be made shorter
 2. the executive summary – set out more clearly the overall level of compliance?
 3. risk information – give more emphasis to risk factors and how they are or could be mitigated
 4. timeliness – publication of reports is some time after the evaluation – is this a problem?
 5. structure – could be improved to make them more easily understood?
 6. sectoral information – reports could include additional information in specific areas eg for those recommendations which apply to several different areas eg banking, securities, insurance, conclusions on risk and compliance could potentially be set out for each type of institution

BBA Comment

23. Our members have said that they find the FATF country assessments are of limited value. Our members suspect that the assessment system is so highly politically charged that the assessments could be seen as being deeply flawed. For example, there is very limited information indeed on the ownership of Russian corporate structures, but no comment is made about this. And with regard to the assessments of India and Pakistan, India should more realistically be rated as much less compliant with AML standards than Pakistan.

24. Our members nevertheless seek to take into account the FATF country assessments as best they can when carrying out their own risk and business assessment programmes.

The DTC Association

(The Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies)

存款公司公會 (香港有限制牌照銀行及接受存款公司公會)

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Our Ref.: 06/01/85 (3)

7th January, 2011 (Fri)

The Financial Action Task Force

Secretariat

2 rue André Pascal 75775 Paris Cedex 16,

France

(Email: fatf.consultation@fatf-gafi.org)

Dear Sir,

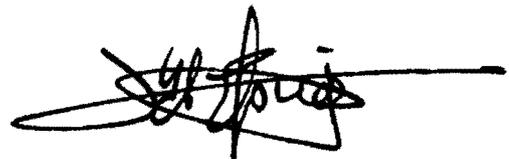
Financial Action Task Force (FATF)
Consultation Paper for The Review of the Standards - Preparation
for the 4th Round of Mutual Evaluations

We have received through our banking supervisor in Hong Kong – the *Hong Kong Monetary Authority* (HKMA) – your FATF consultation arising from an FATF “... review of the existing standards in connection with preparation for the 4th Round of Mutual Evaluations. ...” that has commenced since October 2009.

We would like to let you know that we are generally supportive of your proposals. The more detail remarks are as herewith attached in an appendix.

Thank you for your kind attention,

Yours Sincerely



Pui-Chong LUND
Association Secretary

c.c. Mr. James Tam,
Head of Banking Supervision Dept.,
Hong Kong Monetary Authority

Appendix

In the Consultation Paper issued by FATF for “The Review of the Standards – Preparation for the 4th Round of Mutual Evaluations, it has proposed certain related recommendations and suggested using risk based approach on the FATF recommendations.

Risk-based approach

Country with lower risk may exempt financial institutions from applying certain FATF Recommendations. AIs should also conduct risk assessment to identify and assess their ML/TF risk for customers, countries or geographic areas and products/services/transactions/delivery channels.

Comments: Since risk-based approach is the also the approach adopted by HKMA in most of the areas of AML/CTF, we do not foresee any difficulty if such approach is widely adopted. Instead, it may help AIs in simplifying their CDD process and on-going monitoring.

FATF Recommendations have focused on the following areas:

1. Tax Crimes as a designated category of predicate offence for money laundering
2. Customer Due Diligence
3. Politically exposed persons
4. Third party reliance

1) Tax Crimes as a designated category of predicate offence for money laundering

No comments

2) Customer Due Diligence

AI should ensure CDD measures be appropriate or commensurate to the ML/TF risks. MF/TF risks can vary and that a “one-size-fits-all” approach is not necessary. e.g. AI can use normal CDD measures at customer acceptance stage but high level of due diligence measures for ongoing monitoring of transactions

When handling identification and verification of identity of customers and beneficial owners for legal persons and arrangements, it is proposed to place greater emphasis on understanding the ownership and control structure of legal persons and arrangements. The diversity of the ownership interests should be taken into account whereby the financial institution should first attempt to verify the natural persons’ identity before considering other persons who have control of the legal person and arrangement.

Comments: The approach is similar to HKMA’s current requirement and AIs should be able to follow.

3) Politically exposed persons

According to the proposed recommendations, PEP refers to individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Foreign PEP are always considered to be high risk and reasonable measures will be taken to determine the risk level of domestic PEP. Higher risk of domestic PEP will undergo EDD.

FATF also proposed to focus on the cases where the PEP is a beneficial owner of the account, i.e on situations where a family member or close associate has a business relationship with the AI and a PEP is the beneficial owner of the funds involved in such a relationship.

Comments: In principle, this is a prudent approach and essentially, EDD will have to be conducted when it is confirmed that the UBO, rather than the account holder, is PEP. In practice, the extent to which PEP is identified via screening on family member or close associate's names would depend on the diversity of information captured in the screening database.

4) Third party reliance

FATF is considering taking a more flexible approach for reliance where the third party is a part of a financial group. If the FI belongs to a financial group that effectively implement AML/CFT group programs which are effectively supervised at a consolidated or group level, it could then be considered as meeting some of the conditions normally required under the recommendation on "Third Party Reliance".

Comments: Agree. This applies more to FIs with an international presence and under such cases, customer referred from other FIs within the same group can rely on the KYC/ CDD results obtained from the introducing FI.

To whom this may concern,

On behalf of the Dutch Association of Insurers I am writing you this email.

In response of the consultation paper on the review on the standards the DAI's main point of concern regards recommendation 6 on Politically Exposed Persons. The DAI is not supportive of including domestic PEPs in the revised standards. The current measures are sufficient for the Dutch life insurance market. In the Dutch insurance sector life policy benefits are always deposited on a banking account. Deposits are not made in cash or by cheque. Insurers identify beneficiaries and verify payments made to beneficiaries by checking their banking accounts. Furthermore, the expiration benefits are distributed regularly and over a long period of time. In addition, according to Dutch law life insurers are required to submit annuity premiums, policy values and payments made (which have specific fiscal implications) to the Internal Revenue Services once a year. Taking all the above mentioned into account, the risk on money laundering via life insurance products is minimal. Furthermore, the inclusion of domestic PEPs will result in a considerable increase of the administrative burden. Finally, a clear definition of domestic PEPs is required.

Best regards,

Nicole Lemmen

Nicole Lemmen MSc
Beleidsadviseur
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17 December 2010

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

The Secretariat
Financial Action Task Force
2 rue André Pascal 75775
Paris, Cedex 16
France

Dear Sirs

The Review of the Standards – Preparation for the 4th Round of Mutual Evaluations (“Consultation Paper”)

The Hong Kong Association of Banks welcomes the release of the latest Consultation Paper which aims to maintain necessary stability in the standards while addressing new or emerging threats and any deficiencies and loopholes in the current FATF standards. Our members in general support the Risk Based Approach on Customer Due Diligence (CDD) and reliance on third parties to conduct CDD. We also note that tax crime is already a predicate offence for money laundering under the existing laws of Hong Kong.

We would like to provide our specific comments as follows:

1. Section 2.3, Paragraph 26, Life insurance policies

It would be logistically difficult to “conduct enhanced scrutiny of the whole previous business relationship with the policyholder” if, at the time of pay-out of a life insurance policy, it is identified that the beneficiary of the policy is a Politically Exposed Person (PEP). As such a policy is typically a long-tenor product, the anti-money laundering “Know Your Customer” standards may have substantially evolved over the life of the policy. Also, the beneficiary may not have been a PEP at the inception of the policy, e.g. if the beneficiary is an offspring of the policyholder, the policy may have been taken out at the time of the beneficiary’s birth, so retrospective scrutiny of the entire relationship with the policyholder might not be useful.



2. Section 6.1, Paragraph 47, Beneficiary information

We suggest that the name and account number of the beneficiary should be sufficient. Given data privacy and security concerns, requiring the provision of other personal information of the beneficiary such as address, identity document number and date/place of birth could be considered unacceptably intrusive. It may also be difficult for the remitter to provide detailed personal information of the beneficiary of a wire transfer since their relationship may be purely commercial, rather than personal.

Yours faithfully



Rita Liu
Secretary

c.c. The Hong Kong Monetary Authority
(Mr Steve Lau, Head of Banking Conduct)

Comments on the Consultation Paper

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

The Life Insurance Association of Japan

Page	Paragraph	Comments
7	24	In this paragraph, it is stated that “For both cases, the verification of the identity of the beneficiary (ies) should occur at the time of the payout or when the beneficiary intends to exercise vested rights”. However, we believe that the objective of collecting sufficient beneficiary information has already been achieved if a policyholder was designated as the beneficiary of the contract and the verification of the identity occurred at the time the contract was entered,. Therefore, we believe that this standard should become more flexible so that it does not require financial institutions to conduct the verification of the identity again at the time of the payout.

2011-01-03

Financial Action Task Force (FATF)
2, rue André Pacal
75775 Paris, Cedex 16

Web reply (fatf.consultation@fatf-gafi.org)

SIFA's position paper to The Review of the Standards – Preparation for the 4th Round of Mutual Evaluations, by FATF

The Swedish Investment Fund Association (SIFA)¹ welcomes the opportunity to submit its comments to the review of the FATF standards for combating money laundering and terrorist financing.

SIFA hereby agrees with the comments submitted by the Swedish Bankers' Association, dated December 21st 2010.

THE SWEDISH INVESTMENT FUND ASSOCIATION



Eva Broms



Emelie Antonisen

¹ SIFA is an organisation for Swedish investment fund managers with 36 members. Together our members represent most of assets under fund management in Sweden.

Luis Urrutia Corral
President, Financial Action Task Force
2, rue Andre Pascal
75016 Paris
France
By email: fatf.consultation@fatf-gafi.org

January 6, 2011

Déar Luis,

The Wolfsberg Group¹ appreciates the opportunity to comment on the Revision of the FATF 40+9 Recommendations. The consultation process is a testament to the progress made in effective engagement between the public and private sectors in recent years and provides a unique opportunity to enhance the efficacy of AML/CTF efforts as envisaged by the FATF Standards, as well as by the various sets of Wolfsberg Principles and Statements issued since 2000.

Our comments are structured as per the format used in the consultation paper. We note that there are to be two phases of consultation and therefore our comments below apply to the first consultation phase only; we look forward to participating in the future phase also.

SECTION 1: THE RISK-BASED APPROACH

The Wolfsberg Group strongly supports FATF's proposal to develop a single comprehensive statement on the risk based approach (RBA) and commends FATF for continuing its work on the RBA.² An effective RBA brings focused attention to areas of higher risk necessary to facilitate identification of customers and activities that merit additional scrutiny or that are truly suspicious. We welcome FATF's support of this approach by recognising the importance of the RBA in broadening the scope of its applicability to AML.

The comprehensive RBA statement should make clear that the application of the RBA expressly endorses the use of the full range of measures from the most simplified to enhanced controls that reflects risk more accurately. This would help to dispel the confusion that is frequently encountered in this area; a confusion which misguidedly prompts some financial institutions (FIs) to implement procedures designed more to demonstrate the performance of controls to satisfy regulatory mandates but which are largely divorced from effective risk mitigation. Prescriptive check the box requirements should not be the goal of any CDD exercise; the purpose is to manage potential AML risk, using the

¹ The Wolfsberg Group members are Banco Santander, Bank of Tokyo-Mitsubishi-UFJ, Barclays, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan Chase, Société Générale and UBS.

² The Wolfsberg Guidance on a Risk Based Approach to managing Money Laundering Risks: <http://www.wolfsberg-principles.com/pdf/risk-based-approach.pdf>

RBA. Policy makers and supervisors, including regulators, should find greater comfort in an appropriate CDD structured on the RBA, as opposed to false comfort derived from simply assessing compliance with prescriptive documentary requirements.

We would, in the same vein, caution FATF not to make recommendations or issue guidance that is too prescriptive with regard to any of the various risk indicators. The power of the RBA rests with its specific application within the unique context of each FI's business. In various parts of the Consultation Paper, we see suggestions that imply prescriptive responses. We believe these would only serve to undermine the effectiveness of the RBA. For example, we see this in the suggestion that all foreign Politically Exposed Persons (PEPs) present a heightened risk. Automatic risk ranking is unhelpful in the identification of risk and inconsistent with the application of a robust RBA as it embeds rote requirements unrelated to any active consideration of the risks that are actually present and leads to an inappropriate allocation of resources. Even with PEPs, discussed more fully below, the risks depend on many factors, such as the type of account, seniority of the PEP and specific country risks.

Again, to the same point, FATF R8 identifies new technology and non-face-to-face relationships as two specific risks demanding special attention. While we agree with FATF's suggestion to separate these two distinct issues and to refocus R8 on new technologies, we ask that FATF nonetheless clarify that the risks of new technology and non-face-to-face relationships are different in different circumstances and emphasise that there is no single process appropriate for all conditions.

Our fundamental observation, of course, is that for every broad, blanket assertion, there is an exception, and, therefore, we strongly support FATF's work to help ensure the adoption of the RBA which recognises the distinctions and allows for targeted, meaningful controls. While the RBA is the best approach to detection of matters that need to be brought to the attention of the authorities, it is understood that no approach will assure a 100 per cent success rate in the detection of all questionable matters and that, if some matters are undetected, that does not invalidate the RBA.

SECTION 2: R5 & ITS INTERPRETATIVE NOTE

Section 2.1 General Comments

The Wolfsberg Group supports changes to R5 and INR5 that endorse a strong RBA focused on "risk variables," allowing for a flexible and non-prescriptive approach to CDD. We further note that an effective RBA recognises that the controls adopted to address risk factors will vary greatly across the wide diversity of financial businesses, products and services. The approach to controlling a common risk factor should not lead to "across the board" requirements mandated throughout the breadth of the industry sector. We support FATF's characterisation of risk factors as just that – factors that should be considered but by themselves, and in isolation, lead to no particular conclusion or mandated process. This explicitly recognises that no single factor necessitates a common response. As the paper says, "ML/TF risks can vary and . . . a 'one-size-fits-all' approach is not necessary." Indeed, we

encourage FATF to go a step further and discourage, with explicit language, a categorical approach as not only unnecessary but fundamentally counterproductive due to its consequence of misallocating resource and focus, which undermines the effectiveness of the effort.

We are committed to the robust application of the RBA as the most effective approach to a thoughtful and productive set of controls within any particular institution. We believe the applicability of the RBA is conceptually and practically the most effective mechanism for creating meaningful and effective controls and that this is true across all risk factors, including how to identify and assess risks related to beneficial ownership.

Section 2.2 Beneficial Ownership

The RBA should be applied to the question of when, whether, in what circumstances and to what level of diligence beneficial ownership should be ascertained. Paragraph 21 of the Consultation Paper strikes us as too prescriptive and too narrowly conceived, and, therefore, would not necessarily add significant value to a range of relationships. We endorse the application of the RBA for relevant beneficial ownership. This would entail a risk analysis that sets out the circumstances and conditions leading to a range of vetting options with respect to the level of ownership, shareholding and managerial control to be investigated, depending on all the risk factors set out within the RBA.

The proposed changes seem to place a specific emphasis on the term "mind and management," which is a vague concept with different meaning and implications in different contexts and, therefore, difficult to implement across the spectrum of financial services with any semblance of consistency. The concept of "mind and management" will mean different things to different parties in a relationship, causing confusion within and between regulatory expectations and requirements.

We strongly encourage FATF to provide context and descriptive information about the range of risks inherent in the broad concepts of beneficial ownership and relevant control over a relationship in INR5 and to set out in R5 the principle that beneficial ownership and control are factors relevant to certain customer relationships based on the application of the RBA. As the meaning of "beneficial ownership" is dependent on the circumstances, it is not feasible to define this term in the abstract, nor would it be helpful to create new terms that would introduce new definitional issues.

Nonetheless, it is noteworthy that we encounter very different definitions of what is understood by beneficial ownership between regions. This prevents the global application of consistent, institution-wide controls. In particular, we would highlight the example of US legislation FATCA (Foreign Account Tax Compliance Act contained in the Hiring Incentives to Restore Employment Act of 2010), which is scheduled to come into force in 2013 and will have direct effect on FIs globally. The consequences of this legislation, as it is currently enacted, is at variance with the RBA as proposed by FATF in its consultation paper, as it requires far more in-depth and prescriptive KYC and beneficial ownership requirements. In order to be FATCA compliant such a process will, over time, have to be applied to all clients (with the exception of a small threshold of USD 50'000).

In this context, while we fully support FATF proposals moving further towards taking a RBA, including in the area of establishing beneficial ownership, we cannot reconcile this approach for AML with the approach that FATCA takes and the implications for a de facto new global minimum standard for beneficial ownership, which is very prescriptive. Banks are likely to experience significant issues in reconciling the prescriptive provisions of FATCA with the RBA. Therefore, FATF needs to be aware that standards being developed outside of AML, e.g. in the tax area, will have the effect of imposing new global CDD standards (including the identification of beneficial ownership) on banks.

With regard to paragraph 24, we would note that any requirement to take the name of the beneficiaries should exclusively apply to the life insurance company itself. FIs maintaining accounts for life insurance companies should not be subject to such a requirement. "Beneficiaries" and "Beneficial Owners" should not be conflated. When an FI is involved in making a payment to a beneficiary, applicable sanctions screening should be performed, but the beneficiary is not the customer of the FI by virtue of its beneficiary status, and, by definition, Customer Due Diligence would not be appropriate in the context of a non-customer beneficiary.

SECTION 3: PEPs

We believe that the RBA should be applied to PEPs. We disagree with the assertion that all PEPs (whether foreign or domestic) are high risk and note that even PEPs presenting increased risks may not create a high risk relationship if the products and services are inherently low risk. We would refer to the statement made in the Wolfsberg 2008 PEP FAQs, where it was noted that "the greatest risks appear to be present where a PEP seeks to establish a relationship with a Financial Institution beyond the jurisdiction in which they hold the public position that gave rise to the categorisation."³ Generally, though, the majority of PEPs do not abuse their position and will not represent any undue additional risk to an FI solely by virtue of that categorisation.

We would also point out that the categorisation of a client as higher risk is usually not solely due to one criterion but rather tends to be derived from several factors. The 2008 Wolfsberg PEP FAQs indicate that "Financial Institutions should consider a range of factors when determining whether a particular holder of a public function has the requisite seniority, prominence or importance to be categorised as a PEP. Relevant factors could include examining the official responsibilities of the individual's function, the nature of the title (honorary or salaried political function), the level of authority the individual has over governmental activities and over other officials, and whether the function affords the individual access to significant government assets and funds or the ability to direct the awards of government tenders or contracts."⁴

We also note that there remains to this day no universally agreed definition of a PEP, which means that local or regional regulations may differ in respect of particular elements of the PEP definition. The

³ Wolfsberg PEP FAQ's: <http://www.wolfsberg-principles.com/pdf/PEP-FAQ-052008.pdf>

⁴ Wolfsberg PEP FAQ's: <http://www.wolfsberg-principles.com/pdf/PEP-FAQ-052008.pdf>

need for global FIs to consider these differences when determining PEP categorisation standards and relationship management procedures lead us to recommend, once again, that a universally accepted definition be established, reiterating that the notions of the seniority of the politician, the type of account being requested and who controls the purse strings are essential criteria to be taken into consideration.

With respect to paragraph 30, while we support the underlying rationale for reconsidering the standard with regard to family members and close associates, we would nonetheless recommend the application of the RBA to both rather than trying to address this by changing the definition.

SECTION 4: RELIANCE

The Wolfsberg Group strongly supports FATF's proposal to extend the concept of reliance beyond the banking, securities and insurance sectors to include other types of institutions, businesses or professions. This proposal is not only logical and consistent with a robust RBA, but it will also help to increase operational efficiency without increasing risk. We advocate going further and specifically encouraging countries to authorise reliance on entities outside their own jurisdiction where there is supervision and transparency over AML requirements commensurate with their own.

We would refer FATF to our response letter of 9-Nov-09 for a broader discussion of the concepts of reliance. However, in order to delineate better what constitutes third party reliance, we would encourage FATF to adopt the basic premise that for reliance to exist there must be a shared customer between the relying party and the relied-upon party. We would add that a shared customer relationship in this sense does not arise merely because an FI, in acting on behalf of its customers, transacts with another FI.⁵

The Wolfsberg Group supports FATF's proposal to endorse the concept of reliance across branches, majority-owned subsidiaries and affiliates within a financial group, to the extent permissible by the laws and regulations prevailing in the jurisdictions relevant to the relying group party and the relied upon group party.

SECTION 5: TAX CRIMES AS A PREDICATE OFFENCE TO MONEY LAUNDERING

The Wolfsberg Group acknowledges and supports the various international initiatives regarding tax compliance as highlighted at the G20 Summit in Seoul, Korea in November 2010. These include the signing of hundreds of information exchange agreements and the peer reviews conducted under the auspices of the OECD. The Wolfsberg Group encourages FATF members to coordinate and communicate with their national counterparts involved in these initiatives to monitor developments and

⁵ See Q&A 4 of FAQs on Selected Anti-Money Laundering Issues in the Context of Investment and Commercial Banking: http://www.wolfsberg-principles.com/pdf/ibcb_faqs.pdf and Section 4 of Anti-Money Laundering Guidance for Mutual Funds and Other Pooled Investment Vehicles: <http://www.wolfsberg-principles.com/pdf/mutual-funds.pdf>

prevent duplicative or conflicting efforts. As these initiatives reflect, countries are uniquely positioned to address tax compliance, as a cross border matter, on a government to government basis.

Tax compliance is the responsibility of customers. Although FIs should not deliberately market products or services to customers specifically structured to facilitate tax non-compliance, FIs are not (and should not be viewed as being) in a position to confirm the tax compliant status of customers. The role of what FIs can do in this regard, as an AML matter, is limited by the nature of AML programmes: such programmes are intended to identify unusual activity, which, upon further inquiry, could lead to a suspicion of money laundering. In the context of a tax crime predicate -- where the sources of funds may well be legitimate and where the tax laws that apply to customers are varied, extensive, and complex -- FIs will generally not be in a position to identify the tax non-compliance of their customers. Expectations as to what FIs can do should take these realities into account and should not be unduly raised.

When suspicious activity is detected, it should be reported to the governmental agency charged with receiving suspicious activity reports. It would be inconsistent with the obligation to report suspicious activity to require reporting to different agencies on the basis of the FI's assessment of what possible underlying crimes might be generating that activity.

SECTION 6: SRVII AND ITS INTERPRETATIVE NOTE

We are somewhat surprised that a considerable revision to SR VII is being considered as part of the consultation process. The global payments system is a complex structured system created over several decades to ensure consistency, certainty and speed of global payments necessary to the effective operation of multinational businesses. The issues raised in the consultation paper should be considered carefully as to their implications on changes to the payments system that would jeopardise the efficiency of the system.

Current payment industry standards require that, at a minimum, the beneficiary name, Bank Identifier Code (BIC) or other identifier, bank and where available, account number, are required to execute a transfer. The inclusion of additional beneficiary information would be impractical at the point of initiation of a wire transfer, as the originator of a transfer would not usually have information beyond the name, account number and bank. In some instances the originator may be able to provide the address of the beneficiary; however, since this is not usually required, the information may or may not be available. Given the fact that the originator of the transfer usually does not have additional information beyond the minimum required for the transfer, it would not be feasible to require such additional information, nor there any basis for the originating FI to assess the reliability or accuracy of the information.

Requiring any additional information may have differing implications in relation to domestic and international payment systems. Indeed, the addition of national identity number or dates of birth may also have implications with regard to privacy and/or data protection standards, which vary dramatically

between jurisdictions and the requirement to include such information may create significant legal conflicts.

For these reasons, we do not believe that a requirement for additional beneficiary information would be feasible and the requirement for any additional information, while it may be of some limited usefulness, would conversely create significant delays and disruption to the global payments system.

We are generally supportive of a standard that requires institutions to screen all international transfers, even when acting as an intermediary bank. Banks have specific policies and procedures in place for resolving screening hits in conjunction with their risk based approach. Should additional beneficiary information be present or required in a transfer, the methodology for screening or resolving hits would not change from the present approach. As a group, the members of the Wolfsberg Group currently screen information as intermediary banks; however, this may not be the case for all banks.

It should be noted that there is also a differentiation in the requirement for screening in many jurisdictions between domestic and international transfers. In those jurisdictions that require screening, UN sanctions may be included in the screening process. The result of that screening, if positive results are found, would vary based on local law or regulation. Were additional beneficiary information to be required in a transfer, that information would also be screened; however, the screening of this additional information could have a significant effect on compliance and efficiency. It is generally acknowledged that, with the implementation of the MT 202 COV messages, false hit rates increased by about 30 per cent. Furthermore, additional beneficiary information provided by the originator may be unreliable and the originating bank does not have any means to validate that information or ensure that it is complete.

Regardless of the information contained in a transfer, it is difficult to determine if incomplete information is contained in specific data fields. Screening systems scan the information that is present and compare that information to the lists being screened against. Whether information is incomplete cannot be ascertained from the screening process. For mandatory information, systems can determine if information is missing and a transfer would simply not be executed until the required information is obtained.

Should FATF make changes to SR VII, we strongly feel that it is important to provide guidance that is clear and lends itself to uniform adoption. The original implementation of SR VII has, in the past, varied greatly where differing requirements exist between and within jurisdictions creating substantial confusion and disruption to global payments. It would be highly desirable to avoid this confusion in the future by providing more specific guidance related to implementation.

SECTION 7: OTHER ISSUES

While the Wolfsberg Group notes that the revisions in this section pertain largely to financial intelligence units, we would be interested in seeing the final wording of the proposed revisions,

particularly the means by which FATF will seek to make R27 and R28 more effective (paragraph 51) as well as whatever recommendations are issued with respect to the exchange of information between competent authorities as per any future revisions to R40, although we understand that this is at a preliminary stage.

Similarly, although this section relates to international cooperation (mutual legal assistance, extradition, cooperation/exchange of information), we would like to highlight an issue that is particularly relevant to the management of the legal and regulatory risks associated with ML/TF on a global level, i.e. that some jurisdictions do not foresee the possibility of being able to exchange information across a group of FIs (in particular sharing information on SARs, PEPs, etc. with the parent company/headquarters of such a group).

SECTION 8: USEFULNESS OF MUTUAL EVALUATION REPORTS

We appreciate the opportunity to provide feedback on the usefulness of the mutual evaluation reports to the private sector. We are very conscious of the amount of work that goes into the preparation of these reports and appreciate the fact that, once agreed at a FATF Plenary, they are then made available to FIs and indeed the wider public. We applaud the process, which, while taking time, is intended to ensure a level playing field amongst countries and to ensure a satisfactory implementation of the FATF 40+9 recommendations. Indeed we note also that FATF is the sole body producing AML/CTF relevant reports and, as such, these are seen by the public sector as a reference point for the industry, especially in terms of the quality of a country's AML/CTF regime. That being said, however, while the reports provide an interesting commentary on the status and development of a country's compliance with FATF 40+9, their practical usefulness for FIs in terms of incorporating these reports into their operational processes is limited.

The challenge for FIs rests in how to interpret the content of these reports, what weight to place on them and how best to incorporate the information and/or the overall results into FI risk ratings, particularly country risk ratings, when the reports have not been produced or designed for this specific purpose. Furthermore, it should be noted that, while Country Risk is a significant component of an FI's overall RBA, particularly as it relates to, and interacts with, customer risk, the information in the Mutual Evaluation Reports cannot have the same utility as indices ranking countries such as, for example, a publicly available country corruption index. Moreover, unless MERs include focused money laundering risk assessments for that country (which go beyond an assessment of the country's compliance with 40+9), preferably with clear ratings and a transparent methodology, issued in a timely fashion and regularly updated (e.g. annually), and unless this process is carried out for all countries (not just FATF/FSRB members), then the reports, as currently issued, can only be used for more general educational and background purposes.

In addition to the release of MERs, it has become a practice for FATF to name (and shame) a limited set of countries which are deemed to demonstrate strategic AML/CTF deficiencies. There appears to

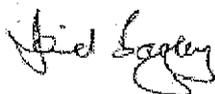
be a specific approach as to why countries are listed, but we are not aware of any methodology that is available by which the rating can be validated or understood beyond the short commentary accompanying the release. While the regularity with which these lists are published falls more in line with FI requirements for timeliness in regard to country assessments, it remains the case that there is no consistency as to how to interpret the ratings (due to lack of clarity around the criteria resulting in their being assessed in the first place) or what the consequences on country risk assessment should in fact be. As already suggested at the FATF Consultation Forum in September 2009, it would be beneficial to issue some guidance around how these countries come to be assessed and what actually qualifies them as being deficient.

Financial Inclusion

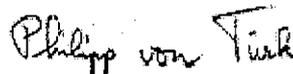
As private FIs competing globally for customers, we welcome this initiative which recognises that a substantial number of persons find some difficulty in gaining access to bank services. One reason for this includes the challenges for some prospective customers in providing acceptable identification documentation and the inability of firms to verify such information in accordance with FATF standards. In trying to reconcile these competing public aspirations (financial inclusion and rigorous AML standards) we would be concerned if the standards to be applied to those currently operating outside the formal regulated sector were unduly weakened for the sole purpose of bringing them into the formal regulated sector. Should the current framework be adjusted in line with the proposed changes with respect to the RBA and R5, this should be sufficient to address and satisfy both aspirations.

We are grateful to have had the opportunity to comment on the proposed revisions to the recommendations and remain at FATF's disposal should any clarification with respect to the above be required. We also note that there are some issues under consideration which may require some highly technical or specialised input, which, if we are able to do so, we would be happy to provide more targeted support on, as FATF pursues its review process.

Yours sincerely,



David Bagley
Co-Chairman
The Wolfsberg Group



Philipp von Türk
Co-Chairman
The Wolfsberg Group



December 22, 2010

FATF Secretariat
Fatf.consultation@fatf-gafi.org

Financial Crimes Section- International
Finance Canada
Fci-cfi@fin.gc.ca

Re: Review of the FATF Standards

This submission is on behalf of the Title Insurance Industry Association of Canada (TIIAC). - L'Association Canadienne des Compagnies d'Assurance Titres (ACCAT).

TIIAC-ACCAT

TIIAC-ACCAT is an industry association of federally regulated title insurance companies. The Office of Superintendent of Financial Institutions (OSFI) regulates our insurance company members' operations federally.

The objects and purpose of TIIAC-ACCAT are:

1. *To promote the common interests and concerns of the title insurance industry in Canada;*
2. *To provide information and education to its members and the public;*
3. *To advocate for the betterment of and on behalf of the title insurance industry;*
4. *To maintain professional standards and ethics in the title insurance industry in Canada.*

What is Title Insurance?

Title Insurance is an optional product which provides additional and enhanced coverage over existing government protections in the land title system that consumers, whether lenders or owners, can decide to purchase, like supplemental health care insurance. Unlike car insurance for driving a car in private auto insurance provinces, or home insurance for securing a mortgage loan from a lender, title insurance is not mandatory when a real estate transaction is processed.

Title insurance is a form of consumer protection benefiting residential and commercial property owners and their lenders. The policy protects their interests in property by indemnifying against loss that may be suffered if title is other than as stated in the policy. It also provides insurance in respect of several other defects, such as access to the property, marketability and various municipal issues.

Some additional known/unknown including off-title problems, defects, liens or encumbrances before the date of the title insurance policy or that are not identified by

the lawyer or notary and divulged to the client are also covered. Some future such as title fraud and certain encroachments are also covered for residential policy holders.

As such the vast majority of claims paid by title insurers are for defects that have occurred before the date of the policy.

Differences with Other Forms of Property and Casualty Insurance

To begin with title insurance is not like other forms of property and casualty (P&C) insurance. Specific differences include:

- No annual premium - a one time cost
- No deductible
- No negotiation - premium based on purchase price of property
- Separate policies for owners and policies for lenders
- Owners policies for both residential and commercial transactions
- Distributed by lawyers/notaries to the public and included in the legal fees and disbursements on a home purchase.
- Can be purchased directly by lenders to protect their interests on title in a purchase mortgage or refinance transaction

While we are technically classified as P&C insurers we are not members of the Insurance Bureau of Canada, as they do not offer a membership classification for title insurers. As such any consultations regarding P&C insurers should also be directed at our organization for input on the impact on our members, as well.

Furthermore, our distribution method is primarily through lawyers and directly to lenders, all of whom have detailed legal obligations regarding anti-money laundering and terrorism practices.

Primary Distribution Methods of Title Insurance

1. Lawyers/Notaries:

For a residential property purchase, the primary distribution method for a home buyer to purchase a title insurance policy is through their lawyer/notary who is handling their real estate purchase transaction. The legal professional may purchase a homeowner policy on behalf of the purchaser, to protect the new ownership interest in the property, and a lender policy for the lender getting a mortgage against the property, to protect the lender's mortgage interest. Lawyers do distribute existing homeowner policies to current homeowners in limited cases.

Where a borrower already owns property but is obtaining a new mortgage against the property (a refinance), a lawyer/notary handling the transaction may buy a policy for the lender. In that case, no policy is required for the owner, as there is no new ownership interest. However homeowners can also purchase existing home ownership policies through their lawyers/notaries at that time.

The premium is included in the disbursements of the legal professional's fees to their clients, whether lender or owner.

2. Lenders:

For mortgage refinances only (that is, where the owner already owns the property and is getting a new mortgage against the property), certain title insurers have lender programs set up through contractual arrangements with the institutional lenders.

The lender obtains a title insurance policy to protect its new mortgage interest (no policy for the homeowner being required, as there is no new ownership interest). The title insurance policy is purchased directly by the lender from the title insurance company. The cost of the lender policy, similar to all other aspects of the cost of credit for the lender, (survey, legal fees, etc) may be passed on to the borrower by the lender.

Title Insurers not Involved in Financial Transaction of Real Estate Purchase

Title insurers do not become involved in the financial aspects of the real estate agreement between the two parties: the vendor and the purchaser. The lawyers/notaries who represent the parties in a real estate purchase are the ones that handle the financial transaction. No money from the real estate purchase touches the title insurers' hands. The legal professionals involved in the transfer of funds already have detailed provisions regarding anti-terrorism and anti-money laundering provisions.

As identified above the title insurer only receives a premium which is included in the disbursements of the legal professional's fees to their clients. There is no negotiation of the price of a residential title insurance policy as it is directly related to the purchase price of a property or the value of a mortgage. For a financial institution in a refinance or purchase mortgage, the cost of a lender's title insurance policy on a mortgage valued up to \$500,000 would be approximately \$175-\$200.

In a home purchase transaction, where the purchase price was \$450,000, the cost of an Owner's policy would be an incremental cost of \$50, when it is purchased in conjunction with a lender policy and included as part of the lawyer/notary disbursement charged to the clients, which is the normal practice. As such the amount of money received by a home owner is not significant in the average home purchase.

Current Challenges of Title Insurers Reporting

Currently title insurers are reporting to police departments when a name on the list appears as a potential policy holder. Title insurers attempt to match the name with social insurance number or date of birth. However they do not collect sufficient information to assist the police in making a proper identification. Title insurers only collect the name, SIN number, date of birth and contact information of the potential policy holder. We have no additional information. As such when we phone the police department with a potential suspect, the standard response from the police is that they need more information and there is no subsequent follow up. As such title insurers are providing reports of little

consequent value to the police and in effect diverting crime fighting resources away from where they should be more effectively targeted.

Title Insurers Provide No Value to Police Investigations.

As such we are making this submission to the FATF to request that we be removed the list of financial institutions that must comply with this legislation. No money from the real estate purchase passes through our hands; the lawyers and lenders who facilitate the real estate financial transaction already comply with the anti-terrorism and anti money laundering requirements. We collect insufficient information to assist police investigations and as such we are diverting important police resources away from more salient anti-terrorism and anti-money laundering investigations.

Thank you for considering our request.

Should you have any further questions please do not hesitate to reach TIIAC at info@tiiac-accat.com

Sincerely,



Don Bergeron, BA, LLB, AMP
President

Review of the FATF Standards – Preparation for the 4th Round of Mutual Evaluations – Comments from Western Union

16

January 2011

Introduction

Western Union (WU) is a leader in global retail payment services, focusing on consumer-to-consumer money transfers. The WU branded retail payment services are offered through a combined network of approximately 435,000 agent locations in 200 countries and territories around the world. In 2009, WU completed close to 200 million C-2-C transactions, moving \$71 billion of principal between consumers, and 415 million business payments. For more information, visit www.westernunion.com.

WU appreciates the opportunity to provide comments to the Financial Action Task Force (FATF) on the proposals contained in the Consultation Paper regarding the review of the 40 + 9 recommendations. We have structured our comments according to the numeration used in the consultation document. Should you have any additional questions please do not hesitate to contact us at your convenience.

Western Union Payment Services Ireland Ltd.
and Vice President AML Compliance - Europe & CIS

Director, [AML/CTF Compliance](#)

Senior Counsel & Vice-President - International Regulatory Affairs

1. ~~The Risk Based Approach (RBA)~~

General Observations

Western Union agrees with the intention of allowing for some flexibility by focusing on an appropriate risk based approach to many of the requirements throughout the 40 + 9 recommendations. We also agree that adding clarity in that regard will help national authorities to be more consistent in their application of the recommendations. It is important to acknowledge that the financial industry has been shouldering severely rising AML/CFT compliance costs over the last number of years.

The global remittance industry is in a struggle juggling the urge to reduce the costs of remittances (e.g. World Bank's 5x5 initiative) and at the same time experiencing a rapid increase in costs associated to implementation of AML/CFT programs. It is therefore critically important to conduct a cost-benefit

analysis before proposing or implementing new AML/CFT rules, and also for providing further clarity to national authorities on allowing for an appropriate risk based approach.

Western Union agrees that non-face-to-face transactions are a risk factor to include when analyzing the risks associated to a product/channel, and that financial institutions should have procedures in place to enable them to effectively manage and mitigate the risks of these products/channels. Keeping in line with the cost-benefit element mentioned above, not only is it important to assess the potential risks that may arise with new technologies, but it is also important to consider the impact that overly burdensome requirements will have on the ability of financial institutions to continue to develop and innovate new payment methods with lower costs to consumers and which help to foster financial inclusion.

According to World Bank studies, more than 70% of the adult population in developing countries (2.7 billion people) does not have access to basic financial services.¹ The World Bank defines financial inclusion as: “...a state in which all people of working age have access to a full suite of quality financial services, provided at affordable prices, in a convenient manner, and with dignity for the clients. [...]”²

Importantly, financial inclusion clearly goes beyond access to traditional bank services, but also includes other formal transactional financial or payment services such as domestic or cross-border remittances. Furthermore, non-bank financial institutions such as Western Union or other non-bank Money Service Businesses (MSB) often function as a stepping stone towards an increased demand for other formal financial services, including bank services. According to our own research, recipients of formal remittance transfers are much more likely to demand additional financial services, for instance bank services, than those without this vital income stream.

Financial inclusion is also strongly fostered by innovation taking place in the financial industry. We think that the FATF should encourage financial innovation within the financial industry, and should encourage it with appropriate, lighter-touch, AML/CFT standards where appropriate. It is desirable to encourage innovation from within the regulated community rather than seeing it occur outside that community and then having regulators and law enforcement agencies trying to bring it in after it is fully developed. We believe it is in the interest of the FATF to encourage local regulators and law enforcement authorities to allow known, responsible financial industry members, whether banks or MSBs, to experiment innovative channels for money transfer (including non-face-to-face operation) and find the right balance without running the risk of severe criminal or civil penalties if they get it wrong or if they piloted a wrong risk-based approach. Again, this balanced approach is a strong driver to an effective and most of all durable financial inclusion of migrants, the underserved or unbanked.

1.1 Interpretative Note devoted to the Risk-Based Approach (RBA)

Western Union strongly supports the FATF initiative for an Interpretative Note devoted to the RBA (“INRBA”). We see this initiative, leading to a single comprehensive document on this topic, as a potentially strong tool for both supervisors/regulators as well as the financial industry. We observe that the RBA is now a recurrent subject of discussion and sometimes also subject to conflicting interpretations by regulators and law enforcement agencies around the world.

¹ World Bank Group, Financial Access report 2009.

² World Bank, Inclusive Finance, June 2010.

Financial Institutions should be given the liberty to determine the appropriate risk assessment methodology and corresponding measures and controls for non-face-to-face transactions. In order for this to happen, the risk based approach found in the recommendations should recognize that different products/channels of transmission carry different risk factors, which in turn require a variety of risk management controls. A one-size-fits-all hard coded set of rules for non-face-to-face transactions conflict with the principle and objective of a risk based approach.

We value the idea of a mandatory risk assessment for countries (7.b.i). This measure shall foster the creation of a common platform of understanding for work and discussion with local regulators when it comes to the definition of the risks for a given business segment (i.e. the MSB segment). This particularly for the “High Risk” segment which can be a potential source of conflict due to the subjectivity of the subject matter. We expect the INRBA to create obligations for the countries in terms of solid and practical communication to the benefit of the financial sector. When the INRBA is implemented, we hope each FATF Member State is able to produce (and amend regularly) guidance papers, typologies and other documentations setting out their regulatory vision in terms of RBA (and the associated High-Risk topic in particular) so that MSB such as WU (i) assess the compliance of their internal ML/TF risk assessments and (ii) engage in productive discussions with regulators without the need to wait for a formal regulatory audit to drive that effort. In other words, the INRBA shall foster clarity regarding the RBA for the FATF Member States’ regulatory authorities as well as for the industry.

Western Union believes that sub-section (iii) *Lower risk* shall also be included into the field of mandatory obligations since the subject fully participates to the idea of a balanced risk-based approach and its implementation also suffers from a significant level of subjectivity. Similarly, we believe each company shall also be engaged to take a formal approach on low risk factors.

It needs to be pointed out that several regulators still consider that all cash-based money transfer products are by default falling under the “high / highest” risk category, regardless of the amounts transferred, the geographies of the business or the frequency of the operations. As a key observer of this market, Western Union does not share this one-dimensional approach and hopes that the INRBA initiative will address this point. The money transfer business must receive, similar to other financial products, dedicated risk categories (low, average and high risk activity) where each category requires its own risk assessment and mitigation plan.

1.2 Impact of the Risk-Based Approach on FATF Recommendations

1.2.2 Recommendation 8 – New technologies and non-face-to-face business

The FATF proposal that country-led governmental bodies should also assess the potential risks that may arise from new technologies and inform financial institutions and DNFBPs of these risks is welcomed by WU since we observe there a thriving market with unacceptable examples of intense collusion between the electronic money and the money transfer regulations (actors licensed to issue e-money for payment purpose sometime offer money remittance options without being licensed for this activity and without being controlled either). Western Union believes that this situation requires some clarification and policing from the FATF member states so that fair competition exists among all actors of the formal remittance sector.

Western Union also anticipates that this revised approach to the Recommendation 8 will enhance the desirability of Member States in fostering innovation from within the regulated community rather than seeing it occur outside that community (and then having regulators and law enforcement trying to bring it in after it is fully developed). As we have mentioned above, we believe it is in the interest of the FATF to encourage local regulators and law enforcement authorities to allow the financial industry to experiment innovative channels for money transfer services (including non-face-to-face operations).

Western Union will launch in 2011 new pilot of money transfer products allowing non face-to-face occasional transactions. These products are targeted to specific consumer needs and only allow for low-principal amounts to be remitted (between EUR 50 and max. EUR 250 per transaction; or on an aggregated basis max. EUR 2,500 per year). In that context, Western Union plans to apply simplified CDD measures in the light of lower ML/TF risks. We hope that the revised FATF approach to non face-to-face remittance operations will take into account lower-risk environments and foster market innovation, thereby also increasing financial inclusion. If not, most of these innovative projects will be rejected when submitted to the local regulatory authorities.

1.2.3. Recommendation 20 – Other non-financial businesses and professions

Western Union concurs with the revised approach taken by the FATF and suggests that an updated list of applicable professions and business segments accompany this revised draft of the recommendation 20.

2. Recommendation 5 and its Interpretive Note

General Observations

Western Union strongly agrees with the concept of risk variables. A product or channel considered high risk can have the risk lowered significantly with certain variables such as transactional limits and aggregate limits over certain time periods. As stated above, the risks associated to non face-to-face transactions can be controlled making normal and even reduced CDD appropriate at the customer acceptance stage. We also agree with the need to determine if a third party is operating an account of a customer and a need to determine if it is appropriate for them to be doing so. This should not have the same applicability to occasional customers typical of the MSB industry, as the person conducting the transaction is the one providing payment at the time of the transaction. Third party determinations on all transactions would significantly increase the amount of information requested and recorded with no real benefit. If there is a requirement to verify if a consumer is representing a third party when processing a money transfer, such a recommendation should have a more limited scope for the MSB industry. For instance, MSBs should be able to rely upon the self-declaration at the point of sale by their occasional customers that they are not representing any third party.

2.1 The impact of the Risk-Based Approach on Recommendation 5 and its Interpretative Note

Western Union welcomes the initiative for a more detailed and balanced list of examples of higher/lower risk factors for CDD and record-keeping as well as the need for more practical examples of enhanced / simplified CDD measures. As mentioned earlier, both initiatives shall bring more clarity and substance to the discussions held with local regulators in preparation to inspections and audits. However, it is also crucial for Western Union to ensure that FATF is willing to take into account the specificities of the consumer-based and transaction-based market when setting these examples: the risk represented by the

transaction in cash is mitigated by the average low-principal amount for the vast majority of MT operations (a Western Union Money Transfer generates an average principal of EUR 350).

The money transfer business is driven by occasional consumers realizing one transaction at a time without referring to a single bank account for these operations. The market is transaction-based, not account-based. The profiling of clients, when possible, is based on the observation and the interpretation of the transactions realized, not on the CDD information provided at the time of a bank account opening, to draw a comparison with the retail banking customer world. Needless to say, the MT consumer is not equipped with domestic or international payment instruments like cards or checks. The only access to a financial platform comes through its occasional relationship with a money remitter at the time he or she decides to perform a transaction. And when this happens, the operation is always controlled by the MTO which remains free to decide to abort the transaction attempt if it does not meet its standards or prudential rules.

In such context of low-principal and occasional transactions, the systematic implementation of certain Enhanced Due Diligence exercises (like the identification of beneficial ownership, the identification of PEPs, and the research for the source of funds or the motivation of transfer) may appear counter-productive from a cost-benefit approach but also from the angle of financial inclusion. Western Union defends the idea that this consumer segment of occasional and low-principal transactions belongs to the low-risk category and is well served in terms of CDD through the collection of the consumer's personal details and their verification against a valid ID. Further due diligence and verification shall come when the consumer is sending individual transactions of larger principal (7,500 USD or equivalent at Western Union) or is accumulating aggregated principals through repeated operations. We hope the FATF will take into account that distinction when setting practical examples for the revised Recommendation 5, when drafting the detailed list of H/L risk factors and when determining "Risk Variables" criteria for our industry.

3. Recommendation 6 – Politically Exposed Persons (PEPs)

When discussing a PEP determination, the concept of risk variables must be included. It does not serve the purpose of this requirement to make such a determination for low value transactions in a transaction based industry. The same concept applies to the obligations related to the family members or close associates of PEPs. The MSB industry generally does not have account opening information, but rather occasional customers, and as such, are not in a position to review records to make that determination. The absence of a single bank account also prevents the tracking of money movements which are constitutive of a potential corruption pattern. We therefore suggest that a reasonable threshold be assigned to this revised requirement for (i) occasional and (ii) transaction-based situations in order to meet the purpose of the requirement. Alternatively, applying a risk based methodology to this requirement would allow business to do what makes sense and to make the determination in situations that might involve corruption.

On a different note, Western Union would like to confirm the fact that as of today its PEP program does not make any distinction between domestic and foreign PEPs.

4. Recommendation 9 – Third Party Reliance

Western Union agrees with the concept of reliance on third parties beyond banks, securities or insurance providers provided that the third party is a regulated entity and thus subject to AML/CFT rules. This statement is particularly true for regional initiatives like the European Payment Services Directive (PSD) that permits the distribution of payment services via agents, which can be regulated or unregulated.

Another example are Mobile Network Operators (MNO) which build over time their own KYC databases on mobile users and appear to be promising partners to money remitters for low-volume cell phone-based money transfers. In such examples, the ability for a regulated entity to rely on another regulated entity makes sense. This should not be limited to one entity relying only on another entity within the same “group”. This concept should be expanded so that “group” has a broader definition. Western Union strongly supports the intra-group reliance approach proposed by the FATF and considers that this definition fully applies to the scope of The Western Union Company and all its subsidiaries and affiliated entities around the world.

5. Tax Crime as a Predicate Offence

Western Union agrees with the concept of the private sector reporting suspicious transactions in relation to laundering the proceeds of tax crimes. The difficulty with this approach lies within the business model of most MSBs. Cash is often used to send a money remittance and consumers do not provide the same level of information that they would when they open or use a bank account. Unlike banks, MSB cannot track the money flows going via an account. Thus, MSBs are most likely reporting suspicious transactions of this nature today, as the “red flags” for laundering the proceeds of tax crimes visible to MSBs today would be very similar to laundering the proceeds of other crimes. It is important that requirements considered do not spell out a need to specify the underlying criminal nature of the suspicious transaction report.

6. Special Recommendation VII and its Interpretative note

General Observations

Western Union has particular interest in the updates requested for this recommendation. Recommendation VII and the considerations being given to screening wire transfers against sanctions lists mainly focus on traditional bank wires. The requirement for information to travel and be made available at the point where a transaction is being received or deposited is crucial in situations where the entity that facilitates the receive or deposit is a separate institution or entity from the one that initiated the payment or send. We understand this to be the reason and intended purpose of the travel rule. But the remittance industry typically functions very different compared to a traditional bank wire transaction.

6.1. Beneficiary information

In most cases, the MSB (e.g. WU) operates a “closed” system in which the remitter conducts both the sending side of a transaction as well as the receive- or payment side of the transaction. Also, MSBs generally operate through an Agent relationship, and are situated in multiple jurisdictions across the globe. It does not fit the spirit of the requirement for the MSB Agent sending the funds to include information systematically and to have that information readily available in the system of the receiving Agent location. It is more appropriate to require the MSB that conducted both the send and receive sides of the transaction to collect and keep the records on both parties and to be required to provide that information within a reasonable amount of time when requested in either the sending or receiving country. Making personal information of a sender in one country available to employees of Agent locations in the receiving country is both a concern from a data privacy standpoint as well as an unnecessary requirement when the information is readily available upon request from the MSB. This situation is particularly pointed when the Agent location in the receiving country is not a financial institution (e.g. a retail agent) and has access to confidential information such as date and place of birth or an account number.

The same comment will apply to the FATF proposal related to the incorporation of the beneficiary information into the international AML/CFT standards governing cross-border wire transfers. In a closed loop system such as the one Western Union operates, most of the information on the beneficiary (with the exception of first and family name) is not collected at the time of payment initiation. Such information is collected and verified when the intended receiver appears in the pay-out location. At this moment, the information is then compared with the beneficiary identity provided by the sender to validate the payment.

Thus, such operating structures make MSB such as WU the only entity able to collect and store the complete set of information on both sender and receiver for a given transaction. It is for that reason that we recommend that beneficiary data also remains with the money remitter who will disclose all the transaction information (send and receive) to a relevant law enforcement agency upon request and within a reasonable amount of time (e.g. three business days). We believe this approach is the most reasonable and we suggest that FATF takes this closed loop working organization into account when drafting its revised approach to SR VII.

6.2. Obligations to screen wire transfers against financial sanctions lists

It is important to notice that the Western Union's closed loop system for consumer and transaction data management makes Western Union (and other MSBs using a similar operating structure) the main actor of the screening against financial sanctions lists. As opposed to a traditional chain of payments where financial actors proceed to the screening of the operations in accordance with their territorial duties only, reputable companies like Western Union screen the transactions against all applicable sanction lists of both the send and receive sides. Additionally, Western Union AML standards require the screening against certain sanction lists regardless of the geography involved (e.g. OFAC or UN lists). It is therefore our understanding that WU and its network of agents already complies with the proposals made for changes in the SR VII. Western Union welcomes those changes in the sense that they set new enhanced CFT standards for the industry and the other MSBs in particular.

Concluding Remarks

Western Union greatly appreciates the opportunity to provide comments to this important consultation. We hope that our comments and recommendations are useful for your work. We look forward to continuing to work with you on these important issues in order to further improve the global AML/CFT framework.

POSITION PAPER

WSBI response to the FATF Consultation on the Review of the AML/CFT Standards

7 January 2011



The World Savings Banks Institute (WSBI) 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, WSBI wishes to thank the FATF for the open and pragmatic dialogue that was held during the 22 and 23 November 2010 Consultative Forum, which allowed the different stakeholders to provide their preliminary views on the revision of the standards.

Support to the views expressed by the European Savings Banks Group (ESBG)

WSBI is a worldwide network of banking organisations, active in developed and in developing countries. In particular, members of the European Savings Banks Group (ESBG) are part of the WSBI membership. WSBI would therefore like to associate itself with the ESBG response to the consultation¹. It fully shares the views expressed by ESBG regarding the Risk Based Approach, the identification and verification of customers and beneficial owners of legal persons and arrangements, the Politically Exposed Persons (PEPs), third party reliance, tax crime as predicate offense, and the transparency of cross border wire transfers and the usefulness of mutual transaction reports.

Specific comments on the Risk-Based Approach (RBA)

A large part of non European WSBI banking institutions operate in emerging and developing countries and serve low income and marginalised and remote populations. Financial inclusion through the provision of adequate and accessible financial services to all categories of the population is part of their objectives. The implementation of Anti-Money Laundering/Combat the Financing of Terrorism Financing (AML/CFT) rules in this context has proved a challenge in a number of situations where, for example, the identification of people or their formal address is not formally organized. In a number of cases, this has acted as a disincentive both for unbanked groups to access the formal financial system, and for financial institutions to serve this market segment.

However, WSBI members are fully convinced that financial inclusion and AML/CFT pursue mutually supportive and complementary objectives: the definition of measures which enable more citizens to use formal financial services increase the reach and the effectiveness of AML/CFT controls. WSBI therefore supports the development of well balanced and proportionate frameworks, which reconcile the goals of encouraging the provision of formal financial services to the largest part of the population, including to the low-income categories, and designing efficient and effective AML/CFT provisions, in compliance with the FATF Recommendations.

WSBI specifically welcomes the endorsement of the Risk-Based Approach (RBA) in this context, and the simplified CDD measures for lower risks that it does involve. This should lead to the differentiation between low and high ML/TF risks and the definition of appropriate or commensurate CDD measures. As stated by FATF, it is important that the RBA is not defined on a “one-size-fits-all” basis, as it should allow enough flexibility to be tailored to the national context and particularly enable national regulators to take into account the banking infrastructure environment, the level of sophistication of the national banking players, the level of bancarisation of the population, their trust and knowledge of the financial sector etc.

¹ Available as an Annex

WSBI would also like to suggest that the FATF includes recommendation in INR.5. on how best to develop an efficient national RBA framework:

- Work through a collaborative, multi-stakeholder approach involving all interested parties: regulators, supervisors, banking industry, non bank financial services providers, as well as the informal financial services providers, ID authorities etc;
- Define solutions based on market research, mapping of risks based on geography, client groups, transactions, and realities of the local market;
- Adopt an evolutive approach and test and adjust the regulatory framework on a regular basis and take account of the evolution of the economic and political context.

WSBI will be pleased to provide further input on this particular issue as part of the FATF Guidance initiative on financial inclusion.



About WSBI – The Global Voice of Savings and Retail Banking

WSBI (World Savings Banks Institute) is one of the largest international banking associations and the only global representative of savings and retail banking. Founded in 1924, it represents savings and retail banks and associations thereof in 90 countries of the world (Asia-Pacific, the Americas, Africa and Europe – via ESG, the European Savings Banks Group). WSBI works closely with international financial institutions and donor agencies and facilitates the provision of access to financial sectors worldwide – be it in developing or developed regions. At the start of 2009, assets of member banks amounted to almost € 9,000 billion, non-bank loans to € 4,300 billion and non-bank deposits to 4,600 billion. Together the member banks conducted operations through 160,000 outlets.

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ZENTRALER KREDITAUSSCHUSS

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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.
