



Consultation on Proposed Changes to the FATF Standards

*Compilation of Responses from the Financial
Sector*

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Attn. Mr. Del Bufalo
FATF President, 2010-2011

On behalf of the AFI Financial Integrity Working Group (FINTWG), please find enclosed the consolidated comments from our members for input on the second public consultation in order to support the ongoing review of the 40+9 standards in preparation for the 4th Round of Mutual Evaluations.

The FINTWG thanks the opportunity to collaborate in this process of finding a balance between financial system integrity and greater financial access, and of establishing a financial environment where advantageous financial services are provided for the poor and the underprivileged.

For any further comments, please do not hesitate to contact me directly or the AFI Secretariat.

Best Regards,

Christian Carreon

Chair

AFI Financial Integrity Working Group

August 30, 2011

Comments on the Consultation Paper on the Review of the Standards – Preparation for the 4th Round of Mutual Evaluation

Thank you for providing the Alliance for Financial Inclusion (AFI) and the Financial Integrity Working Group, the opportunity to provide input on the review of the FATF recommendations. We welcome your efforts to review financial inclusion elements during your broad consultation process. We have reviewed the Consultation Paper on the Review of the Standards – Preparation for the 4th Round of Mutual Evaluation Second Public Consultation and hereunder provide our comments on the same.

1. General:

From a general standpoint, the clarifications/guidance that FATF is proposing to provide with respect to the identified areas will assist countries and financial institutions in understanding and appropriately applying the FATF standards.

2. Beneficial Ownership: Recommendations 5, 33 and 44 (Para 7):

We fully support the initiatives towards transparency about legal persons and arrangements. However, we believe that these measures should be tempered considering the necessary resources in order to be able to arrive at the natural persons beneficially owning or controlling the legal persons. While corporate layering may be resorted in order to mask the identity of the persons behind a legal person, there are also corporate layering undertaken for legitimate purposes. We suggest further parameters be set to determine how far a covered institution should drill down on its own stockholders/ its own BO, in order to comply with AML/CFT requirements.

In providing clarification as to what countries are expected to do to implement this requirement, the clarification should for example provide the acceptable level of compliance when dealing with entities such as Funds, such as hedge funds; pension funds and collective investment schemes. Ascertaining the beneficial ownership of Funds is normally a challenge given their structure and nature of operations. In most cases, one can determine the Managing Partners of the Fund or at least the more prominent contributors given their shareholding in the Fund. Beyond a certain level, it becomes very difficult to ascertain the natural persons beyond the legal entities comprising the Fund. The Guidance that FATF is proposing to issue in this area would therefore go a long way in providing appropriate guidance in this area particularly if it could address itself to the distance (levels) or shareholding limits countries or institutions should go to determine the beneficial ownership in Funds.

We likewise believe that the requirement for the identification of beneficial ownership, especially in publicly traded corporations whose shares are heavily traded, should be relaxed considering the difficulty in ascertaining not only the legal but also the beneficial ownership thereof. The presence of several intermediaries necessary for the efficient operations of financial markets may pose a challenge in complying with this requirement.

This requirement can be relaxed either in terms of frequency of determination or in the percentage threshold for the disclosure.

3. Recommendation 5:

With regards to Trusts and other Legal Arrangements, there has always been ambiguity on the right party to be vetted particularly when the beneficial ownership is to be ascertained. By clarifying that the ultimate beneficial owner with respect to the settlor, the trustee or the beneficiary should be identified will help remove this ambiguity.

Further, this would be premised that the trustee is a supervised entity or an AML covered institution. While some trust entities are under the supervision of the some Central Bank, not all trustees are supervised entities.

- 4. Recommendation 12:** In our view, information on beneficial ownership should be available to both the company and competent authorities and companies should be responsible for holding the same. If the responsibility of holding the information is not placed on companies then there will be challenges in obtaining and assessing the information as is the current case.

The proposal to have the details of nominee shareholders disclosed to the company and relevant registry is laudable. However, there may be need to place restrictions on who else, other than competent authorities, can access this information. This safeguard may be necessary to balance between abuse and the need for confidentiality.

5. Data Protection and Privacy - Recommendation 4:

The additional requirement that FATF is proposing to introduce, namely *“authorities responsible for AML/CFT and those responsible for data protection to have effective mechanisms in place to enable them cooperate and coordinate on this issue”* is ambiguous and may not be very helpful to countries and authorities. The requirement/guidance should be clearer and should specify or at least give examples of what these mechanisms are. Conflicts between data protection and privacy and application of AML/CFT requirements could still continue to exist and the review should look at ways of ensuring that the two requirements are harmonised.

In order to manage conflicts arising from the implementation of data protection and privacy rules with the enforcement of AML/CFT regulations, the FATF may consider including in the relevant standard the following:

- a. In general, countries should adopt measures, including legislative measures, that would allow foreign authorities (of home country jurisdictions) to inquire or look into certain financial accounts pertaining to the foreign jurisdiction to build sufficient information for AML/CFT purposes. This would allow the authorities to obtain consolidated information on the international operations of its supervised entities;

b. With specific reference to the concern of the FATF on the interplay of AML/CFT in connection with the delivery of services by international financial services groups seeking to transfer information across borders for consolidated AML/CFT risk management, the FATF could consider including in the standards that regulatory authorities concerned should be able to establish safeguards ensuring the protection of the subject data being shared. Given the need of financial services groups to manage risks attendant to their businesses and also the need to protect information specific to their clients, the safeguards that could be established by regulatory authorities concerned could include:

- (i) Regulatory authorities of each country should require financial institutions to adopt specific data protection policies / operational controls allowing them to preserve and maximize the benefits of sharing information necessary to manage AML/CFT risks, including those of their other related companies, without running in conflict with the diverse data protection and privacy laws of various jurisdictions where they may be operating.

For instance, jurisdictions allowing financial institutions to share relevant AML/CFT information with other related financial institutions may define the institutions with which sharing may be made. Hence, it is possible that for risk management purposes, the sharing of AML/CFT information, which could be protected under data protection laws, could only be made to the financial institution's head office but not to other subsidiaries or affiliates of such head office.

- (ii) Regulatory authorities may also consider imposing the requirement of observance of a balanced data sharing scheme which could contemplate only the sharing of appropriate and relevant information concerning financial transactions among members of a financial group. Such scheme could allow sharing of information on an aggregate basis, hence, preventing unnecessary disclosure of protected private information.

Only in cases where heightened AML/CFT risk is detected on the basis of information shared should the financial services group require from among its member institutions specific data concerning a particular entity or individual. Such sharing of information should be done in accordance with the laws /regulations governing the financial institutions concerned.

- (iii) Financial services group should ensure that the sharing of information among its members should only be made among those located in countries with comparable legal and political systems as a way of to maintain the integrity of the information shared. The sharing of information on an enterprise-wide basis should not result in making any information shared reach the public domain or hamper efforts of the financial intelligence units or law enforcement agencies to investigate and institute appropriate actions against the entities/subjects concerned.

6. Group Wide Compliance Programmes – Recommendation 15

Sharing of information within the group in some instances faces challenges when the group members are located in different jurisdictions. In addressing this issue, regard will have to be had to the Data Protection and Privacy requirements particularly across borders.

7. Targeted Financial Sanctions – SR III

The proposal to require countries to require all natural and legal persons to “freeze, without delay and without prior notice, the funds or other assets of designated persons and entities” may be difficult to implement as it will require legislative changes and can also be challenged on the basis of unconstitutionality depending on a jurisdiction’s legal system. There should be appropriate mechanisms and an appropriate authority that can effect the freeze mechanism.

8. Risk-Based Approach in Supervision

We agree with the adoption of a risk-based approach to supervision of financial institutions and also the adoption by financial institutions of risk-based approach to AML/CFT. A key benefit of the risk-based approach to AML/CFT allows financial institutions to be more efficient in discharging AML/CFT responsibilities, as it allows financial institutions to direct their limited resources to those areas identified to be more risky insofar as money laundering and terrorist financing are concerned.

Adopting a risk based approach to AML/CFT could have its challenges in the absence of a jurisdiction having undertaken a national risk assessment. The Guidance to be issued by FATF should also guide on adoption of this approach in the absence of an assessment. It could broadly set out the acceptable criteria to be considered by countries. This will be particularly useful when a country’s framework is being assessed as there could be differences between authorities and assessors on the identified risks.

With particular reference to efforts on financial inclusion, the adoption of risk-based approach to AML/CFT allows financial institutions to impose graduated requirements on customer identification and due diligence, depending on the degree of money laundering/terrorist financing risk posed by the (future) customer. The adoption of risk-based approach to AML/CFT allows financially excluded and underserved groups to have access to formal channels of financial services, effectively contributing to achieving the objective of protecting the integrity of the financial system.

9. Special Recommendation VII (Wire Transfers)

It is important to contextualise the importance of remittances to the developing world. According to the World Bank, officially recorded remittance flows to developing countries are estimated to increase by 6 percent to \$325 billion in 2010. Current reforms are aimed at increasing competition, transparency, and consumer protection in remittance markets and reducing remittance costs. The application of mobile phone technology has been successful for domestic remittances in several developing countries in Africa and Asia, but lack of clarity on anti-money-laundering and combating the financing of terror (AML-CFT) regulations remains a major barrier to the entry of cross-border remittance service providers.

There is also a clear tension between the different objectives of money transfers, on the one hand promoting remittances in the formal economy and avoiding unjustified prudential regulation (licit flows)/overregulation and on the other hand, mitigating the money laundering and the risk of terrorist financing and interests of law enforcement. The reality is that in many cases migrant remittances represent a main source of income for the family unit left behind and can serve to repay debts related to education, normal expenses, investment in a family business or savings for future return and retirement. As such, senders are foremost concerned with the speed and security of their transfer at the lowest possible cost. This desire to send money home efficiently and cheaply that generates the demand for the services supplied by the various informal value transfer methods. The majority of people in developing countries live and conduct their financial transactions in an informal cash-based society. To the extent that these transactions do not pass through the formal financial sector, they are beyond the reach of FATF standards. It is important to know that Implementation of AML/CFT standards in the money transfer environment in a manner that does not take into account the need for simplicity and low-cost products, and the number of residents who conduct their affairs entirely within the informal cash-based economy, will result in greater exclusion and an ineffective AML/CFT regime

In this line of reasoning we recommend that the regulation imposed be proportionate and risk-based, given that generally remittances on a global level are of very low amounts which indicate a low risk of money laundering. Specifically, the regulation and enforcement measures directed against money laundering and terrorist financing should be 'appropriate to developing countries' (Pearce, 2005: 11). Similarly a proportionate framework in developing states, where the foremost concern may be the resulting financial exclusion of large parts of the population can mean an ineffective AML/CFT regime. Wire transfers are a key component of the process of remitting money, not only in terms of the originator information required but in terms of the costs of verifying such information that will impact the overall cost of remitting money. Such costs can exclude people who as mentioned above are looking for a quick, cheap way to send money home. However, we are also cognisant that the general perception is that terrorist financing occurs in low values and hence there is a need to find an approach that addresses terrorist financing risk balanced against greater inclusion. It can be argued that if one had to weigh the benefit for law enforcement on having more people within the formal economy with an auditable trail versus the cash economy with no trail, then greater inclusivity still serves the effectiveness of AML/CFT objectives.

That said, we are in favour of the de minimus threshold for verification purposes, absent indications of high risk or suspicious activity. The originator information *above the threshold* should contain the originator's name, account number or transaction number, the recipient's name, account number or transaction number and the recipient's address or ID number. The sending institution can verify the originator's information, but it is impossible to verify the recipient's.

Below the threshold the EFT message can contain the same set of information but there should be no need for verification and this should impact the costs of remitting positively and being more inclusive. The intermediary institution can make sure that all the information stays with the EFT message and have risk-based measures to identify EFTs which lacks originator

information. The recipient institution must have risk-based measures to identify EFTs which lacks originator information and to decide whether to reject suspend or execute those EFTs

On item 18, some of the measures identified in the consultative document of the Basel Committee on Banking Supervision entitled “due diligence and transparency regarding cover payment messages related to cross-border wire transfers”¹ could be adopted in the following cases:

- a. When electronic financial transactions passing through intermediary financial institutions lack full originator information as required

Examples of measures cited in the aforementioned consultative document include (i) considering (in the case of repeated incidents involving the same correspondent or in the case where a correspondent declines to provide additional information) whether or not the relationship with the originator financial institution should be restricted or terminated; and/or (ii) filing a report of suspicious activity with the local authorities. The reasons for the decisions taken should be documented.

- b. Whether and what kind of procedures financial institutions apply to cross-border electronic financial transactions to detect whether information with respect to parties that are not their customers is meaningful

- (i) Beneficiary Financial Institutions (or originator) can inquire further with the Originator Financial Institution (or beneficiary) on the accuracy of the information.

- (ii) If the originating financial institution or the beneficiary (as an interested party) refuses to provide information to verify the accuracy of the information of the parties concerned, the financial institution concerned should refuse to effect/wire transfer or the pay-out of funds; and/or

- (iii) File a report of suspicious activity with the local authorities.

The reasons for the decisions taken should be documented.

As regards whether financial institutions should apply screening procedures to cross border electronic financial transactions below the threshold, we believe screening procedures may be waived. However, if the transactions of customers or parties which may be related to previous customers, are identified to present patterns of activity that may be suspicious and presents a heightened money laundering /terrorist financing risk, it is a must for financial institutions to apply screening procedures and if warranted, to report such activities in accordance with the national laws. If the suspicious activities are also associated with a particular correspondent bank, it is also warranted that the financial institution should review its relationship with the correspondent bank.

¹ July 2008.



Review of standards - preparation of the 4th round of mutual evaluations.

This paper emphasizes the implementation of FATF recommendations for countries that have implemented the recommendations and those that have not yet incorporated in these guidelines and regulations that do not have government agencies such as Colombian agency UIAF.

The revision of the FATF standards included:

1. The real beneficiary: The recommendation proposes to give further effect to:
 - a. Customer identification and verification of their identity
 - b. Identifying the real beneficiaries of a legal person and,
 - c. Identification of a legal structure (identity of the trustor, trustees, beneficiaries, beneficiary class, payer's expense).

2. Legal Persons: Suggests clarifying the mechanisms to be used to gain access to beneficial ownership information in reference to legal persons. Considering:
 - a. Access and preservation of the basic customer information and its real beneficiaries.
 - b. Unlimited access to information by the regulators and authorities
 - c. Knowledge and control of the shareholders of the customers for timely monitoring and identifying the names of others.

3. Other legal structures: This recommendation is in the same direction as the previous one, and suggests measures to establish access to information from the real beneficiary of the trusts. Also, the allocation of responsibilities to the trustee (trustor) and the trustee, on the obligation to obtain and maintain information about the settlor, the real beneficiary, the assets and goods of the origin of resources.

4. Protection and data privacy: FATF consider adding effective mechanisms to mitigate the impact of protection and data privacy with the cooperation that institutions should render to the supervisory and regulatory bodies.

5. Compliance programs at the group terms, the FATF recommends the creation of prevention programs of Money Laundering and Terrorist Financing in the economic group terms, to support risk management globally.

6. Wire transfers (electronic): The purpose of this recommendation is to strengthen the transparency of electronic funds transfers, including payments, complete information on the originator and the beneficiary.

7. Financial sanctions targeted at (AML/CFT): The most important change proposed by the FATF recommendations is to implement targeted sanctions on financial institutions in the context of Money Laundering and Terrorism Financing, and to:

- a. The institutions must freeze without delay and without prior notice and cash funds.
- b. Compliance with the prohibitions of providing financial services to individuals designated or related ML / TF.
- c. Report to the authorities in a timely manner

8. The risk-based approach in supervision: The FATF discussed and the determinations of the approach affect supervision. He suggested an approach based on risks to financial institutions and self-regulatory bodies.

9. Politically Exposed People: Suggested that additional work must be done due diligence, relatives and close associates of PEP, as individuals who meet prominent roles for international organizations.

In relation to the standards that have been issued by the Superintendence would mean an addition in the corresponding financial penalties (point b), and an addition to the criteria to be considered for designation as a PEP.

Undoubtedly, the FATF self-regulation are implicit message that invites institutions to create a culture of risk prevention (AML/CFT), through strict adherence to its recommendations and implement risk assessment models, consistent with the size of the entities and the market segments they serve.

With all the above, for the sector Colombian Trust, it is necessary to standardize the processes and procedures for linking and tracking of clients, that while the Financial Supervisory Authority has issued instructions through the Basic Legal Circular, in relation to the (AML/CFT) (antimony laundering/combating the financing of terrorism (in Spanish: SARLAFT), in practice is not strictly comply with these guidelines, because in many cases, overlapping business interests, generating informality in the bonding process.

Sirs FATF-GAFI:

Respectfully, we are sending you the received comments by the banks and the comments of the Association of Banking and Financial Institutions of Colombia, ASOBANCARIA on possible amendments of the FATF 40 +9 recommendations contained in the document "The Review of the Standards – Preparation for the 4th Round of Mutual Evaluation".

Regards,

Banking Operation Direction
Colombian Banking Association
Bogotá, Colombia

Final Beneficiaries

We consider that is very complex to identify the beneficial owners or shareholders in every type of legal person. Furthermore, when the aim of some specific legal persons is to allow a high level of dynamism in the participation in those entities, which could mean constants changes related to the beneficial owners. Even more, the documents that hold information about the societies provided by the register of companies does not contain the detail of the shareholders when they are not natural persons.

On the other hand, we are not against the recommendation that demands to identify the beneficial owner, but we believe that is convenient that the legal authority of each country determines the methodologies and the legal forms that should be applied in order to fulfill this knowledge.

Data Protection and Privacy

Given the FATF effort to ensure an improved cross-border flow of information, we consider the demand that establishes "Competent authorities should have powers to obtain information regarding trusts and share it as necessary" we deem, sharing the information must be according with privacy and mandatory data protection, taking in consideration the applicable laws of each jurisdiction.

International Cooperation

It refers about the way the competent authorities should be capable of exchange information between them. Never the less, we think it is important to consider client's privacy and data's protection. Besides, it is indispensable to evaluate if the possibility of exchanging information would respect the independency of jurisdiction and the sovereignty of the countries.

Financial Sanctions in the Terrorist Financing and Proliferation Financing Contexts

Extending the scope of the current recommendation on preventive measures to be taken by financial institutions to confiscate the terrorist assets leads many legal changes because in Colombia there is no legal authority to freeze assets of a natural person or legal entity. In this way, it must require a warrant is required in a criminal case it must be given by the Judge Warranties Control. For this case, it needs the laws reformed.

Politically Exposed Persons

We consider is not proper to include family members and other associates, because nowadays it does not exist a clear criteria to designate a PEP and how long this quality should be in force, neither a definition of associate as well as who should be consider as a family member. But, given that it is proposing to broaden the base of foreigners PEPS and their relatives, we think is necessary to define objective procedures through which they can easily identify these people. This need is evident in an example in the document and is the term "prominent functions" that would be applied to officials of international organizations, it is clear to us that the adjective is ambiguous and can lead to subjective interpretations of the recommendations' receivers. Our recommendation would be to consider as a PEP only the concerned person, due to the fact that at the moment of a contractual relation with the client is not always possible to detect this links. Although, we find it probable to comply this recommendation if the associate or family member is recognized as PEP or the link is publicly well known.

In addition we think that another alternative would be established the obligation to those organizations to maintain public lists that inform the identity of those who have functions that correspond to the concept.

Finally, after a deep reflection on FATF recommendations we conclude that it is going to wrong way compared with the reality of financial institutions and it will become to a demanding work by the legal risk that may lead to sanctions at the hands of the regulator by a non-compliance local regulations. Therefore, we believe that the

recommendations must be implemented on the premise of viability within the constitutional framework of the entities.



Consultation Paper
The Review of the Standards -
Preparation for the 4th Round of Mutual
Evaluation

Second public consultation
June 2011

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

Second public consultation

June 2011

1. Introduction

The Australian Bankers' Association (ABA) welcomes the opportunity to comment on the FATF Consultation Paper.

Our comments follow, which are set out in the same structure as the Consultation Paper.

2. Beneficial Ownership: Recommendations 5, 33 and 34

2.1 Recommendation 5

- (1) The ABA does not support the introduction of more prescription in Recommendation 5. The risk-based approach is the right approach and has led to the development of a strong and efficient AML regime in Australia.
- (2) The October 2010 FATF Consultation Paper - the FATF as a footnote recorded that "The reasonableness of the beneficial owner identify and verification measures should be based on the ML/TF risk of the customers". The ABA supports a risk-based approach to the identification and verification of beneficial owners, however consistency in the use of terminology is required.

There has been recent debate on the meaning Beneficial Ownership (BO) and Ultimate Beneficial Ownership (UBO). Some view BO and UBO as each having a distinct meaning, for example, UBO is defined as relating to the individual(s) at the heart of the control structure, whereas BO is defined as ownership at the first level of the organisation's ownership structure. Others view BO and UBO as meaning the same.

The Australian regulator AUSTRAC recently released draft amendments to their Rules that replace the current Australian definition of 'beneficial owner' with a new definition relating to 'ultimate beneficial ownership'.

The ABA's view is that BO and UBO are one of the same, and that a uniform definition would avoid confusion. Paragraph 4(c) of the Interpretative Note to Recommendation 5 in the Recommendations states:

c) Identify the beneficial owners, including forming an understanding of the ownership and control structure, and take reasonable measures to verify the identity of such persons. The types of measures that would be normally

needed to satisfactorily perform this function would require identifying the natural persons with a controlling interest and identifying the natural persons who comprise the mind and management of the legal person or arrangement. Where the customer or the owner of the controlling interest is a public company that is subject to regulatory disclosure requirements, it is not necessary to seek to identify and verify the identity of any shareholder of that company.

We read this to mean that FATF intended BO to mean UBO, and that the Note implies a definition of UBO.

- (3) ABA notes that the U.S. Foreign Account Tax Compliance Act (FATCA), which has broad customer identification requirements, contemplates a 10% ownership threshold for beneficial owner identification. The ABA and many other banking associations have been arguing for a 25% threshold, consistent with FATF Recommendations and local AML regulation, and would welcome FATF support for this position.

- (4) Consultation Paper:

If no natural person exerts control through ownership interests (e.g., if ownership interests are widely dispersed), information would be required on the identity of the natural persons exercising control through other means; or in their absence on the identity of the senior managing official.

Guidance on the meaning of "exercising control through other means" is requested.

- (5) Consultation Paper:

These requirements would not apply if the customer or its owner is a company listed on a recognised stock exchange and subject to proper disclosure requirements.

In relation to "listed on a recognised stock exchange", the ABA suggests that the FATF releases a list of such exchanges to ensure a globally consistent approach.

- (6) Consultation paper:

To identify the beneficial owners of a legal arrangement and take reasonable measures to verify their identity: - the identity of the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries and any other natural person exercising ultimate effective control over the trust (including through a chain of control or ownership).

There is a different risk profile associated with the settlors, trustees, protectors (and others) for small retail family trusts and those for large and complex corporate trusts.

There are also differences between jurisdictions. For example, the identification of settlor is mandatory in Hong Kong and in this

context they are referring to the asset contributor. In Australia, however the settlor is more often or not a lawyer or accountant who drafts and sets up the trust with a nominal settlement and then has no further interest in the trust. Often there is a clause stating that the settlor cannot be a beneficiary.

ABA recommends a risk-based approach in relation to trusts.

2.2 Recommendation 33 – Legal Persons

(7) Consultation paper:

The FATF is considering whether:... That competent authorities should be able to access beneficial ownership information from one or more of: the company itself; financial institutions, professional intermediaries, the register of companies, another body or authority which holds such information (e.g., tax authorities or regulators); or by using the authorities' investigative and other powers.

Guidance would be welcome on the expectations of "competent authorities" in being able to access such information from financial institutions.

(8) Consultation paper:

An interpretative note is being considered which would specify in more detail what is involved in an effective set of measures to prevent the misuse of legal persons, and what should be considered adequate, accurate, and timely information about beneficial ownership. These would include the following:

...Requiring that certain basic information on legal persons should be available from Registers of Companies, including, at a minimum, the company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers (e.g., memorandum & articles of association), a list of directors.

The suggestion that basic information on legal persons be available from official registers is supported by the ABA. Financial institutions should be able to rely on the public register of companies in jurisdictions which have equivalent ML controls.

There is a strong preference for (restricted if necessary) access to beneficial ownership information being available to financial institutions, with corporate registries governing access, use and provision of information by corporates.

For example, the UK Companies House currently has a user pays model to access corporate information on UK companies, with limited governance over company information completeness and accuracy.

(9) Consultation paper:

The following types of companies could be exempted from the requirements above, on the basis that they are subject to other

requirements that ensure adequate transparency: companies listed on a recognised stock exchange; state-owned enterprises; and financial institutions or DNFBPs which are subject to AML/CFT supervision.

The ABA recommends that the AML/CTF obligations in Australia should be extended to all DNFBPs. Legislation to this effect has been mooted since 2008.

2.3 Recommendation 34 – Legal Arrangements

- (10) Centralisation of information on trusts would be beneficial, but the ABA would not support extending the current obligations on banks and other financial institutions.

3. Data Protection and privacy: Recommendation 4

- (11) The ABA supports the sharing of data (internally across global jurisdictions). There seems to be a trend led by some jurisdictions restricting customer data being sent offshore for AML purposes, which limits the ability for centralised global solutions within financial institutions.

- (12) Consultation paper:

Data protection and privacy rules can in some cases limit the implementation of AML/CFT requirements

The ABA welcomes recognition of the issues, and would like to see further protection provided to banks when they are legitimately fulfilling AML/CTF obligations. These protections already exist but in a limited form.

4. Group-wide compliance programmes: Recommendation 15

- (13) Global programs, with protection for financial institutions from conflict with local regulations, are effective in most cases, but there needs to be an opportunity for parts of a global institution that have a lower risk profile (eg staff super, certain super products) being permitted to have their own program.

5. Special Recommendation VII (Wire transfers)

- (14) The ABA supports the formalisation of the approach outlined in paragraph 17 of the consultation paper, but the risk-based approach must be preserved, and guidance would be needed on an acceptable process to reduce the current operational impact.
- (15) The recent FSA report into management of high-risk money laundering situations was critical of a lack of a formal process for dealing with correspondent customers who continually submit SWIFT messages without complete payer information.

(16) Consultation paper:

The FATF is also seeking input on: (i) what types of procedures are currently being used by intermediary FIs for dealing with EFT which lack full originator information as required, and whether any of these procedures are risk-based; (ii) whether and what kind of procedures FIs apply to cross-border EFT to detect whether information with respect to parties that are not their customers is meaningful, and (iii) whether financial institutions apply screening procedures to cross border EFT below the threshold, and if so, how such procedures are applied.

- (i) ABA member bank procedures are in line with Australian requirements imposed. Currently there is a risk-based approach to stop inbound and outbound SWIFT messages for compliance-checking with SRVII. There is a risk-based approach taken to whether payments are processed or rejected, based on the institution involved and the number of instances of non compliance for that institution. As the procedure looks for complete originator information, it will be information on customers, but also on third parties where the customer is the beneficiary of the payment.
- (ii) There are currently processes to check that beneficiary information on customer originated payments is meaningful, (not required under current Australian legislation).
- (iii) Cross-border wire transfers below the threshold are screened for sanctions purposes.

6. Targeted financial sanctions in the terrorist financing and proliferation financing contexts

- (17) ABA supports the change proposed to SRIII described in paragraph 19 of the consultation paper.
- (18) ABA supports the approach described in paragraphs 20, 21 and 22 of the consultation paper, but notes the existence of potentially conflicting local regulations, for example, those relating to asset freezing in Australia.
- (19) Financial institutions and DNFBs would benefit from regulatory body co-ordination in relation to sanctions list content, for example:
 - Publication of meaningful data on a list entry (date of birth, location, reason for listing) to achieve operational efficiencies
 - Consistency in spelling and identifying data items.
 - Publication of a list of names of known "owned or controlled" entities to enhance intelligence on lists.

7. The Financial Intelligence Unit: Recommendation 26

(20) ABA supports the role of the FIU as described in the revised Recommendation, and notes that it is important that FIU functions be separate for regulatory compliance and enforcement.

8. International cooperation: Recommendation 40

(21) No comments

9. Other Issues included in the revision of the FATF Standards**9.1 Adequate/inadequate implementation of the FATF Recommendations**

(22) Consultation paper:

It is proposed that financial institutions should be required to apply enhanced due diligence measures on the basis of the overall risk posed by a country (taking into account its compliance with the FATF Standards), rather than only on the basis of adequate or inadequate compliance with the Standards.

Guidance from the FATF on the expectations on how to aggregate overall risk on a country is requested.

(23) Further examples in countermeasures would be supported, but without a weakening of the risk-based approach.

9.2 Risk-based approach in supervision

(24) The risk-based approach is embedded into bank AML programs and operating models. Consideration would need to be given to the impact on operations of any changes to the supervisory approach.

9.3 Further consideration of Politically Exposed Persons

(25) PEPs are one category of higher risk customer types. Banks have processes to identify higher risk customers including PEPS, which apply domestically and off-shore.

Banks are best placed to understand their own risk exposures. Existing processes focus greatest effort at highest risk customers. Prescriptive procedures for PEP associates potentially only duplicate existing processes. At worst, the proposed prescription will enforce a "tick the box" mentality to managing customer risk exposures.



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16 September 2011

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FRANCE

By e-mail to: fatf.consultation@fatf-gafi.org

Copy to:
Mr John Schmidt, Chief Executive Officer,
Australian Transaction Reports and Analysis Centre
PO Box 5516 West Chatswood
NSW 1515 AUSTRALIA

Dear Sir/Madam,

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

Thank you for the opportunity to provide comments on the Consultation Paper dated June 2011 in respect of *The Review of the Standards - Preparation for the 4th Round of Mutual Evaluations Second Public Consultation*.

1. BACKGROUND

The Australian Finance Conference (AFC) made a submission in January of this year in response to the earlier Consultation Paper dated October 2010. As detailed in that submission, the AFC is an Australian-based finance industry association with a diverse membership including traditional finance companies, banks, motor vehicle financiers and financial leasing companies which provide consumer and commercial finance in the Australian market. Our associate members include receivables management companies and credit reporting agencies. The AFC and its affiliated bodies the Australian Equipment Lessors Association, the Australian Fleet Lessors Association and the Institute for Factors and Discounters together represent more than 150 financier organisations.

2. THE CURRENT POSITION IN AUSTRALIA

In general terms, our members are of the view that Australia's current Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) laws provide a workable anti-money laundering and counter-terrorism financing regime for the Australian financial services industry. The industry incurred great cost in implementing processes and procedures to comply with the current regime from its commencement in 2006; and continues to incur on-going compliance costs. Our members strongly believe that any amendments to the FATF 40 Recommendations, the 9 Special Recommendations or the Interpretive Notes; and any new

Guidance should only be made following a rigorous investigation to ensure that they are likely to significantly reduce the opportunity for lending and financial leasing services to be used for money laundering or terrorism financing purposes.

The current AML/CTF regime in Australia allows a risk-based approach to be followed in a number of areas, some of which would be impacted by the proposals referred to in the Consultation Paper. In particular, a risk-based approach can be applied in relation to some requirements for customer identification, collecting and verifying additional KYC information, transaction monitoring and enhanced customer due diligence programs. Many of the products and services offered by our members can be classified as “low risk” for money laundering and terrorism financing. Examples of these include:

- Equipment finance products (eg finance leases and commercial hire purchase) where the financier is the legal owner of the goods until the end of the finance arrangement;
- Consumer loans to finance the purchase of cars, electronic goods or furniture;
- Arrangements by employers to finance motor vehicle purchases by employees; and
- Fleet leasing arrangements.

Such arrangements almost invariably allow only a single advance to the customer by payment to the supplier or into the customer’s bank account, do not permit cash re-draws or advances, and require repayment by regular bank transfer. The requirement for use of a linked bank account means that any attempt to acquire goods of any significant value using laundered cash would be picked up when the cash is deposited into the linked bank account. Any requests for different arrangements are likely to be noticed and reported on by the financier.

The categorisation of these types of lending products as low risk is supported by the Typologies and Case Studies Report 2011¹ recently published by Australia’s Financial Intelligence Unit AUSTRAC. This contains a number of case studies involving money laundering offences. All of these involve one or more of cash-based services, gambling services, deposit accounts, remittance services and international funds transfers, none of which services are features of the low-risk lending products described above. The analysis is also supported by the AML/CFT Sector Risk Assessment published by the New Zealand Government in March 2011². The findings of that assessment were that services such as non-bank non-deposit taking lending and financial leasing are low risk for money laundering. In addition, the Asia/Pacific Group on Money Laundering’s most recent Yearly Typologies Report³ states that in the case of Australia, the most prevalent services used to launder funds are deposit taking services, remittance services and fund transfers conducted through the banking, remittance, professional services and gambling sectors.

Based on the data described above, our members would not support more stringent requirements applicable to all financial products and which require identification of the beneficial owners of legal persons and arrangements, unless they are subject to a risk-based approach to determining the extent to which this information is to be verified. If a risk-based approach is not permitted, the consequence will be that legally operating businesses and their beneficial owners will incur unnecessary delays and expenses when obtaining low risk financial products through which it would be extremely difficult for criminals to launder money or finance terrorism activities.

Our comments below are mainly directed at the FATF Recommendations referred to in the Consultation Paper which are relevant to beneficial ownership and do not cover all of the issues raised in the Paper.

¹ Available at http://www.austrac.gov.au/typologies_2011.html.

² Available at http://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Services-Anti-Money-Laundering-Sector-and-National-Risk-Assessments?OpenDocument).

³ Available at <http://www.apgml.org/about/newsDetail.aspx?newsID=149>

3. BENEFICIAL OWNERSHIP: RECOMMENDATION 5

We submit that any changes to the types of measures required to

- (a) identify customers that are legal persons (eg companies) or legal arrangements (eg trusts); and
- (b) understand the nature of their business and ownership and control structure

should be both practical and achievable within each jurisdiction; and should be able to be implemented using the risk-based approach.

As stated in our previous submission, we are not opposed to the principle that information about the “mind and management” of a legal person or arrangement should be obtained, but the implementation of this principle should take into account the circumstances of each jurisdiction and the risk profile of customers and the products they are using. The Second Consultation Paper refers to identifying the senior managing official of an entity which has widely dispersed ownership interests. Our members would not oppose such a requirement if it can be met by following the risk-based approach and the same customer identification procedures as are applied to identify other individuals.

AUSTRAC is in the process of amending the definition of “beneficial owner” as it relates to companies for the purposes of the ongoing customer due diligence requirements and more generally under Australia’s AML/CTF Rules. We suggest that the results of these changes be reviewed before any additional requirements are imposed which would apply to countries such as Australia.

4. BENEFICIAL OWNERSHIP: RECOMMENDATION 33 - LEGAL PERSONS/COMPANIES

We note that the FATF is considering whether companies should be responsible for holding information about their beneficial ownership; and whether this information should be accessible to competent authorities through mechanisms such as financial institutions. It is a feature of Australian company law that a company does not necessarily have information about its beneficial ownership. Reasons for this include the fact that company shares can be held on a trust which is not evidenced in writing and need not be disclosed to the company; and that shares in some non-publicly listed companies can be transferred to another holder without the immediate knowledge of the company. It is also a feature of Australian law that financial institutions do not have the legal ability to oblige a customer to hold or disclose such information to them.

The Consultation Paper refers to addressing the misuse of bearer shares, bearer share warrants, nominee shareholders, foundations, anstalt and limited liability partnerships by imposing various requirements. We are not aware that such mechanisms are used to any great extent in Australia as money laundering or terrorism financing vehicles. It is therefore submitted that any new requirements should be subject to the risk-based approach.

5. BENEFICIAL OWNERSHIP: RECOMMENDATION 34 - LEGAL ARRANGEMENTS/ TRUSTS

The FATF’s proposals for trusts are similar to those for companies. They refer to giving trustees an obligation to obtain and hold beneficial ownership information, allowing competent authorities to access trust information; and requiring trustees to disclose their status to the authorities and to financial institutions when entering a business relationship.

These proposals do not reflect current Australian law, under which discretionary trusts are common business structures frequently used as part of legally acceptable tax-planning arrangements. A feature of these structures is that it is not always possible for the trustee, its

financiers or competent authorities to accurately verify who the trust beneficiaries are at any given time. Financiers regularly ask for information about trusts, but often do not have the ability to check its accuracy. A registration requirement for trusts would require a substantive change to Australian law, significant implementation expenses, delays to settling standard lending transactions and the incurring of costs which would be passed on to customers. It would only be supported by our members if they were able to apply a risk-based approach to deciding whether to incur the cost of accessing such information as part of their customer identification procedures for low risk products and customers.

6. RECOMMENDATION 4: DATA PROTECTION AND PRIVACY

We would support a requirement that the authorities responsible for AML/CFT and the authorities responsible for data protection and privacy have effective legal mechanisms to enable them to cooperate and coordinate on this issue.

7. RECOMMENDATION 15: GROUP-WIDE COMPLIANCE PROGRAMS

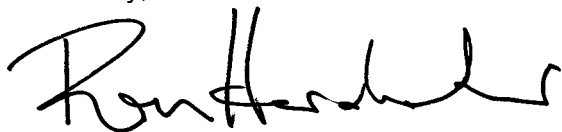
Our members which are part of corporate groups are likely to have already implemented group-wide compliance programs to at least some degree; and to support proposals allowing sharing of information within the group for the purposes of global risk management.

8. CONCLUSION

Many financial services which involve straightforward lending arrangements without cash advances or repayments inherently present a low risk for money laundering and terrorism financing. This is illustrated by the Australian and New Zealand Government publications and the Report of the Asia/Pacific Group on Money Laundering referred to above. Any new FATF customer identification requirements or guidance should allow jurisdictions to permit financiers to apply a flexible risk-based approach to determining whether to incur the expense and delays of carrying out extra customer identification in respect of beneficial owners. If this is not done, then the economic impact on legitimate businesses is likely to be completely disproportionate to any reduction in the risk of these financial products being used for money laundering or terrorism financing activities.

If you have any questions or comments on this submission, please email me at [or our Corporate Lawyer Catherine Shand at .](#) _____

Yours truly,



Ron Hardaker
Executive Director



16th September 2011

Financial Action Task Force Secretariat
fatf.consultation@fatf-gafi.org

Australian Financial Markets Association
Submission to the Consultation Paper: The Review of the Standards –
Preparation for the 4th Round of Mutual Evaluation
Second Public Consultation, June 2011

The Australian Financial Markets Association (AFMA) is the leading industry association promoting efficiency, integrity and professionalism in Australia's financial markets and provides leadership in advancing the interests of all market participants. These markets are an integral feature of the economy and perform the vital function of facilitating the efficient use of capital and management of risk. Market participants perform a range of important roles within these markets, including financial intermediation and market making.

AFMA represents over 130 members, including Australian and international banks, leading brokers, securities companies, state government treasury corporations, fund managers, traders in electricity and other specialised markets and industry service providers.

We thank you for the opportunity to provide the following submissions in response to the consultation paper. We have not addressed all matters raised in the consultation, and have provided responses to the matters which are directly relevant to our members, their activities and for which in the time that has been afforded to us, we have been able to address.

While we welcome this opportunity, we expect that both FATF and governments should do more to address any of the inequitable matters which arise from delayed implementation of the Recommendations both within countries (between sectors) and also between jurisdictions.

These implementation differences cause a competitive disadvantage for countries and institutions that abide by, and who are fully regulated to comply with, the eventual transposed regulations. Clearly where such disadvantage may arise, it is necessary for FATF and member countries to take steps to overcome and address it.

This submission follows the same numbering used in the consultation paper.

1. Beneficial Ownership: Recommendations 5, 33 and 34

We agree that clarity is required in the Recommendations and interpretive notes regarding the definitions and practical application of beneficial ownership information. We do, however, have some concerns, questions and comments arising from the practical consequences of such an initiative.

Recommendation 5 – Beneficial Ownership

It is accepted practice that identification of beneficial ownership is integral to any anti-money laundering/counter terrorism-financing (AML/CTF) program. Our reading of the proposed amendments to Recommendation 5 is that it will require the identification and verification of all natural persons who hold beneficial ownership through either direct or indirect control. While we agree this amendment will enable entities to derive greater knowledge of their customers, the practical manner as to how this is achieved has not been considered.

For example, in Australia the AML/CTF Rules require collection of information about beneficial ownership of all individuals holding more than 25% of the issued share capital in a company. Other body corporate structures are not prescribed or contemplated¹. We consider that there is a lack of allowance for depth of beneficial ownership investigation and there is no provision for any risk based approach or analysis in determining the level of ownership required.

We understand that in countries where this has been implemented - for example India (where no percentage of ownership is accounted for in the regulations), the regulation is difficult to satisfy. Essentially, our interpretation of the new Recommendation is that it requires the identification of all natural persons regardless of the percentage of ownership in the customer. It would be helpful for international organisations if the relevant percentage of beneficial ownership is consistent across member states and in the Recommendations. Significant operational hardship is experienced where percentages are prescribed at different levels in member states and no 'passporting' of clients is enabled.

In practice for example, in the cases of hedge fund operators and private equity firms, this would be near impossible to identify. Indeed, in fund structures, where there is a constant change in shareholders – the process is not either very practical or very useful from the perspective of managing money laundering risk.

With respect to the proposed steps to determine control, this information is difficult to ascertain and in order to achieve this in practice it will be necessary for member countries to make this information freely and publically available through the relevant corporate and other registries. Alternatively, it must be entirely open to regulated entities to make this assessment, without prescriptive requirements which would counteract any practical measures.

FATF should give clarity for simplified due diligence processes either directly in the Recommendation or in the interpretive notes for listed or regulated organisations of comparable jurisdictions. The Recommendation should therefore enable a risk based approach to meeting this condition. In Australia for example, the full effect of existing Recommendation 5 and the interpretive notes has not been incorporated in the AML/CTF Rules and therefore, there is no ability to exercise simplified due diligence on

¹ Chapter 4 of the AML/CTF Rules Instrument 2007.

what may be regarded as the low risk wholesale sector of listed and regulated entities. This makes existing due diligence processes more onerous than necessary and is a cost impost to the regulated sector.

Recommendation 33 – Legal Persons

The existing Recommendation is clear. We do however welcome any improvements which will give rise to increased transparency and availability of customer due diligence information.

The new measure set down regarding responsibility for companies to hold basic information around beneficial ownership information is positive, however we have reservations as to whether this could be properly implemented. Our preference is that the relevant basic information necessary to meet the Recommendation should be available from the registers of companies and there should be legal requirements, properly regulated, to keep this information up to date.

Further, similar measures should also be applied in relation to other body corporate types such as foundations, anstalt, partnerships and limited liability companies – and where such measure are presently non-existent, member countries should take steps to achieve this. We would also welcome the opportunity of reviewing any interpretive note.

In the case of Australia, the Australian Securities and Investments Commission ('ASIC') only makes limited information available to the public. Entities are able to access the full set of data held but at a cost to the institution. This is less than favourable for regulated entities, who quite clearly have a regulatory obligation to obtain such data and already operate under a 'fee for service' regulatory system. For example, in the case of the New Zealand Companies House all information is available to the public so as to make the customer due diligence process more efficient for regulated entities, and this allows full transparency.

In the Australian context, AUSTRAC and ASIC will have to work together to ensure that the principles of the revised Recommendation are met and that the material contained in the registry is sufficiently up to date, can be accessed easily, and importantly - parties are regulated so that they provide the relevant information to the registry in a timely manner.

Further detail should be provided in the relevant interpretive notes concerning the risk based approach and relevant simplified due diligence principles. We would expect that these should be adopted in member states, particularly for entities operating in the wholesale markets which are almost exclusively regulated for financial services.

Recommendation 34 – Legal Arrangements

The proposed changes regarding the information held concerning legal arrangements are agreeable. This will allow entities to better identify and, where necessary, verify the structure of such arrangements and the individuals and parties associated with them. Again, this will be useful for the regulated sector if the information is transparent, up to date and freely available.

Please however ensure that appropriate articulation of the relevant parties is included in the Recommendation and/or interpretive notes. For example, trustees do not hold information regarding beneficial ownership but rather information on beneficiaries or members of class in trust.

2. Data Protection and Privacy: Recommendation 4

Data protection limitations - for example, the use of other data held by an organisation, to simultaneously complete client due diligence has imposed a burden on financial institutions.

There is no doubt that information can be appropriately protected and also used for client due diligence purposes. Governments must actively seek to reduce the red tape that is associated with the AML due diligence process, and if using existing data for these purposes would assist, then so be it.

We are pleased that some attempts have been made in Australia to address this conflict and we would encourage further liberalisation so as to reduce the cost associated with obtaining client due diligence.

3. Group Wide Compliance Programs: Recommendation 15

The proposed changes regarding financial groups having group-wide programs against money-laundering and terrorist financing requires further consideration.

The concept of group-wide programs has not yet been comprehensively contemplated in the context of laws and regulations in Australia. As a result, comparable jurisdictions are not fully considered by the Australian regulator, AUSTRAC. In the absence of guidance by local regulators, and more importantly adoption of the principle of mutual recognition, it will be difficult, if not impossible for financial groups to implement a group-wide program.

The failure to properly enable mutual recognition means that there are inconsistent approaches to AML/CTF regulations across multiple jurisdictions, and practical implementation difficulties exist when trying to comply with the legislation. For example, AML/CTF obligations may be triggered by licensing in some jurisdictions or it may be triggered by activities.

For example, Australian AML/CTF obligations are activities based and are applicable if a designated service(s) (which is outlined by legislation) is provided. This can be juxtaposed with the United Kingdom, where the Third Directive applies to the financial sector as well as to some non-financial professions, being DNFBPs, and applies where a 'business relationship' is established.

A pure financial advisory firm that is a subsidiary of an Australian parent is regulated by the Financial Services Authority and is required to comply with the anti-money laundering regulations of the UK. This firm's activities do not fall within Australian AML/CTF law because advisory activity does not qualify as a designated service. As a result there will be differing legislative requirements and a group-wide program may be difficult to implement particularly in relation to the proposed changes for a group-wide program to include, at a minimum sharing information within the group for purposes of global risk management and enabling group-level compliance, audit, and/or AML/CTF functions to be provided with customer, account, and transaction information from branches and subsidiaries when necessary for AML/CTF purposes.

In particular, the issues around tipping-off need to be considered in relation to sharing information. In Australia, information may only be shared amongst members of a Designated Business Group ('DBG'). The UK subsidiary in the above example would not

be eligible to become a member of the DBG because it does not provide a designated service under the Australian AML/CTF Act.

Therefore, a group-wide program requiring the sharing of information and requirements of group-level compliance, audit, and/or AML/CTF functions being provided with customer, account, and transaction information from branches and subsidiaries could in some circumstances breach tipping-off provisions, which in Australia constitutes a criminal offence. This is not an optimal outcome for the firms operating in the regulated sector. Indeed, in order to ensure that financial crime is inhibited to its fullest extent, disclosure within group companies must be permitted without the prospect of being criminally sanctioned for tipping off.

Any changes to the Recommendations around group-wide programs should consider the impact of inconsistencies in legislation across jurisdictions and the complexities this provides for companies that operate internationally, including the effect on tipping off and privacy.

8. Other Issues Included in the Revision of FATF Recommendations

8.1 Adequate/Inadequate Implementation of FATF Recommendations

We are concerned that in the Australian context the full benefit of the Recommendations has not been applied. In Australia, there is an uneven approach to the regulated sector wherein the DNFBPs are not regulated for money laundering purposes. This we believe poses systemic weaknesses in the Australian AML coverage, and given the regulator's ability to recover regulatory costs from the sector, diminishes the number of regulated entities and thereby causes the costs of money laundering regulation to be solely borne by the financial sector.

Additionally, although termed as a risk based AML framework, customer due diligence obligations in Australia under chapter 4 of the AML/CTF Rules Instrument 2007 are very prescriptive. There are no simplified due diligence obligations for entities which would be considered to be low risk and subject to simplified due diligence under Recommendation 5 and its associated interpretive note 9.

This means that for our members there are considerable operational burdens and administrative consequences which arise by the inadequate implementation of the existing Recommendations and steps should be taken by the Australian regulator to address this imbalance as soon as possible.

8.2 Risk Based Approach to Financial Supervision

We consider that the principle of risk based supervision is well founded. However, in the Australian context, we are concerned that either this principle has not been well appreciated or that consideration has not been adequately afforded to the activities of our members, or the nature of their clients.

For example, investment banks in Australia deal, for the most part, with regulated wholesale clients. These clients are regulated in comparable jurisdictions and therefore qualify for simplified due diligence measures under Recommendation 5 and the supporting interpretive note 9. Investment banks do not take cash and are therefore not susceptible to the 'placement' stage of money laundering – the weak point of the financial system.

Unfortunately, these matters do not appear to be contemplated with any serious sophistication by the regulator AUSTRAC. This is evidenced by the comment found in AUSTRAC's Cost Recovery Impact Statement that '*..AUSTRAC's risk based approach to the regulation of reporting entities with compliance obligations....means that those reporting entities with a large number of customers will incur the highest regulatory cost. Generally, these reporting entities are large multinational companies that demonstrate the potential to meet the cost of AUSTRAC's regulatory activities*'.

This kind of statement reveals that no consideration is given to the risks posed by the *type* of clients or the *type* of designated services when arriving at this intention to supervise. Simply the number of clients and the number of services has been determined – this is risk calculated on a quantum basis rather than actual susceptibility of money laundering risk, and on any sophisticated money laundering analysis must be determined to be unfounded.

Further, there is no empirical analysis that our members are more prone to money laundering risk than other members of the regulated sector. With largely no participation in the placement stage of money laundering and with a majority of regulated clients (who should be afforded simplified due diligence pursuant to the Recommendations) – this seems unlikely.

Please contact me on or if you have any queries about this submission.

Yours sincerely



Tracey Lyons
Director, Market Operations

TO: FATF Secretariat

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

Re: The 2nd consultation on the review of the FATF Standards

19th September 2011

Dear Sir or Madam

The BBA welcomes the opportunity to provide further input into the FATF review of the 40 + 9 Standards. With over 240 member banks from over 60 countries the BBA is the authoritative voice of the banking industry in the United Kingdom, representing members' interests in both wholesale and retail markets. Our members have significant expertise in AML/CTF policies and procedures and have developed the most sophisticated systems and controls. The input of the private sector into the review can help ensure that any amendments to the Standards are informed by real practical experience.

This second FATF Consultation Paper sets out a series of proposals for amendments to the Standards, based on the key issues highlighted in the first phase of the Consultation. The precise changes to the text of the 40 + 9 Standards that are being considered are not provided in this current FATF paper. This BBA response therefore provides an initial view on the broad proposals. We stress the need for further consultation with the private sector on the detailed drafting amendments being considered, including at the Private Sector Consultative Forum later this year.

We understand that the final text changes will be considered by the FATF in February 2012. We would welcome an opportunity to consider the proposed text changes in detail before they are finalised, so that our members can examine the potential impacts and assess the feasibility of implementation. We would also be keen to receive any cost/benefit analysis undertaken by the FATF on the proposed changes.

The BBA and a number of other respondents to the first phase consultation set out views on improving the usefulness of FATF reports. Given the importance of this issue to our members, we were disappointed that proposals in this area have not been included in this FATF paper. We

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suggest that this is an additional topic that could be usefully discussed at the Private Sector Consultative Forum.

We look forward to contributing to the next stages of the consultation.

Yours Sincerely

Matthew Allen
Director- Financial Crime

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Issue 1: Clarify requirements on Beneficial Ownership

1. BBA members welcome the intention of FATF to clarify the requirements on Beneficial Ownership. Indeed our members have invested significant resource and effort in following the requirements set out by the FATF, the 3rd EU Money Laundering Directive and the UK Money Laundering Regulations on customer identification. It is clear though from examination of the reports published under the 3rd Round of FATF Mutual Evaluations that countries are struggling to fully comply with the beneficial ownership requirements, especially in regard to identification of natural persons. Beneficial ownership clearly remains a complex and challenging area and our members would find more clarity around the specific requirements helpful. It will though be important to ensure that proportionate AML/CTF benefits are accrued from any text changes.
2. On the details of these early proposals, our members felt “verifying powers that regulate and bind the entity” (eg the memo and articles of association of a company) is concerning as they are not relevant to beneficial ownership and are straying from AML into credit risk. Our members would also welcome clarification of what precisely is meant by the reference in Paragraph 10 to competent authorities having access to beneficial ownership information held by financial institutions.
3. FATF also proposes to clarify the arrangements that should be in place to ensure timely and effective access to relevant information for the purposes of identification of beneficial ownership. This would be useful as access to public registries that provide relevant and reliable information can help inform research that supports identification of natural persons.

Issue 2: Data Protection and privacy

4. The BBA is supportive of the aspiration of the proposal to require authorities to have effective mechanisms for coordination and cooperation on data protection and AML/CTF. Financial Institutions have to manage the interplay between their obligations to report suspicions of money laundering or terrorist financing whilst abiding by domestic and EU laws on data protection. We understand that the challenges are particularly acute in certain EU Member States. Authorities have a vital role to play in ensuring that they effectively support efforts by financial institutions to achieve an appropriate balance and the FATF Standards could usefully reflect this.

Issue 3: Clear requirements for Group wide compliance

5. The BBA supports in principle the FATF proposal to set out clear requirements for Group wide compliance. These appear entirely consistent with the practices followed by British banks that operate globally and in line with legal obligations.

Issue 4- Wire Transfers (SR VII)

6. The BBA believes that the intention of this proposal, in promoting enhanced transparency for electronic funds transfers, is sound. Our members believe that Financial Institutions ought to require accurate information on beneficiary names in order to process a transaction. However, our members have reservations over some aspects of the proposals as they are not convinced that in reality they would provide practical AML/CTF benefits and could be disproportionately burdensome.
7. Rather than repeating all the details we set out in our previous submission on SR VII, we thought it would be more useful to confirm that a funds transfer would almost invariably carry at least one other identifier (account number, address, passport number) in addition to a name, to enable the transfer to be applied correctly. Our members cannot see how the suggested requirement for an ordering financial institution to include a “unique transaction reference number” is practicable or would enhance effective targeting of AML/CTF measures in a proportionate manner. Our members feel that the formal requirement should be limited to the name and the FATF should not be prescriptive as to supporting identifiers.
8. On question 1 of paragraph 18, BBA members outlined that they follow the current requirements of SR VII (and EU Regulation 1781/2006) for intermediaries to pass on all the payer information they receive, whether complete or not, and to keep records, but there is no requirement to monitor for incomplete information. Whilst there might be merit in doing so to enhance the effectiveness of sanctions screening, it would be challenging to adapt current systems and processes to align the two objectives to best effect.
9. BBA members, given the importance of the issues raised on SR VII, would welcome an opportunity to consider the detailed text for SR VII and the Interpretative Note.

Issue 5: Targeted financial sanctions

10. BBA members are taking every measure possible to comply with domestic and international obligations on targeted financial sanctions. We question the need for amendments to Special Recommendation III (SR III) and the Interpretative Note, as they are already comprehensive.

Issue 6: The Financial Intelligence Unit

11. FIUs are an essential element of an effective AML/CTF regime but it is clear there are differences globally in compliance with the requirements of the FATF Standards. The BBA would therefore be supportive of efforts to articulate more clearly through the FATF Standards the key FIU functions, to promote more consistent and widespread adherence to Recommendation 26.
12. FIUs also have an important role in providing feedback to organisations that report on money laundering and terrorist financing. This information is of crucial importance to Financial Institutions for their application of effective and risk based AML/CTF controls. The FATF Standards could usefully articulate detailed requirements in this area.

Issue 7: International Cooperation

13. Effective international cooperation between competent authorities is essential to a strong AML/CTF system, especially given the global nature of the criminal offending. Mutual Evaluation reports show that there is a need for enhanced compliance with the FATF Standards in this area. The BBA thus welcomes in principle revisions to Recommendation 40 to improve cooperation and to prohibit the use of unduly restrictive measures that constrain cooperation. We would welcome further detail on the precise revisions that are proposed, in particular explanation of what is meant by “modalities of diagonal cooperation”.

Issue 8: Inadequate implementation of FATF Standards

14. The FATF is quite correct that to effectively apply enhanced due diligence, a risk based approach should be adopted that takes into account compliance with the FATF Standards and other relevant risk factors. Any amendments to the FATF Standards that seek to improve the application of the risk based approach need to be designed in consideration of how the requirements can be effectively implemented at practical level. We found it difficult to analyse the practical requirements of the proposals being in the absence of the detailed text.

Issue 9: Risk Based Approach in supervision

15. BBA supports the proposal to apply the risk based approach to supervision of DNFPBs and looks forward to examining the detailed text that will articulate this requirement.

Issue 10: Further consideration of Politically Exposed Persons

16. The FATF is seeking to clarify the due diligence requirements for family members and close associates of PEPs and on whether persons entrusted with prominent positions for international organisations should be considered as PEPs. The application of EDD for domestic PEPs on a risk based approach is welcomed and clarification of how representatives of international organisations should be considered would be useful. However, identification of family members and associates can be a real challenge for financial institutions in the absence of access to authoritative lists of PEPs. As such for the proposal to be realisable in relation to identification of family members, there is need for explanation by the FATF of how Governments and relevant international bodies can better support Financial Institutions in this area.

CEA LETTER ON THE FATF 2ND ANTI MONEY LAUNDERING CONSULTATION

The CEA is the European insurance and reinsurance federation. Through its 33 member bodies — the national insurance associations — the CEA represents all types of insurance and reinsurance undertakings, e.g. pan-European companies, monoliners, mutuals and SMEs. The CEA, which is based in Brussels, represents undertakings that account for around 95% of total European premium income.

The CEA welcomes the opportunity to provide comments in response to FATF's second Consultation Paper entitled "Review of the Standards—Preparation for the 4th Round of Mutual Evaluation" [Second Consultation Paper] issued on June 27, 2011.

The CEA has also actively contributed to and accordingly fully subscribes to the letter sent by the International Network of Insurance Associations (INIA) to the FATF in response to this consultation.

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

General remarks

The CEA welcomed the particular attention to the life insurance industry in the FATF's first consultation paper, especially the recognition that some terms/requirements apply differently in the life insurance industry than in other sectors. The insurance industry welcomes this kind of sectoral differentiation in the FATF Standards.

However, the CEA regrets that no further work was done in this regard in the 2nd consultation round. The CEA's main concern is whether the efforts required by insurers in order to implement the prescribed measures are balanced with the ultimate outcomes. Due to its nature, the risk of money laundering through life insurance is different than in other industries and so measures taken to prevent Money Laundering and Terrorist Financing in the life insurance industry should be appropriate. Furthermore, the insurance industry has some specific characteristics which need appropriate attention. For example, the life insurance industry is an intermediated business, and as such more frequently uses third parties (brokers, banks ...) in the CDD process than other industries. In 2009, the FATF and the Life insurance Industry together developed a report on "Risk-Based Guidance for the life insurance industry". The CEA believes that this report provides appropriate principles for regulating the life insurance industry and the CEA would strongly support the FATF taking this paper into account when updating its standards for the Life Insurance sector.

1. Beneficial ownership**Recommendation 5**

The CEA welcomes the additional clarification given to the types of measures that financial institutions would be required to undertake to identify, verify and understand the identity and nature of their customers.

As a general remark, the CEA believes that the document issued by the FATF in February 2009 “Methodology for Assessing Compliance with FATF 40 Recommendations and the FATF 9 Special Recommendations”, provides appropriate criteria to define beneficiary and beneficial owner.

We would like to take this opportunity to highlight the difference in Life insurance products once more regarding the beneficial owner and the beneficiary of a Life insurance policy.

The beneficial owner, as referred to by the FATF recommendations, is the party owning and controlling the policyholder as legal person (or legal arrangement) and the assets of the policyholder himself. The CEA believes that for the purposes of AML/CTF standards, identification and verification should be limited to beneficial owners that are entitled to 25% or more of the property, as indicated in the Article 3 6 a (1), b(i) and (iii) of Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. A Life insurance contract has up to three different roles, being the Policy Holder, the Life Insured and the nominated Beneficiary. None of whom seem to coincide with the proposed concept of “beneficial owner”. In particular, The Beneficiary nominated in a Life insurance policy, a role that in many countries is not mandatory or could change multiple times during the duration of the policy, only plays a role if the insured event occurs, for example in case of the death of the insured. In other words the nominated Beneficiary plays no role at conclusion and during the duration of the Life insurance contract, only if the insured event occurs.

Consequently, the nominated Beneficiary shall not fall under the requirement to establish the beneficial ownership, their identification and verification, until such time there will be a payout to the nominated Beneficiary, for the before mentioned reasons.

It is important to recognise that for higher risks, for example in certain countries for every payment of at least EUR 15.000, insurance companies already identify the beneficiary (or beneficiaries) at pay-out to prevent potential fraudulent activities and that such measures should be deemed sufficient for the purpose of identifying the beneficial owner in the case of pay-outs.

The CEA also suggests establishing a central government registry for trust and partnerships where such a registry does not yet exist in order to have international consistency and to allow time and cost efficiency for insurers identifying and verifying beneficial owners. The registry could be used throughout the process, from policy issuance to payout, when non-natural persons are involved.

The clarification that is given on the type of measures that financial institutions would be required to undertake does not solve any of the remarks that are mentioned above. Therefore, the CEA suggests that appropriate attention is given to the timing and the 25% property threshold of identifying and verification of the beneficial owners of a life insurance policy. Additionally, a system, that is not overly burdensome, should be developed to make it feasible to obtain the required information. .

Recommendation 33 – Legal Persons

The CEA does not support that beneficial ownership information should be accessible to competent authorities through financial institutions. Financial institutions can try to obtain the necessary information regarding beneficial owners but cannot guarantee that they will actually receive (all) the information and thus be able to provide this information to the competent authorities. In our opinion, the local Authority should have access to the information about beneficial owners from companies, register of companies, etc

Preventing the misuse of bearer shares and nominee stakeholders would also imply important changes in national legislation that do not seem feasible.

Recommendation 34 – legal arrangements

Again, The CEA does not support that beneficial ownership information should be accessible to competent authorities through financial institutions. Financial institutions can try to obtain the necessary information regarding beneficial owners but cannot guarantee that they will actually receive (all) the information and thus be able to provide this information to the competent authorities. In our opinion, the local Authority should have the access to the information about beneficial owners from companies, register of companies, etc. However, here trustees are required to disclose their information to the financial institutions, making it more feasible for financial institutions to deliver the required information.

Please note that preventing the misuse of trust would imply important changes in national legislation.

2. Data protection and privacy

The CEA supports INIA's comments on data protection and privacy.

3. Other issues included in the FATF Standards

Further consideration of Politically Exposed Persons (PEPs)

The CEA welcomes the reference made to the RBA when dealing with family members and close associates of domestic PEPs. However, the RBA should be consistent in its application. All Money laundering or Terrorist Financing risks should be assessed individually based on their own characteristics. This consistency in approach should apply to PEPs whether they are foreign or domestic, given that not all foreign PEPs are high risk. Therefore, the CEA suggests applying a risk based approach to all PEPs regardless of their origins.

Currently, widening the scope of PEPs would put an administrative burden on financial institutions, including insurers. Additionally, even the most extensive PEP list cannot guarantee the correct identification of PEPs' family members and associates

Taking into account these practical difficulties in tracing PEPs, the CEA believes that current CDD measures are sufficient and that the RBA is enough to detect unusual situations. As such, only in the event of a certain risk, should it be checked whether these people, their family members or close associates are domestic or foreign PEPs, or if these people carry prominent functions for international organisations.

The CEA strongly recommends the **FATF to call on governments/supervisors to provide up to date PEP lists.**



16th September, 2011

The President
Financial Action Task Force
2, rue Andre Pascal 75775
Paris.

Dear Sir,

Re: Review of FATF Standards: Preparation for the 4th Round of Mutual Evaluation

The Committee of Chief Compliance Officers of Banks in Nigeria (CCCOBIN) welcomes the current second public consultation launched by the Financial Action Task Force (FATF) on 'The Review of the Standards – Preparation for the 4th Round of Mutual Evaluation.'

The CCCOBIN is the Committee of Chief Compliance Officers of Banks in Nigeria. The Committee is an independent and well respected advocate of best practices and standards on compliance matters in Nigeria.

CCCOBIN is involved in the exchange of ideas and experiences on matters relating to anti-money laundering and countering of terrorist financing in particular, and compliance in general, as they affect Banks and the financial services industry.

CCCOBIN wishes to seize this opportunity to highlight the key proposals that the FATF should consider in reviewing the FATF 40+9 recommendations in the preparation for the 4th Round of Mutual Evaluation:

5. Targeted financial Sanctions in the terrorist financing and proliferation financing contexts (sub-section 20).

In addition to the existing proposals, countries should be required to establish bodies or empower existing bodies to take charge and be responsible for freezing and confiscating terrorist assets as it is obtained with OFAC of the US and HMT of the UK.

6. The Financial Intelligence Unit: Recommendation 26

In addition to the existing proposals on the roles and functions of the FIU, countries should be required to ensure that the FIU is independent and adequately staffed to enable it perform its functions effectively.



8. Other Issues included in the revision of the FATF Standards

8.2 Risk-based approach in supervision

There has been a lot of hullabaloo on the risk-based approach to supervision to AML/CFT, KYC, Audit, etc. However, in practice as evident in some jurisdictions, there is no difference between what was obtained in the Compliance approach era and what is obtained today in the risk-based approach era. It would therefore be necessary to take the proposal beyond the current requirement that a risk-based approach should apply to the supervision of financial institutions and DNFBPs to a level where the risk-based approach could be better understood through a practical rather than theoretical vigour. In a similar manner to the proposal to Recommendation 5, it would therefore be necessary to specify more clearly what the risk-based approach to supervision entails.

8.3 Further consideration of Politically Exposed Persons

The proposal that enhanced due diligence (EDD) could be required (on a risk-based approach) for family members and close associates of domestic PEPs as against the automatic EDD that is proposed for family members and close associates of foreign PEPs (i.e. persons carrying out prominent functions for international organizations) should be revisited. Foreign PEPs and Domestic PEPs should be treated equally and the risk-based approach to EDD proposed for domestic PEPs should be expunged to avoid varying interpretation and subjectivity. Also, it would be very necessary to define "prominent functions" in relation to international organizations and assignments to avoid ambiguity and varying definition.

Yours faithfully,

On behalf of the Committee of Chief Compliance Officers of Banks in Nigeria



Pattison Boleigha
Secretary

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Dr. Jens Weidmann
Dr. Theodor Weimer
Rainer Wunderlin
Prof. Dr. Rüdiger von Rosen
(Managing Director)

20 September 2011

Dear Mr. Del Bufalo,

we would like to thank you for the opportunity to give comments on your consultation paper "The Review of the Standards – Preparation for the 4th Round of Mutual Evaluation – Second public consultation" from June 2011 as an interested party. Deutsches Aktieninstitut is the association of German exchange-listed stock corporations and other companies and institutions with an interest in the capital market.

Please find enclosed our position. For any further questions please do not hesitate to contact my assistants Dr. Cordula Heldt and Dr. Claudia Royé or myself.

Yours faithfully



Prof. Dr. Rüdiger von Rosen

Enclosurement

Deutsches Aktieninstitut's Comments on FATF's "Review of the Standards – Preparation for the 4th Round of Mutual Evaluation" Second public consultation

September 2011

About us

Deutsches Aktieninstitut e.V. (DAI) is the association of German exchange-listed stock corporations and other companies and institutions with an interest in the capital market. As an independent, non-profit institution, DAI is committed to enhancing the conditions for Germany as a financial centre and for equity as an investment and financing instrument at all levels of society and in the political domain. DAI works in Berlin as well as in Brussels to improve the regulatory framework of the capital market and for the benefit of its members.

Comments on the Consultation Paper

Introductory Remarks

DAI acknowledges the great significance of the work and aims of FATF and supports the German Federal Republic's commitment to the FATF and its Recommendations. Therefore we very much welcome the idea of giving more interpretative notes for the implementation of the Recommendations into national law. DAI appreciates the possibility to give comments as an interested party to the proposals of the FATF focusing on the Recommendations regarding legal persons and legal arrangement. In general, DAI is concerned that in some points the wording of the proposed ideas are too extensive or not sufficiently clear.

1. Beneficial Ownership: Recommendations 5, 33, 34

1.2. Recommendation – Legal Persons

DAI welcomes FATF's approach to develop an interpretative note specifying the requirements of Recommendation 33.

Recommendation 33 states that "Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. In particular, countries that have legal persons that are able to issue bearer shares should take appropriate measures to ensure that

they are not misused for money laundering and be able to demonstrate the adequacy of those measures.”

Beneficial Ownership

DAI is of the opinion that companies should not be responsible for holding both basic information about their beneficial ownership as considered in number 10 bullet point 1 (a). The determination of „beneficial ownership“ throughout the EU is a big legal and practical issue. A lot of efforts are being undertaken to establish an EU-wide definition of the term and to break down cross border barriers in intermediary chains.

Beneficial ownership has international dimensions that companies would face if international investors buy their shares. The obligation to get the information about the beneficial owner (which can be the intermediary in some jurisdictions) must not be at the expense of companies that are not able to violate diverse international interpretations and in a practical respect intermediary chains. Still, companies with bearer shares that face higher costs for registry services if they are traded on an organised market would appreciate higher transparency of nominees, so that the higher costs pay off. If the nominee shareholder is an intermediary the customer of the intermediary is rather able to insist on transmitting his identity to the company because if it is not transmitted the customer can change to an institution that offers the service to disclose the identity.

So, in any event, there should be a safe harbour for companies.

Bearer Shares

DAI regards the requirements of Recommendation 33 as possibly very extensive, especially when it comes to the question of bearer shares. Bearer shares are a wide-spread traditional German corporate institution and an important capital market instrument and have as such basically become part of the guaranteed freedom of action. New requirements that restrict this freedom have to be measured and balanced out carefully against the following principles that stem from German constitutional law: they have to be necessary, adequate and appropriate.

a. Are measures against bearer shares necessary?

Preventing money laundering and terror financing are very important aims but inventions ought to be justified taking into account the extent to which bearer shares could be realistically used for criminal aims. We do not see the high potential of misusing bearer shares of non publicly listed companies for these offences due to corporate and tax legislation. The FATF stated a lack of transparency in Germany (Third Mutual Evaluation Report of Germany, Feb 2010, p. 250). Unfortunately there was no argumentation given how money laundering or terror financing could be done by purchasing bearer shares of non-publicly listed stock corporations. We are missing reasons how bearer shares can be used for money laundering reasons as well in the Recommendations itself, in its interpretative notes so far, in the Mutual Evaluation Report as in any other given guidance. As stated above, bearer shares have a long tradition in Germany. From 17,000 stock corporations in Germany,

about 60 % issue registered shares, the rest issues bearer shares.¹ Therefore, please find our thoughts sketched in the following.

We consider the risk of money laundering to be rather low and would like to explain why:

(1) From a criminal's point of view investing in bearer shares of a non listed company where there is no conspiracy with management for money laundering reasons seems to be too risky for regulatory and practical reasons. DAI has examined the ways investors can sell shares of companies in a position for the German Federal Constitutional Court (Bundesverfassungsgericht) for a proceeding in which the question of liquidity of shares of non listed companies, companies that have their shares admitted to trading on a regulated market and such admitted to trading on a non regulated market is important. We came to the conclusion that there is liquidity for both regulated and non regulated markets because of institutionalised market making², but not for shares that are not traded on such organised trading platforms.

For illiquid shares only few private organisations offer the service to match potential sellers and buyers of shares. As there mostly are no stock prices, market makers or analysts available, the price of such shares may have to be freely negotiated taken into account the (few) information available on non listed companies like the annual report. Even if there is a chain of "buyers" finally money launderers would face the risk of either not finding a real buyer or only being able to sell their shares to a price much lower than invested. So, after "parking" the money the realisation of the "investment" seems to be very difficult. We assume, though, that the more shares a money launderer owns, the more entrepreneurial the participation in an non listed company becomes, the more likely he is able to sell the shares to an appropriate price to a buyer with a professional business interest. Holdings of 25% of a small company (as a possible threshold, see our statement below) are not unrealistically high.

(2) If a company is founded only for money laundering reasons without real operational business and in conspiracy with management and shareholders this may be detected due to German regulation. First of all, tax authorities will check the tax balance sheets. Also, annual reports have to be audited. Small corporations' annual reports do not have to be audited (due to section 267 para. 1 German Commercial Code) but their annual reports as well as those of bigger companies have to be published in an electronic way on an official website (www.ebundesanzeiger.de) and are easily accessible for everyone which additionally helps to examine suspicions.

¹ Study of Hoffmann/ Bayer about the dissemination of registered shares in Germany, published in January 2011.

² Non regulated, but organised markets like the "entry standard" of the Deutsche Börse AG are in our view to be considered as recognised Stock exchanges in the sense of the Review paper because of transparency obligations and because the shares have to be deposited with a financial institution in order to be traded.

b. Are there adequate and appropriate measures?

(1). Prohibition of bearer shares

We see a point for the need to have access to adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion in case of strong suspicion. However, as stated above, we do not believe that there are many opportunities to purchase a mentionable amount of bearer shares of non publicly listed companies under the actual laws of money laundering surveillance and transparency duties of German companies.

Surely the prohibition of bearer shares for non publicly listed companies would be a possible measure to prevent money laundering with this instrument. Some countries have interpreted Recommendation 33 that way and recently have enacted such an abolition recently. But DAI would be very reluctant towards a complete prohibition of bearer shares for non publicly listed companies. We would regard this as an inappropriate intervention into the freedom of scope and of the right of companies to give themselves constitutions. We believe that it has to be a basic right of the company and its shareholders to choose whether they issue bearer or registered shares and therefore would consider fighting possible criminal action with less interventional means.

(2) Therefore we very much appreciate FATF's ideas on the alternatives of preventing the misuse of bearer shares or bearer share warrants in number 10 point 3. Here, the FATF foresees alternative possibilities apart from prohibiting bearer shares for non publicly listed companies. We very much welcome the idea of alternative (c) and (d). More than sufficient transparency would be given by immobilising bearer shares by requiring them to be held with a regulated financial institution or professional intermediary (c). Under EU and national law regarding anti money laundering measures the competent authority would have access to timely and accurate information where and by whom the shares are deposited as national financial institutions and central securities depository are obliged to maintain this information and give it to competent authorities under certain legal requirements.

Even more, DAI strongly welcomes the idea to prevent misuse of bearer shares by requiring shareholders with a controlling interest to notify to the company registries, and for the company to record their identity (d). This proposal is appropriate to balance out companies' freedom to issue bearer shares providing a high notification threshold like 25% or 30% against preventing money laundering and terror financing. This also corresponds with our assumption that a criminal can resell the shares of such amount easier than a lot of different shares of different companies. Facing a notification threshold will probably make bearer shares an even less attractive instrument for money laundering reasons. Nevertheless, we would appreciate a definition of "shareholders with a controlling interest". We understand this as shareholders who hold a controlling amount of shares. For non publicly listed companies which issue bearer shares low notification thresholds as they are in place for the capital market would be too burdensome and not appropriate.

Also, we would suggest a general exemption for companies within group organisations because of the reporting obligations of group structures and affiliates.

Preventing the misuse of nominee shareholder in number 10 bullet point 4 (a) and (b)

In order to help companies with registered shares DAI welcomes FATF's intentions. DAI sees problems for beneficial ownership, though, see our comments above.

1.3 Recommendation 34 – Legal Arrangements

Concerning the Recommendation 34 and its interpretation DAI sees problems because there seems to be no restriction at all regarding the scope and practical implementation especially of parts of the measures that FATF mentions in number 12 to prevent the misuse of trusts and to reach a higher level of transparency. The measures especially mentioned in number 12 bullet points 1 and 2 seem to us very extensive. To give trustees a legal obligation to obtain and hold beneficial ownership information about trusts in any case can cause burdensome problems in practice.

Response to the Financial Action Task Force's second public consultation on the Review of the Standards – Preparation for the 4th Round of Mutual Evaluation

September 2011

Eurofinas is entered into the EC Register of Interest Representatives with ID N° 83211441580-56

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ABOUT EUROFINAS

Eurofinas, the European Federation of Finance House Associations, is the voice of consumer credit providers in the EU. As a Federation, Eurofinas brings together associations throughout Europe that represent finance houses, specialised banks, captive finance companies of car, equipment, etc. manufacturers and universal banks. The scope of products covered by Eurofinas members includes all forms of consumer credit products such as personal loans, linked credit, credit cards and store cards. Consumer credit facilitates access to assets and services as diverse as cars, furniture, electronic appliances, education, etc. It is estimated that together Eurofinas members financed over 324 billion euros worth of new loans during 2010 with outstandings reaching 824 billion euros at the end of the year.

**For further information about this Eurofinas consultation response, please contact:
or visit www.eurofinas.org.**

1. INTRODUCTORY REMARKS

Consumer credit providers active in Europe fall within the scope of the anti-money laundering rules applicable in the EU jurisdiction: the Third Anti-money Laundering Directive 2005/60/EC (the “3rd AML”) and Commission Directive 2006/70/EC (the “Implementing Measures”).

Eurofinas, the European Federation of Finance House Associations, welcomes the opportunity to provide comments on the FATF Review of the Standards in preparation of the 4th round of mutual evaluation.

As a member of the European Banking Industry Committee (EBIC), Eurofinas fully endorses the EBIC response to this public consultation.

In addition to the comments submitted by EBIC, Eurofinas wishes to emphasise the low level of anti-money laundering (AML) risk posed by consumer credit products.

We hope that our observations will duly be taken into account and remain at the FATF’s disposal should any further questions arise.

2. CONSUMER CREDIT IS AN INHERENTLY LOW RISK TRANSACTION

Eurofinas believes that the provision of consumer credit fundamentally is a low risk transaction for AML purposes.

The European Commission agrees with this fact as evidenced through the Implementing Measures to the 3rd AML (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...”

At national level, the spirit of these rules indicating that consumer credit is a low risk transaction has not always been followed. This is evidenced by the data contained in the following box.

Summary of 2009 Eurofinas survey results on CDD in consumer credit transactions

Question:

Is the provision of a consumer credit considered in your country as an activity with only “little risk” – as referred to in the 3rd Anti-money Laundering Directive (paragraph 11 of the introduction, as well as Article 2 and Article 8(2)), thereby exempting the credit provider from needing to comply with (some of) the information requirements contained in the Directive (e.g. copies of utility bill not required/passport not required for the provision of a consumer credit)?

The answers to the survey are varied. For example, in Finland, the provision of consumer credit is not considered as a low risk activity whereas in Germany, the face-to-face provision of consumer credit and sales financing up to a limit of EUR15000 is considered to be a low risk activity (in accordance with the 3rd AML and the Implementing Measures).

At the time of writing, in other countries such as Poland and Sweden, no specific guidance on when a consumer credit transaction can be classified as low risk has been provided.

It is however interesting to note the following guidance provided by the United Kingdom regulator: *‘given that a loan results in the borrower receiving funds from the lender, the initial transaction is not very susceptible of the placement stage of money laundering.’*

This indicates that whether a low value consumer credit loan is made face-to-face or through distance methods, the risk of money laundering is low.

There is little evidence to support the theory that consumer credit transactions should be regarded as an activity needing enhanced customer due diligence (CDD).

Consumer credit is an inherently low risk transaction As a vehicle for money laundering, consumer credit is ineffective

The banking industry, supervisory authorities and law enforcement officials, have historically considered consumer credit transactions as posing a lower risk of money laundering compared with most other financial products and services. The sophisticated application screening and fraud monitoring systems employed in relation to consumer credit products combined with restrictions on cash payments, cash access and credit balances, make them less effective as a vehicle for money laundering.

Using credit cards as an example, 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) credit line facilities generally limit the amount of money that can be accessed by account holders; ii) there are similar limitations on the ability of a card holder to insert cash (e.g. through repayments) into the financial system; and iii) settlement payments by card holders are generally required to be denominated in local currency, and therefore the funds used to make loan payments will already have been placed into the local regulated banking system before reaching the credit provider)(1).

Loan repayments

One basic reason why consumer credit transactions show a low risk of money laundering is due to the payment methods used to repay a consumer credit loan.

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

This means that an applicant borrower has already been identified and CDD conducted on him/her by the financial institution holding their 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 low risk consumer credit 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 AML(2).

CDD checks made by another financial institution, and conducted before any credit agreement has been made, ensure that when loan repayments are made in the future from a borrower’s (usually current) account via a direct debit or standing order, as is commonly the case, the ‘paper trail’ for the loan repayments cannot be concealed. The origin of these repayments can thus be traced back without difficulty.

When a consumer credit provider then carries out its own CDD during the credit granting process, this is the second time that those checks are being made(3) on the applicant borrower. This means that a high level of CDD is built into any given consumer credit transaction, limiting the need for consumer credit transactions to be subject to specifically enhanced CDD as described by the 3rd AML and its Implementing Measures.

Furthermore, as a customer is generally unlikely to have the option to repay the loan in ways other than direct debit/standing order, it is extremely unlikely, if not impossible, for a criminal to launder money by repayment through a large cash deposit in favour of the credit provider. This fact in itself acts as a deterrent to criminals wanting to launder money in consumer credit transactions.

The status of consumer credit as a low risk transaction is evidenced by the low number of suspicious transaction reports.

1 Wolfsberg AML Guidance on Credit/Charge Card Issuing and Merchant Acquiring Activities.

2 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.*

3 As explained above, the first time CDD was carried out it was by the applicant borrower’s own bank (i.e. the financial institution holding the applicant borrower’s current account).

Negligible levels of suspicious transactions over a five and a half year period

In Germany, between 30 June 2002 and 1 January 2007, a survey on suspicious transactions was carried out by the Bankenfachverband⁴.

During this period, automotive captive banks, corporate and private banks had an average loan portfolio monitored of 7,823,600 credit agreements with private customers and 1,823,600 credit agreements with companies or self-employed persons.

Of these 9,647,200 monitored transactions there were only 16 transactions classified as suspicious. 4 out of these 16 reported suspicious transactions regarded fraud against a financial institution and the suspicion for AML purposes was precautionary only.

Hence only 0.0001% of these credit agreements studied in Germany over a five and a half year period were held to be suspicious transactions (and even then these were only classified as precautionary for AML purposes).

⁴ Eurofinas' German Member Association, representing consumer credit providers in Germany.

3. POLITICALLY EXPOSED PERSONS

Finally, in the context of point 8.3 of the FATF's second public consultation paper on the Review of the Standards, Eurofinas would like to stress that any amendments to the existing politically exposed persons (PEPs) regulation should take into account the different levels of risk for money laundering and terrorist financing that exist between various financial products.

Regulation of PEPs should be minimized where the product in question is inherently low risk, such as consumer loans. Even when the consumer in question applying for a consumer loan has the capacity of a PEP, it is the character of the product that determines in practice that the risk for money laundering or terrorist financing is low.

Launched in 1960, the European Banking Federation is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of almost 5000 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU only.

EBF position on FATF consultation paper- Review of the Standards

The European Banking Federation (EBF) would like to thank the Financial Action Task Force for the opportunity to participate in this written consultation on the potential changes to the FATF standards. This consultation complements the fruitful exchanges we had on the issue of the review of the standards over the last few months and enable us to intensify our discussion. We hope to continue this close cooperation in the future and would welcome sight of the FATF paper setting out the precise changes to the text of the 40+9 standards to consider the proposals in more detail.

The EBF generally welcomes some of the concrete proposals made by the FATF and the efforts made to clarify some key concepts. We would like however to stress the following specific points.

1. BENEFICIAL OWNERSHIP/ RECOMMENDATIONS 5, 33 AND 34

Current FATF requirements regarding legal persons or arrangements are already followed by European banks, in particular in the context of the requirements of the third EU AML Directive¹ and its obligations related to the beneficial ownership.

Clarifying the types of measures that could be used to properly implement the already existing requirements regarding beneficial ownership information could however be opportune as difficulties are still encountered by employees to identify the ultimately controlling natural person of a legal person. Such tasks require specialized research, which can be problematic when in some EU Member States, legal persons are under no statutory obligation to disclose natural persons or to register their names into publicly available accessible registers. Credit institutions therefore have to rely exclusively on the information given to them by the person opening the bank account for and on behalf of such legal persons. The FATF considerations in paragraph 10(a) have thus to be favoured. Besides, we also appreciate the proposals of paragraph 11.

The most practical solution would be for EU Member States/FATF members to grant access to public registries which would also need to provide reliable shareholding information on non-listed companies.

As discussed at the FATF Consultative Meeting in Paris in November 2010, the extension of beneficial ownership to “management” structures 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. Anyway the definitions of “senior management positions” and “the senior management official” have to be made clearer to be workable.

2. DATA PROTECTION AND PRIVACY: RECOMMENDATION 4

The 40 Recommendations requires an extensive processing of personal data, especially when it comes to Know Your Customer. It may also be the case that an institution refrains from initiating a business relationship because the person or entity does not provide sufficient information to fulfill the customer due diligence requirements. Also in those cases there is a legitimate need for the institution to keep records of the individuals in order to prevent them from returning to the institution through a different channel.

The principle of a requirement addressed to authorities to have more mechanisms in place to better cooperate and coordinate on the the interplay between AML/CFT and data protection and privacy is welcome. It is essential that personal data can be processed in a similar way in all countries, especially for financial institutions with cross-border activities. In order to harmonize the data protection rules it is also important that the FATF further clarifies the requirements which the authorities have to meet.

The European Banking Federation is in favour of initiatives that will enable European banks to implement properly AML standards in ensuring the full protection of data in line with the EU Data Protection directive. It is indeed crucial for the European banking sector to be able to process data on AML/CFT and exchange information in an effective way. Legal certainty on the duties that banks must comply with is a key question in their day-to-day activities.

Besides, improving the current mechanisms allowing for international transfers of personal data, while it is ensured at the same time that personal data and privacy are well protected would also be welcome. We believe that conditions governing the exchange of data within groups of affiliated companies acting on the same level of data protection should be further harmonised and simplified. Such a framework would be for the benefit of European banks and their customers whose data could continue to be processed as securely as possible.

In addition, the proposed addition to Recommendation 4 should also seek to ensure that data protection legislation does not impact on the collection of customer information to assist with ongoing monitoring obligations and the mitigation of money laundering and the financing of terrorism.

3. GROUP-WIDE COMPLIANCE PROGRAMMES: RECOMMENDATION 15

The requirements for financial groups to have group-wide programmes against money-laundering and terrorist financing describe actually already the course of action followed by many European banks.

We particularly welcome the principle of policies and procedures for sharing information within the group for the purpose of global risk management.

However, regulators should keep in mind that certain jurisdictions do not allow an unlimited sharing of information for this purpose. In this case, banks cannot be obliged by one regulator to break the rules of another one. Therefore, it is the task of legislators to develop an international regulatory agreement for group-wide compliance.

4. SPECIAL RECOMMENDATION VII (WIRE TRANSFERS)

The European financial sector has taken substantial steps to establish the Single Euro Payments Area (SEPA) which, once fully operational will account for the bulk of EU payments. SEPA will solve some of the most pressing issues addressed in the proposed FATF amendment as far as the EU as a single payments area and jurisdiction is concerned. In this context, an EU legal framework² already ensures information requirements, and the respective rights and obligations of payment services users and providers. Additional obstacles to the straight through process could therefore be to the detriment of an effective and efficient payment service.

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

The suggestion to include full beneficiary information is unlikely to deliver additional support to the overall objectives of the FATF. Whilst on the one hand the proposal will create additional requirements for and hence be burdensome on clients, the expected benefit is going to be limited. The EBF believes that requiring additional beneficiary information is not an efficient contribution to the prevention/detection of AML/CFT. From a bank's perspective it is also unclear whether there might be an intention on the side of the FATF to consider mandating additional checking requirements on banks. Such an approach would on the one hand create significant reengineering and associated costs on the banking side, whilst on the other hand the actual ability of sending and intermediary banks to be able to check and confirm correctness of beneficiary information is not given, due to the fact that such data does not relate to their own clients and therefore is not held with these banks. Given that this fact is recognised in the consultation text, it is unclear what benefits the inclusion of full beneficiary information is intended to bring. As regards the input the FATF is seeking on banks' ability to check cross-border electronic funds transfers for completeness and meaningfulness of data we observe that straight-through processing of mass transactions generally does not allow for such checks. On the other hand, screening of cross-border payments for beneficiaries' names under sanctions rules is performed without any threshold.

Finally, we would like to reiterate that - as stated in the FATF decision of 2008³ and confirmed by the Basel Committee in its guidance of May 2009⁴, **"The European Union (EU) and the European Economic Area (EEA) are considered here as one jurisdiction": it is of utmost importance from a European banking and payments perspective that the EU continues to be clearly recognised as a single jurisdiction.**

² We would like to stress in particular that Article 74 (1) of the EU Payment Services Directive (Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on Payment Services in the Internal Market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC provides that: " If a payment order is executed in accordance with the unique identifier, the payment order shall be deemed to have been executed correctly with regard to the payee specified by the unique identifier".

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

⁴ Basel Committee on Banking Supervision's document "Due diligence and transparency regarding cover payment messages related to cross-border wire transfers" of May 2009, § 11

5. TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS

European financial institutions are fully committed to the fight against terrorist financing and already apply existing EU regulations implementing UNSCRs which contain provisions in case of failure to comply. The mentioned changes to Special Recommendation III are therefore not really considered as necessary.

6. THE FINANCIAL INTELLIGENCE UNIT: RECOMMENDATION 26

We favour initiatives that would improve the conditions in which Financial Intelligence Units can carry out their tasks.

In this context, we would also like to stress that European banks, as reporting entities, welcome meaningful, regular and useful feedback from their respective FIUs in response to the Suspicious transactions reports or suspicious activities reports they are required to fulfill. Effective and timely feedback is indeed valuable for European banks to help identifying priorities and shaping an appropriate risk-based approach within the European banking sector.

In addition the EBF would welcome an emphasis on the need for streamlined reporting for Financial Institutions to FIU and law enforcement agencies in order to avoid duplicate reporting of money laundering and fraud (predicate offences) to various enforcement agencies within the same jurisdiction.

7. INTERNATIONAL COOPERATION: RECOMMENDATION 40

We are very supportive of the proposed changes to Recommendation 40 to ensure more effective cooperation between competent authorities.

8. OTHER ISSUES INCLUDED IN THE REVISION OF THE FATF STANDARDS

No comment.

9. RISK-BASED APPROACH IN SUPERVISION

The EBF is in favour of an update to this recommendation to stress the importance of a risk-based approach in order to avoid supervisors and legislators applying more prescriptive rule-based obligations and supervisory techniques which undermine the principles and benefits of adopting a risk-based approach to manage and mitigate money laundering and terrorist financing risks. Without such an update, the risk of supervisors and legislators applying more prescriptive rules will become more probable, increasing the chances of inconsistency in interpretation under the risk-based approach.

10. FURTHER CONSIDERATION OF POLITICALLY EXPOSED PERSONS

Further clarification related to the requirements with respect to family members and close associates of Politically Exposed Persons (PEPs) can bring clarity to the current provisions, which we welcome. Identification of family members and close associates is a real challenge for Financial Institutions in the absence of authoritative lists of PEPs. Clarity is required in terms of the role of governments and legislators in supporting the development of lists and assisting Financial Institutions in meeting their obligations in respect of PEPs. This may also assist in managing the risk in a more meaningful manner.

* * *

Contact Persons: Sébastien de Brouwer, [and Séverine Anciberro](#), [_____](#)



European Banking Industry Committee

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

Brussels, 14 September 2011

EBIC'S RESPONSE TO THE SECOND FATF CONSULTATION PAPER ON THE REVIEW OF THE STANDARDS-PREPARATION FOR THE 4TH ROUND OF MUTUAL EVALUATIONS

The European Banking Industry Committee brings together European banking associations with a mandate to provide advice, assure a comprehensive consultation of market participants and ensure a representative view of the European financial industry. EBIC has been established by the main banking industry federations: the European Banking Federation (EBF), the European Savings Banks Group (ESBG), the European Association of Cooperative Banks (EACB), the European Mortgage Federation (EMF), the European Federation of Building Societies (EFBS), the European Federation of Finance House Associations (Eurofinas)/ the European Federation of Leasing Company Associations (Leaseurope), and the European Association of Public Banks (EAPB).

EBIC welcomes the continued dialogue with the FATF and the opportunity for further comments on the review of the FATF standards in preparation of the 4th round of mutual evaluations.

We appreciate the consideration by the FATF of points raised by our letter from 7 January 2011, such as the need for clarification of Beneficial Ownership (BO) identification and verification requirements, the need for public access points to BO information as well as technical limits to the information verification possibilities in cross border payments. However, EBIC would like to repeat its warning against the general tendency to impose on the private sector, what public authorities are struggling or are unable to provide.

Please find here more specific comments on the issues addressed in the Consultation Paper (CP) dated June 2011.

1. Beneficial Ownership: Recommendations 5, 33 and 34

EBIC welcomes the clarifications of the types of measures required to identify and verify Beneficial Owners. There are noticeable improvements in terms of clarity of proposed measures compared to the first consultation document.

It is, however, unclear what the FATF understands by “exercising control by other means” under point 1.1. A range of examples of “other means” could help to clarify. It should also be clarified how to understand “widely dispersed ownership interests”. EBIC still believes that for this purpose the 25 % threshold, which nowadays is commonly used as a worldwide standard should be used as a benchmark at FATF level. For financial institutions this threshold is helpful as an objective criterion, thus giving a clearer and appropriate standard concerning control from a company law perspective.

Moreover, the extension of beneficial ownership to “management” structures 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 most 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. Anyway the definitions of “senior management positions” and “the senior managing official” have to be made clearer to be workable.

EBIC also welcomes the considerations of the FATF on mechanisms of access to Beneficial Ownership information. However the FATF should not require financial institutions to serve as formal access points to collect and manage information on beneficial ownership as proposed under point 1.2. (a) or (b). This task should be exclusively assigned to the official register of companies. Difficulties are still encountered by employees to identify the ultimately controlling natural person of a legal person. Such tasks require sophisticated and specialized research. In some jurisdictions legal persons are under no statutory obligation to disclose the natural persons acting on behalf of them (or to register their names into publicly accessible registers). Banks thus have to rely exclusively on the information given to them by the person opening the bank account on behalf of such legal persons.

The most efficient and practical solution would be to grant financial institutions access to public registries which provide reliable shareholding information on non-listed companies. The FATF should encourage jurisdictions to promote company registers that provide the necessary information for BO identification and verification. 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.

As to Recommendation 33 the CP (Point 11) proposes exemptions for some select unlisted entities from due diligence requirements such as disclosure of BO information, provided the aforementioned institutions or entities are subject to AML/CFT supervision. Since the exemption under Recommendation 5 applies to publicly listed entities, it is, for the sake of consistency, recommended to extend the exemption under Recommendation 5 to unlisted entities that are subject to high standards of AML/CFT supervision which are comparable to those that apply in case of regulated financial institutions.

2. Data protection and privacy: Recommendation 4

An international understanding on how to implement key AML/CFT and data protection standards, which at the same time takes into consideration certain national specificities, is essential in a globally interconnected economic and financial environment.

Therefore EBIC welcomes the FATF considerations on how to enable financial institutions to properly implement AML/CFT standards while at the same time ensuring full protection of clients' personal data in line with data protection standards. It is indeed crucial for the European banking sector to be able to process data on crime and AML/CFT risks and exchange information in an effective way. We also welcome the reflections of the FATF on how to clarify the mechanisms for international banking groups, which face different national requirements.

A new obligation of authorities, within and between jurisdictions, to have better mechanisms in place to balance the often contradictory targets of AML/CFT on one hand and data protection on the other is a first positive step. However the inability of different authorities to sometimes agree on the appropriate mechanisms and balance between AML/CFT and data protection priorities should not lead to financial institutions finding themselves in legal uncertainty about their specific duties and procedures which is a key issue in their day-to-day activities.

We believe that conditions governing the exchange of data within groups of affiliated companies acting on the same level of data protection should be further harmonised and simplified. Such a framework would be for the benefit of financial institutions and their customers whose data could continue to be processed securely.

3. Group wide compliance programmes: Recommendation 15

The planned requirements for financial groups to have group-wide programmes against money-laundering and terrorist financing are in line with current practices of many financial institutions. We particularly welcome the principle of policies and procedures for sharing information within the group for the purpose of global risk management. However, regulators should keep in mind that certain jurisdictions do not allow an unlimited sharing of information for this purpose. In this case, financial institutions cannot be obliged by the regulator of one jurisdiction to breach the rules of another. Therefore, it should be a priority for legislators to develop an international regulatory framework that enables group-wide compliance by financial institutions and prevents the rise of home-host conflicts.

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

From a European banking and payments perspective we wish to reemphasise 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 Single Euro Payments Area (SEPA) which will be fully operational by 2014 and will then account for the bulk 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.

Therefore amendments to Special Recommendation (SR) VII and its Interpretative Note (INSR) should avoid an overly detailed approach and should focus more on general principles.

Current payment industry standards generally require the ordering bank to include the beneficiary account number (but not the beneficiary name) in domestic or SEPA payments (single jurisdiction). However, for international transfers standards require at a minimum the beneficiary name, the bank identifier (BIC) or other identifiers and only where available, the account number, to execute a transfer. Those differences according to the domestic or international character of a transfer have to be taken into account in order to avoid jeopardising the efficiency of a system which has been developed over several decades.

Moreover, requiring additional beneficiary information appears quite difficult from a practical point of view. The proportionality and usefulness – with regard to the purpose envisaged by some members of the FATF – of requiring further information on the beneficiary is also questioned. Finally, we believe that requiring additional beneficiary information is not an efficient contribution to the prevention/detection of money laundering and terrorist financing. It will only lead to additional costs, without any real benefits.

In the same context, we like to stress that is important that banks are not required to verify the content of the information accompanying the transfers as it would just be impossible for them to apply such a requirement.

We welcome the statement of the FATF that one should not require financial institutions (FIs) to verify the identity of parties to a transaction who are not their customer. In particular, intermediary FIs are not able to verify the identity of either the originator or beneficiary.

5. Targeted financial sanctions in the terrorist financing and proliferation financing contexts

European financial institutions are fully committed to the fight against terrorist and proliferation financing and already apply existing regulations implementing UNSCRs which contain provisions in case of failure to comply. The proposed changes with regard to more explicit measures against terrorism financing to Special Recommendation III are therefore not considered as necessary.

With regard to the extension of FATF requirements to proliferation financing European banks regard an entity-based approach (checking lists of natural and legal persons) as the only

feasible and cost-effective option when it comes to combating proliferation financing. Measures against proliferation financing are indeed already foreseen in the UN framework. However, the general reference to, or requirement of, "vigilance" in many proliferation-relevant UNSCRs is not helpful and has led to implementation difficulties for financial institutions. General vigilance is impossible to implement for financial institutions. It must be explained exactly to the credit institutions under which conditions and concerning whom exactly they would have to exercise vigilance. Any new FATF requirements "similar" to targeted financial sanctions should take this into consideration.

We would also like to stress again that the information provided for the purpose of freezing funds to financial institutions must be "actionable" and that mechanisms must be in place, including judicial procedures, to avoid financial institutions being drawn into unnecessary discussions with their customers. The FATF should also make sure that FIs will not incur any civil or criminal liability while assisting the authorities in the combating of proliferation financing.

Moreover lists of entities should not only contain sufficient information to allow clear identification beyond any doubt, but should be provided in standard data formats in order to avoid any bureaucratic burden and the risk of incorrect spelling.

As regards the input the FATF is seeking on banks' ability to check cross-border electronic funds transfers for completeness and meaningfulness of data we observe that straight-through processing of mass transactions generally does not allow for such checks. On the other hand, screening of cross-border payments for beneficiaries' names under sanctions rules is performed without any threshold.

6. The Financial Intelligence Unit: Recommendation 26

EBIC welcomes any initiatives that improve the conditions in which Financial Intelligence Units can carry out their tasks. In this context, we would also like to stress that financial institutions, as reporting entities, welcome meaningful, regular and useful feedback from their respective FIUs in response to Suspicious Transactions Reports or Suspicious Activity Reports they are required to file. Effective and timely feedback is indeed valuable for financial institutions to help identifying priorities and shaping an appropriate risk-based approach within the banking sector.

7. Other issues: Recommendation 6: Politically Exposed Persons

EBIC welcomes further clarification related to the requirements with respect to family members and close associates of Politically Exposed Persons (PEPs).

While EBIC understands the risk that may be associated with individuals with responsibilities in international organisations, the proposal to extend the definition of PEPs to individuals carrying out "prominent" functions for international organisations will lead to new implementation questions for financial institutions. For proper implementation the FATF should provide an official list of International Organisations as well as a list of the types of functions that are considered "prominent".

EBIC considers that public authorities should be able to provide lists of Politically Exposed Persons to reporting entities.

* * *

Dear Sirs,

Whilst supporting your proposals to amend the various recommendations as set out in your consultation paper dated June 2011, I wonder why you have proposed that information on the identity of nominee shareholders should be included on the register of directors (see recommendation 33 – Legal Persons) rather than on the register of shareholders?

With kind regards

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FEDERATION
BANCAIRE
FRANCAISE

Paris, September 16, 2011

FBF RESPONSE TO THE FATF CONSULTATION ON STANDARDS REVISION

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

The FBF welcomes the opportunity given by FATF to express its view on the potential changes to the FATF standards.

1/. Beneficial Ownership: Recommendations 5, 33 and 34 (Points 6 and 7)

The FBF welcomes the FATF proposal to clarify the already existing requirements regarding the identification and the verification of the identity of the customer and the beneficial owner, as well as the understanding of the nature of their business, their ownership and control structure, since, in practice, the Financial institutions faced, for some files, a hardship time to comply with those requirements.

Concerning the requirements of the FATF recommendations on beneficial ownership, the FBF would like to stress the following specific points:

- It is a State liability to ensure transparency of legal persons or legal arrangements through the register of company. An access to data collected at the time of incorporation and keeping up to date by the authorities shall be provided to financial institutions to ascertain the minimum basic data related to ownership and effective control of legal persons or legal arrangements.

- Identification of the beneficial owner shall be made by any available and appropriate means, which includes the acknowledgement of a certificate issued by the client.
- It appears that Public authorities rely increasingly on information collected by financial institutions under their AML/CFT obligations. The FBF would support a regulated framework for the use of AML/CFT data by public authorities.

1.1/. Recommendation 5 (Points 8 and 9)

The FBF is very supportive of the proposed changes to Recommendation 5. However, identification of the beneficial owners in the specific situation of equity payable to bearer (which are still available in some jurisdiction such as Switzerland) is a real challenge for credit institutions. The FBF propose to set up an international, harmonized frame of the minimum data that should be collected by register of company/ register of incorporation.

Nevertheless, the FBF consider also it is essential to include some flexibility in the identification of the beneficial owner and favour a possible recognition of numerous ways to identify the beneficial owner : client certificate, interview, certification of another FI for common clients....

1.2/. Recommendation 33 – Legal persons (Point 10)

The FBF would recommend enlarging information contained in the registers of companies which should include an internationally recognized minimum information on the company/ legal arrangements: the company name, legal form and status, the address of the registered office, basic regulating powers (e.g. memorandum & articles of incorporation), identity of directors, identity of shareholders (with the exception of the listed part) and when appropriate identity of beneficial owners.

In order to prevent the misuse of bearer shares and bearer share warrants, among the different proposals of the FATF, one of them consist in their prohibition (a). According to our comprehension, the prohibition suggested by the FATF would only concern materialized/anonymous bearer shares, without any possibility to identify the shareholders. This prohibition would only be directed at bearer shares and bearer shares warrants that guarantee anonymity of shareholders. As a consequence, it would not concern bearer shares that exist in our legislation ie dematerialization whereby the identity of the shareholders is always disclosed in a registry. Therefore, the FBF only supports the prohibition of bearer shares and bearer shares warrants that comes under the first category (materialized/anonymous bearer shares without any possibility to identify the shareholders). Failing that, the FBF would be positive about (b) the possible conversion of bearer shares to registered shares or share warrants and (c) the immobilisation of bearer shares by requiring them to be held with a regulated financial institution or professional intermediary. But, the FBF does not support (d) requiring shareholders with a controlling interest to notify the company, and the company to record their identity and suggests that the proposal be removed. Practically, Banks usually refuse to establish business relation with such customers considering that in this situation, a simple notification is not sufficient. Bearer shares are too “money laundering sensitive” to be used in forestalling and preventing transactions.

On the last proposal (last bullet point) the FBF fully supports option b) requesting the licensing of nominee shareholders (b) in order to prevent the misuse of such activity. The

FATF proposal to disclose the identity of nominators to a potential shareholder registry (a) is definitely improving the situation but in the FBF's view not sufficient to prevent the full misuse of nominee shareholders.

1.3/. Recommendation 34 – Legal Arrangement (Point 12)

First of all, The FBF support the FATF statement "*that there should be an equivalent level of transparency about the beneficial ownership of trusts and other legal arrangements, as there is about the companies and other types of legal persons*". The best way to achieve this goal would be to submit the Trust/ legal arrangements for AML/CFT obligations, including the above proposed changes like the license of the nominee shareholders, discloser of information related to the ownership and the control on the entity in the Register of incorporation, the submission of the trustee to AML/ CFT obligation....

Besides, we consider that the terms "financial institutions and DNFPBs" (point 12 second bullet) should be removed. It would be better to mention where information concerning the trustee, the beneficial ownership of the trust and the trust assets can be found.

(Point 13)

The FBF agrees with the work to work approach of the FATF on this issue and welcomes the concrete proposals made by the FATF in order to progress in the development of complete policies to combat money laundering and terrorist financing.

2/. Data Protection and Privacy: Recommendation 4 (Points 14 and 15)

The FBF agrees with the FATF proposal but intends to draw the FATF's attention on the importance of harmonization between the data protection rules and the AML/CFT obligations. The FBF believes that before modifying the FATF's standards, it is crucial to ensure that personal data can be processed in a similar way. Cooperation and coordination on this issue is absolutely essential.

3/. Group-wide compliance programmes: Recommendation 15 (Point 16)

The FBF welcomes group-wide programmes against money-laundering and terrorist financing and particularly the principle of policies and procedures for sharing information within the group acting on the same level of data protection. Nevertheless, in the FBF's view, the proposed addition to recommendation 15 should also expressly insist on the possibility to share information within all the entities of the group. It is crucial for the French banking industry to exchange information in an effective way as far as groups are organized with internal binding rules that regulate the exchange of information. Therefore, conditions governing the exchange of information within financial groups have to be simplified and harmonized. The FATF could also take this opportunity to clarify the rules to apply concerning affiliates of Financial Institutions that are not subject to AML regulations in consideration of their own activities.

Besides, the FBF intends to draw the FATF's attention to the fact that the proposed addition to recommendation 15 does not solve the issue of the possibility to share information in jurisdictions where the local law forbids such a communication.

4/. Special Recommendation VII (Wire-transfers) (Points 17 and 18)

The Special Recommendation VII adequately resumes the state of discussions. Regarding the full beneficiary information required by SR VII, the FBF welcomes the communication of the name and account number of the beneficiary but stress the fact that the beneficiary's address is not always available neither to the ordering FI nor to the Intermediary bank. In many instances the address is even meaningless as it relates to specific geographical and local practices.

The obligation of the intermediary bank shall be limited to the transfer of data laid on the wire transfer. If it shall be compulsory to transfer all the data mentioned in the wire, it is not the PSPs liability to add any missing information by asking the ordering or the beneficiary financial institution in particular for intermediary FI's.

Cross border wire transfer raise a serious legal concern related to the application of non european sanction lists (or even national list). As a consequence, the FBF would like to stress that all obligations concerning wire transfers' case have to be limited to the local sanctions lists.

Furthermore, the FBF would like to focus on the fact that European financial sector is establishing the Single Euro Payments Area (SEPA). SEPA will solve issues concerning information requirements, rights and obligations of payment services users and providers as far as the EU and the EEA continue to be clearly recognised as a single jurisdiction.

Therefore, it is of importance for the French Banking Industry to consider the EU and the EEA as one jurisdiction in order to relieve banks from their obligation to verify the identity of the beneficiary in domestic or SEPA payments.

**5/. Targeted financial sanctions in the terrorist financing and proliferation financing contexts
(Points 19, 20, 21 and 22)**

The FBF has no particular comment on this issue.

**6/. The Financial Intelligence Unit: Recommendation 26
(point 23)**

The FBF has no particular comment on this issue.

**7/. International cooperation: Recommendation 40
(Points 24 and 25)**

The FBF support a better international cooperation between the FIUs, mainly to simplify the reporting obligation in cross boarder situation.

8/. Other Issues included in the revision of the FATF Standards

**8.1/. Adequate/Inadequate implementation of the FATF Recommendations
(Point 26)**

The FBF has no particular comment on this issue.

(Point 27)

The FBF would suggest an emphasis on the need of transparency regarding the compliance of jurisdictions with FATF standards. All the mutual evaluation and detailed assessment

reports must be effectively published. The FBF welcomes the aim of the FATF to ensure that the implementation of the Risk Based Approach does not overlap, or even interfere with existing standards, the later having to be amended accordingly.

(Point 28)

This notion is key as the international FI's should be able to rely on uniform countermeasures ensuring a coherent handling of cross-border clients and/or transactions.

8.2/. Risk-based approach in supervision

(Point 29)

The FBF is very supportive of the proposed application of a risk-based approach in supervision.

8.3/. Further consideration of Politically Exposed Persons

(Point 30)

As it is difficult for Financial Institutions to meet their obligations in the identification of family members and close associates, the FBF supports the establishment of authoritative lists of PEPs close relatives/ associates.

Actually, the FBF is reluctant to expand the list of PPEs and would like to draw the FATF's attention to the disadvantages of such an expansion :

- enlarging the category of persons considered as PEP goes against the risk-based approach that should be built to tackle the major risk of corruption and not all types of corruption.
- this expansion will lead to a huge list which will lose in efficiency as it is possible to enhance the vigilance on accounts open to persons carrying prominent functions only. Considering all persons carrying out prominent functions for international organizations as "domestic" PEPs will definitely raise difficulties, mainly to identify the immediate family member and the persons known to be close associate.

The FBF welcomes the FATF proposal to apply automatic enhanced CDD measures to foreign PEP and risk based approach for domestic ones.

GERMAN BANKING INDUSTRY COMMITTEE RESPONSE TO THE FATF 2ND CONSULTATION PAPER ON THE REVIEW OF THE STANDARDS-PREPARATION FOR THE 4TH ROUND OF MUTUAL EVALUATIONS

Kontakt: Dr. Gernot Rößler

Berlin, 16. September 2011

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The German Banking Industry Committee (GEBIC) brings together German banking associations with a mandate to provide advice, assure a comprehensive consultation of market participants and ensure a representative view of the German financial industry. GEBIC has been established by the main banking industry federations: 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.

GEBIC welcomes the continued dialogue with the FATF and the opportunity for further comments on the review of the FATF standards in preparation of the 4th round of mutual evaluations.

We appreciate the consideration by the FATF of points raised by our letter from 7 January 2011, such as the need for clarification of Beneficial Ownership (BO) identification and verification requirements, the need for public access points to BO information as well as technical limits to the information verification possibilities in cross border payments. However, GEBIC would like to repeat its warning against the general tendency to impose on the private sector, what public authorities are struggling or are unable to provide.

Please find here more specific comments on the issues addressed in the Consultation Paper (CP) dated June 2011.

1. Beneficial Ownership: Recommendations 5, 33 and 34

GEBIC welcomes the clarifications of the types of measures required to identify and verify Beneficial Owners. There are noticeable improvements in terms of clarity of proposed measures compared to the first consultation document.

It is, however, unclear what the FATF understands by "exercising control by other means" under point 1.1. A range of examples of "other means" could help to clarify. It should also be clarified how to understand "widely dispersed ownership interests". GEBIC still believes that for this purpose the 25 % threshold, which nowadays is commonly used as a worldwide standard should be used as a benchmark at FATF level. For financial institutions this threshold is helpful as an objective criterion, thus giving a clearer and appropriate standard concerning control from a company law perspective.

Moreover, the extension of beneficial ownership to "management" structures 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 most 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. Anyway the definitions of "senior management positions" and "the senior managing official" have to be made clearer to be workable.

GEBIC also welcomes the considerations of the FATF on mechanisms of access to Beneficial Ownership information. However the FATF should not require financial institutions to serve as formal access points to collect and manage information on beneficial ownership as proposed under point 1.2. (a) or (b). This task should be exclusively assigned to the official register of companies. Difficulties are still encountered by employees to identify the ultimately controlling natural person of a legal person. Such tasks require sophisticated and specialized research. In some jurisdictions legal persons are under no statutory obligation to disclose the natural persons acting on behalf of them (or to register their names into publicly accessible registers). Banks thus have to rely exclusively on the information given to them by the person opening the bank account on behalf of such legal persons.

The most efficient and practical solution would be to grant financial institutions access to public registries which provide reliable shareholding information on non-listed companies. The FATF should encourage jurisdictions to promote company registers that provide the necessary information for BO identification and verification. 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.

As to Recommendation 33 the CP (Point 11) proposes exemptions for some select unlisted entities from due diligence requirements such as disclosure of BO information, provided the aforementioned institutions or entities are subject to AML/CFT supervision. Since the exemption under Recommendation 5 applies to publicly listed entities, it is, for the sake of consistency, recommended to extend the exemption under Recommendation 5 to unlisted entities that are subject to high standards of AML/CFT supervision which are comparable to those that apply in case of regulated financial institutions.

2. Data protection and privacy: Recommendation 4

An international understanding on how to implement key AML/CFT and data protection standards, which at the same time takes into consideration certain national specificities, is essential in a globally interconnected economic and financial environment.

Therefore GEBIC welcomes the FATF considerations on how to enable financial institutions to properly implement AML/CFT standards while at the same time ensuring full protection of clients' personal data in line with data protection standards. It is indeed crucial for the European banking sector to be able to process data on crime and AML/CFT risks and exchange information in an effective way. We also welcome the reflections of the FATF on how to clarify the mechanisms for international banking groups, which face different national requirements.

A new obligation of authorities, within and between jurisdictions, to have better mechanisms in place to balance the often contradictory targets of AML/CFT on one hand and data protection on the other is a first positive step. However the inability of different authorities

to sometimes agree on the appropriate mechanisms and balance between AML/CFT and data protection priorities should not lead to financial institutions finding themselves in legal uncertainty about their specific duties and procedures which is a key issue in their day-to-day activities.

We believe that conditions governing the exchange of data within groups of affiliated companies acting on the same level of data protection should be further harmonised and simplified. Such a framework would be for the benefit of financial institutions and their customers whose data could continue to be processed securely.

3. Group wide compliance programmes: Recommendation 15

The planned requirements for financial groups to have group-wide programmes against money-laundering and terrorist financing are in line with current practices of many financial institutions. We particularly welcome the principle of policies and procedures for sharing information within the group for the purpose of global risk management. However, regulators should keep in mind that certain jurisdictions do not allow an unlimited sharing of information for this purpose. In this case, financial institutions cannot be obliged by the regulator of one jurisdiction to breach the rules of another. Therefore, it should be a priority for legislators to develop an international regulatory framework that enables group-wide compliance by financial institutions and prevents the rise of home-host conflicts.

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

From a European banking and payments perspective we wish to reemphasise 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 Single European Payments Area (SEPA) which will be fully operational by 2014 and will then account for the bulk 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.

Therefore amendments to Special Recommendation (SR) VII and its Interpretative Note (INSR) should avoid an overly detailed approach and should focus more on general principles.

Current payment industry standards generally require the ordering bank to include the beneficiary account number (but not the beneficiary name) in domestic or SEPA payments (single jurisdiction). However, for international transfers standards require at a minimum the beneficiary name, the bank identifier (BIC) or other identifiers and only where available, the account number, to execute a transfer. Those differences according to the domestic or

international character of a transfer have to be taken into account in order to avoid jeopardising the efficiency of a system which has been developed over several decades.

Moreover, requiring additional beneficiary information appears quite difficult from a practical point of view. The proportionality and usefulness – with regard to the purpose envisaged by some members of the FATF – of requiring further information on the beneficiary is also questioned. Finally, we believe that requiring additional beneficiary information is not an efficient contribution to the prevention/detection of money laundering and terrorist financing. It will only lead to additional costs, without any real benefits.

In the same context, we like to stress that it is important that banks are not required to verify the content of the information accompanying the transfers as it would just be impossible for them to apply such a requirement.

We welcome the statement of the FATF that one should not require financial institutions (FIs) to verify the identity of parties to a transaction who are not their customer. In particular, intermediary FIs are not able to verify the identity of either the originator or beneficiary.

5. Targeted financial sanctions in the terrorist financing and proliferation financing contexts

German financial institutions are fully committed to the fight against terrorist and proliferation financing and already apply existing regulations implementing UNSCRs which contain provisions in case of failure to comply. The proposed changes with regard to more explicit measures against terrorism financing to Special Recommendation III are therefore not considered as necessary.

With regard to the extension of FATF requirements to proliferation financing European banks regard an entity-based approach (checking lists of natural and legal persons) as the only feasible and cost-effective option when it comes to combating proliferation financing. Measures against proliferation financing are indeed already foreseen in the UN framework. However, the general reference to, or requirement of, "vigilance" in many proliferation-relevant UNSCRs is not helpful and has led to implementation difficulties for financial institutions. General vigilance is impossible to implement for financial institutions. It must be explained exactly to the credit institutions under which conditions and concerning whom exactly they would have to exercise vigilance. Any new FATF requirements "similar" to targeted financial sanctions should take this into consideration.

We would also like to stress again that the information provided for the purpose of freezing funds to financial institutions must be "actionable" and that mechanisms must be in place, including judicial procedures, to avoid financial institutions being drawn into unnecessary discussions with their customers. The FATF should also make sure that FIs will not incur any civil or criminal liability while assisting the authorities in the combating of proliferation financing.

Moreover lists of entities should not only contain sufficient information to allow clear identification beyond any doubt, but should be provided in standard data formats in order to avoid any bureaucratic burden and the risk of incorrect spelling.

As regards the input the FATF is seeking on banks' ability to check cross-border electronic funds transfers for completeness and meaningfulness of data we observe that straight-through processing of mass transactions generally does not allow for such checks. On the other hand, screening of cross-border payments for beneficiaries' names under sanctions rules is performed without any threshold.

6. The Financial Intelligence Unit: Recommendation 26

GEBIC welcomes any initiatives that improve the conditions in which Financial Intelligence Units can carry out their tasks. In this context, we would also like to stress that financial institutions, as reporting entities, welcome meaningful, regular and useful feedback from their respective FIUs in response to Suspicious Transactions Reports or Suspicious Activity Reports they are required to file. Effective and timely feedback is indeed valuable for financial institutions to help identifying priorities and shaping an appropriate risk-based approach within the banking sector.

7. Other issues: Recommendation 6: Politically Exposed Persons

GEBIC welcomes further clarification related to the requirements with respect to family members and close associates of Politically Exposed Persons (PEPs).

While GEBIC understands the risk that may be associated with individuals with responsibilities in international organisations, the proposal to extend the definition of PEPs to individuals carrying out "prominent" functions for international organisations will lead to new implementation questions for financial institutions. For proper implementation the FATF should provide an official list of International Organisations as well as a list of the types of functions that are considered "prominent".

GEBIC considers that public authorities should be able to provide lists of Politically Exposed Persons to reporting entities.

Buenos Aires, September 15, 2011

Executive Secretariat

FATF

I am addressing this letter to you on behalf of the Group of Six (G6). The members of this group are: the Argentine Commerce Chamber (CAC), the Argentine Construction Chamber (CAMARCO), the Argentine Industrial Union (UIA), the Argentine Private Bankers Association (ADEBA), the Argentine Rural Society (SRA) and the Buenos Aires Stock Exchange (BCBA).

Due to the consultation process proposed by the FATF described in the Consultation Paper dated last June, called "The Review of the Standards - Preparation for the 4th Round of Mutual Evaluation, Second Public Consultation", we are sending to you in the enclosed annex our comments specially related to the "Further Consideration of the Politically Exposed Persons" and "Risk based approach in supervision", both subjects of great interest for the members of the above mentioned group. These comments are signed by most of the entities that are part of the G6 because some of them, due to time reasons, have not been able to provide their agreement.

In the preparation of our comments we have considered the local and international background material available, as well as the best practices regarding the prevention of money laundering and the financing of terrorism.

Yours truly,

NORBERTO C. PERUZZOTTI

Commission to Prevent Money Laundering and
the Financing of Terrorism of the G6 Group

COMMENTS ON THE REVIEW OF THE STANDARDS – PREPARATION FOR THE 4th ROUND OF MUTUAL EVALUATIONS – SECOND PUBLIC CONSULTATION

The comments included below have been grouped according to the issues submitted to consultation by the FATF in the document "The Review of the Standards - Preparation for the 4th Round of Mutual Evaluation, Second Public Consultation".

1. Further Consideration of the Politically Exposed Persons

FATF proposes that the individuals entrusted with prominent functions by an International organization, must be treated in the same way as the local PEP's.

Furthermore, it proposes that the requirements for foreign and local PEP's must be equally applied to family members or close associates of the PEP's.

Among the existing background material on the definition of Politically Exposed Persons, the following can be mentioned:

- FATF's No. 6 Recommendation and its interpretation notes.
- The definitions about PEP's developed by the Wolfsberg Group within the framework of frequent consultations made to said Group.

Regarding both proposals about the PEP's issues, we believe that it is extremely important to consider the following aspects:

- To specify the meaning of the words "family members" and "close associates", indicating in the first case the degree of kinship, and in the second one the relationships that would be included within the "close" group.
- To specify the meaning of the word "prominent function" in the case of international organizations.
- To indicate in the case of "international organizations" which is the reference involved, since in this respect there is a multiplicity of organizations, forums, etc, that could be included.
- To request the national authorities in charge of AML/CFT the preparation of a unified list that allows identifying the PEP's.
- To specify the concept of local Politically Exposed Persons, according to what is shown in FATF's Recommendation No. 6 interpretation note.

- To state precisely the concept of Politically Exposed Persons referred to in Recommendation No. 6, specially, emphasizing that it must keep a strict relationship with the performance of a public office position and the disposal of public funds, so the persons not showing the two above mentioned requirements should not be included in the PEP's category.

2 . Risk based approach in supervision

FATF proposes that the risk based approach be applied to the supervision of financial institutions and those of the DNFBPs (Designated Non Financial Business and Professions), including the Self-regulation Organizations.

In this respect, there is background material on the risk based supervision, such as:

- "The Guide to apply the criterion according to the risk to fight money laundering and terrorist financing - High Level Principles and Procedures" issued by the FATF in June 2007. This document includes in its Section 2 a Guide for Public Authorities that considers risk based supervision.
- The document called "Due diligence of client" (October 2001) from the Basel Committee on Bank Supervision, specially in Chapter IV – The role of supervisors, that establishes the essential elements that should serve as a guide, so supervisors can proceed with the task of designing or improving the national practices on supervision.
- The document called "Consolidated Management of the KYC risk" (October 2004) from the Basel Committee on Bank Supervision, specially the chapter on: The task of the supervisor, establishing guidelines about an effective control of the KYC risk under a consolidated base.
- The basic principles for an effective Bank Supervision, from the Basel Committee on Bank Supervision (October 2006), specially Principle No. 18, establishing that supervisors must be satisfied that the Banks have established adequate policies and processes, including strict rules about "know your client" that promote high ethical and professional standards in the financial sector, preventing the bank from being used, knowingly or not, in criminal activities.
- The document called "Basic Principles Methodology" (October 2006) from the Basel Committee on Bank Supervision, sets out a number of essential criteria, and additional ones, to evaluate the compliance with each principle.
- At the regional level, the GAFISUD (South American Financial Action Group) prepared a document on "Standard Procedures on Supervision" on this subject. The Central Bank of Argentina had an active participation in its preparation and discussion.

We believe necessary to make progress in an initiative aimed at the supervision organizations, reinforcing the concept of specialized supervision and control at AML/CFT.

In case of adopting standards with the above mentioned characteristics, in our opinion this would allow the following:

- To reinforce the financial systems and the DNFBP making them aware of the AML/CFT.
- To provide the financial systems and the economic players with tools that allow granting more certainty to their commercial relations, more specifically for the countries that adhere to the proposed standards.
- To generate information inputs that can be exchanged in the relationships between private parties and regulatory agencies.
- To differentiate those countries and entities not adhering to the proposed standards.
- To reduce uncertainties in the relations, since the new guidelines could help to differentiate the particular realities in each region, at the same time generating the specific procedures that consider such reality.

The specialized supervision/control diagram on AML/CFT, as an example, could be formed by at least the following elements:

- Implementation of a specific supervision area on this subject within the formal structure of the regulating/supervising agencies.
- Implementation of a qualified and trained inspection group on this subject, for example, similar to the experts that perform the mutual evaluations at the FATF.
- Planning of the financial system's inspection activities and those of the DNFBP, according to a risk oriented approach.
- To establish an inspection chronogram according to a risk matrix of the financial system and the economic sectors involved.
- To establish specific procedures in each financial entity or DNFBP, derived from the analysis of their risk profiles.
- To analyze the convenience of making independent controls as opposed to the traditional inspections regularly performed, for example regarding liquidity and solvency, in the case of financial institutions.
- To establish an inspection procedures manual which, as an example, could cover the following aspects:

- Evaluation of the background material corresponding to each financial entity or DNFBP on the subject (in relation to sanctions, performance of internal and external audits, information Systems, etc.).
- Evaluation of the control environment with respect to the AML/CFT.
- Evaluation of the computing environment and its implications with this subject.
- Evaluation of the monitoring controls covering the main operations.
- Evaluation and definition of different inspection strategies or a combination of them (on site and/or off site).
- Definition of design tests for the internal controls regarding this subject.
- Definition of compliance tests for the above mentioned controls (test requirements, evidence analysis, types of tests, evaluation of the tests results, conclusions, etc.).
- Definition of substantive tests (nature and scope of every test, criteria for sample selection, requirements for the programs, evaluation of the results, conclusions, etc.).
- Sampling policies.
- Establishment of criteria to prepare work papers.
- Resolution of critical issues.
- Reports issue.
- Policies to report suspicious operations.

The above mentioned framework would allow the supervisor to perform a strict specialized control regarding an adequate compliance with the regulation mentioned in previous paragraphs.

To complement the monitoring task, it might be adequate to perform evaluations and the subsequent application of specific marks, as a result of the above mentioned supervision, defining the components to be assessed and the assessment system.

To this end, the alternative of taking as a base the assessment system used by the FATF to evaluate the jurisdictional risk (country) regarding the AML and CFT could be considered, also taking into account the best international practices.

In this respect, as can be seen from the above, the FATF has made a significant progress regarding the evaluation of the jurisdictional risk (country) to prevent the ML / FT, and the mechanism used to this end has been very effective.

This initiative could represent a progress and/or a complement of the risk evaluation methodology used by the FATF. The aim is now to make the approach based on the evaluation of the institutional risk (financial institutions).

In our opinion, this assessment could be placed at a stage totally in agreement with the assessments used by the bank supervisors when they evaluate liquidity and solvency. Clearly, and with the purpose of increasing the protection of the financial systems' stability, it could grant an added value, thus complementing said traditional supervisory evaluations/assessments with the initiative described in this document.

Due to the foregoing, and considering the above mentioned background information, we believe it is necessary to make progress regarding the following:

- To define objective guidelines for the supervising agencies that adopt a supervisory methodology regarding the AML/CFT under a risk based approach. These guidelines could include, among others:
 - Public procedures for inspection/control.
 - Preparation of a specific supervision area regarding the AML/CFT in the supervising agencies.
 - Assessment of the inspectors group entrusted with the supervision regarding the AML/CFT under the risk based approach.
 - Development of an inspection manual with the above mentioned considerations.
 - To incorporate the performance of on-site and off-site tasks as methodology for the application of the risk based supervision.

- To define the guidelines for the DNFBP supervision under a risk based approach. In this respect, we believe it necessary to consider, among other issues, the following:
 - To define the agencies that will undertake the DNFBP supervision regarding the AML/CFT, especially in the cases where different supervising agencies are involved.
 - Public procedures for inspection/control.
 - To create a specific supervision area regarding the AML/CFT in the supervising agencies.
 - Assessment of the supervising inspection group regarding the AML/CFT under the risk based approach.

- Development of an inspection manual with the above mentioned considerations.
- To incorporate the performance of on-site and off-site tasks as a methodology for the application of the risk based supervision. These tasks will include, among others, the preparation of a risk matrix covering the activities included in Recommendation 12 as DNFBP, the preparation of an DNFBP ranking by risk level, and the performance of in-situ inspections.

Dear FATF and CFATF Secretariats,

In reference to Second Round of FATF Consultation Paper, please note that the Special Verification Intendancy (Guatemala's FIU) forwarded said CP to Compliance Officers from the private sector including banks, offshore banks, financial companies, insurers, credit cards, money transmitters, stock market, and credit unions.

After they answered a survey to convey their comments on each subsection of the consultation paper.

- 1.1 BENEFICIAL OWNERSHIP Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?
- 1.2 BENEFICIAL OWNERSHIP Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?
- 1.3 BENEFICIAL OWNERSHIP Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?
- 2.0 DATA PROTECTION AND PRIVACY Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?
- 3.0 GROUP WIDE COMPLIANCE PROGRAMMES Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?
- 4.0 WIRE TRANSFERS Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?
- 5.0 TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?
- 6.0 THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26 Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?
- 7.0 INTERNATIONAL COOPERATION Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?
- 8.1 "OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS Adequate/inadequate Implementation of FATF"
" Do you agree with subsection 8.1 of FATF's Consultation Paper?"
- 8.2 "OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS Risk-based approach supervision" Do you agree with subsection 8.2 of FATF's Consultation Paper?
- 8.3 "OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS
8.3 Further consideration of Politically Exposed Persons" Do you agree with subsection 8.3 of FATF's Consultation Paper?
- 9.0 GENERAL COMMENTS ON FATF'S CONSULTATION PAPER

Enclosed you will find xls document that details responses from Guatemala's private sector detailed as follows:

NO. SUBSECTION IN CONSULTATION PAPER	ISSUE	QUESTION	ANSWER	<u>PRIVATE SECTOR</u>	RESPONSE ADDITIONAL COMMENT
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Please do not hesitate to contact us if you need further information.

Best regards,

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NO. SUBSECTION IN CONSULTATION PAPER	ISSUE	QUESTION	ANSWER	PRIVATE SECTOR	RESPONSE ADDITIONAL COMMENT
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	BANK	
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	BANK	In the case of the State Trusts, it is difficult to know the identity of all the final beneficiaries, which creates risk for the Financia about this.
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	BANK	According to what is indicated in the subsection b) a legal framework should be considered in every country that establishes le beneficiary. Identify the final beneficiary identity previously and while the commercial relationship is established. In practice this is a very diff compliance of this subject and that don't affect the development of financial institutions should be evaluated.
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	BANK	
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	BANK	
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	BANK	Legal regulations should be strengthen in every country so that it can be effective.
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	BANK	
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	BANK	In State Trusts, the identification of the final beneficiary turns difficult in the case of management trusts or inheritance. This p the trustees doesn't work on generalities; there should be specific points for each type of instrument.
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	BANK	
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	BANK	
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	BANK	
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	BANK	
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	BANK	
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	BANK	Evaluate or make procedures in order to meet with the requirement.
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	BANK	
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	CREDIT CARD	
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	FINANCIAL CO.	
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	FINANCIAL CO.	The "Ley de Extinción de Dominio" -LED- (Spanish acronym) points out in its articles 71 and 75 that the stocks of Anonymou nominative, with this, who are the real beneficiaries will not be a secret anymore.
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	FINANCIAL CO.	Currently this recommendation is fully complied, for what is stated in Resolution JM-93-2005 Regulation for Credit Risk Mana recommendation will allow us to extend the information required in trusts operations.
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	INSURER	The legal procedure for the constitution and registration of companies must be checked, since nowadays is admissible when does and not enough information is required referring to the shareholders.
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	NO	INSURER	The change suggested is not considered practicable for the insurance field, taking into consideration that the insurance busir that there aren't different movements from the agreed premium; it could be applied, but only in special cases. Financial instit based on the risk level of each one of them that the information should be required to the clients.
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	INSURER	
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	INSURER	Those requirements should apply for the customers that quote in the stock too, in any case, it should be a decision of the obl risk evaluation.
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	INSURER	
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	MONEY TRANSMITTER	
1.1	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.1 of FATF's Consultation Paper regarding R.5?	YES	STOCK MARKET	
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	BANK	
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	BANK	The Trade Register allows including within the main purpose of the company (trade and patent of incorporation) the phrase " allow knowing the main purpose of the clients and their behavior. We think this situation must not be allowed.
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	BANK	It should be considered to establish a due diligence by the authorities responsible for the establishment of legal persons, to a formation.
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	BANK	
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	BANK	
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	BANK	
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	BANK	
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	BANK	This information could be managed by the Trade Register, in order that the identity of beneficial owners is available at the req banking institutions. Nowadays, the information obtained at the Trade Register is not enough. It is considered that this entity : settles the legal person's life and all its details, within those it should be registered information about taxation under which the
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	BANK	It is convenient that as a country (Guatemala) approves the law against Bearer Shares to implement the recommendation in F
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	BANK	
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	BANK	
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	BANK	
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	BANK	
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	BANK	
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	BANK	
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	BANK	In order to comply in 100% with this recommendation, it should be reviewed the legislation of the country. .

NO. SUBSECTION IN CONSULTATION PAPER	ISSUE	QUESTION	ANSWER	PRIVATE SECTOR	RESPONSE ADDITIONAL COMMENT
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	CREDIT CARD	
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	FINANCIAL CO.	
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	FINANCIAL CO.	The Trade Register should establish a control of shareholders of all societies. The form to start relationships with a Legal Person should request the name of the main shareholders.
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	FINANCIAL CO.	This review would help considerably in order to make consultations to confirm that the legal person is properly registered and documentation requested from these people.
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	INSURER	Companies should be responsible to have the real beneficiary information; however it would be helpful to report the information to the Register.
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	INSURER	
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	INSURER	
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	INSURER	Basic information on legal persons, must be requested and available at the Trade Register so financial institutions be able to
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	INSURER	
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	MONEY TRANSMITTER	
1.2	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.2 of FATF's Consultation Paper regarding R.23 Legal Persons?	YES	STOCK MARKET	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	BANK	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	BANK	The KYC's regulations of the beneficiaries of trusts should be strengthened. Mainly those that are constituted by the Government information from their beneficiaries. Additionally, this is considered a high risk product.
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	BANK	In practice, there are not established sources of information about the final beneficiary.
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	BANK	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	BANK	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	BANK	This will fully identify the participants, a situation that should be required.
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	BANK	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	BANK	The KYC is vital in order to create the appropriate profiles.
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	BANK	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	BANK	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	BANK	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	BANK	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	BANK	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	BANK	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	BANK	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	CREDIT CARD	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	FINANCIAL CO.	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	FINANCIAL CO.	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	FINANCIAL CO.	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	INSURER	Trusts can be managed by banks institutions in order to avoid the inappropriate use of these types of services.
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	INSURER	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	INSURER	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	INSURER	The competent authorities should obtain and share the information with financial institutions.

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1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	INSURER	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	MONEY TRANSMITTER	
1.3	BENEFICIAL OWNERSHIP	Do you agree with subsection 1.3 of FATF's Consultation Paper regarding R.34 Legal Arrangements?	YES	STOCK MARKET	
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	BANK	
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	BANK	
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	BANK	It has to be evaluated if this point can be included in the legal framework of every country.
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	BANK	
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	BANK	
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	BANK	It has to be approved in Law, of every country so that it can be viable and reliable.
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	BANK	
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	NO	BANK	Currently, Guatemala must protect sensible information about its customers, due to the extreme violent conditions that prevail
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	BANK	
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	BANK	
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	BANK	
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	BANK	This change is important for the guard of the information that other institutions provide, institutions that aren't governmental.
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	BANK	
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	CREDIT CARD	
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	FINANCIAL CO.	
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	FINANCIAL CO.	It has to be a mandatory regulation so that it can be assessed by all the countries in the same way.
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	FINANCIAL CO.	
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	INSURER	No
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	INSURER	The Public Information Access Law (Decree 57-2008) is a limit for the obligated persons in the compliance of the procedure
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	INSURER	
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	INSURER	
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	INSURER	
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	MONEY TRANSMITTER	Whenever the regulator require the information.
2.0	DATA PROTECTION AND PRIVACY	Do you agree with subsection 2 of FATF's Consultation Paper regarding R.4 Data protection and privacy?	YES	STOCK MARKET	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	BANK	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	BANK	

NO. SUBSECTION IN CONSULTATION PAPER	ISSUE	QUESTION	ANSWER	PRIVATE SECTOR	RESPONSE ADDITIONAL COMMENT
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	BANK	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	NO	BANK	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	BANK	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	BANK	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	BANK	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	BANK	The Banks and Financial Groups Law addresses this issue. The ALD risk administration must be known, applied and docun more effective.
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	BANK	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	BANK	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	BANK	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	BANK	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	BANK	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	BANK	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	BANK	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	CREDIT CARD	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	FINANCIAL CO.	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	FINANCIAL CO.	Is important that every institution comply with these requirements of the Basilea Committee, since it's good to have a good gu
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	FINANCIAL CO.	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	INSURER	No
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	INSURER	The Banks and Financial Groups Law states on its article 63 that there can be an exchange of information between banks ar
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	INSURER	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	INSURER	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	INSURER	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	MONEY TRANSMITTER	
3.0	GROUP WIDE COMPLIANCE PROGRAMMES	Do you agree with subsection 3 of FATF's Consultation Paper regarding R.15 Group wide compliance programmes?	YES	STOCK MARKET	
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	BANK	
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	BANK	In the case of wire transactions sent by the US correspondent banks, we consider that there should be cooperation from thei sends the transfers, in necessary cases; since there is not or not enough cooperation from them; this difficults the detection c
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	BANK	Considero recomendable fortalecer las medidas que apliquen para las empresas remesadoras, en vista que en muchos de k agentes pagadores, siendo la administracion de datos de las remesas administrada unicamente por las empresas remesado
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	BANK	
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	BANK	It is advisable to strengthen the measures that apply to the remittant companies, since in a lot of the bank cases they just act the remittances managed only by the remittant companies.
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	BANK	
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	BANK	
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	BANK	Transfer control turns difficult when the data depends on the systems managed by SWIFT, since the message they carry out
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	BANK	

NO. SUBSECTION IN CONSULTATION PAPER	ISSUE	QUESTION	ANSWER	PRIVATE SECTOR	RESPONSE ADDITIONAL COMMENT
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	BANK	
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	BANK	
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	BANK	
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	BANK	
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	BANK	WE COMPLY WITH WHAT ESTABLISHES THIS RECOMMENDATION.
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	CREDIT CARD	
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	FINANCIAL CO.	
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	FINANCIAL CO.	We don't make wire transactions of Crossborder Funds in our institution, and since we don't manage that, we can't give any
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	FINANCIAL CO.	
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	INSURER	The participating institutions in the transaction must warrantee the system of prevention according to the current regulations : information among them, which will allow to know more about the origin and destination of the resources transferred.
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	INSURER	
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	INSURER	
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	INSURER	
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	MONEY TRANSMITTER	
4.0	WIRE TRANSFERS	Do you agree with subsection 4 of FATF's Consultation Paper regarding SR.VII Wire transfers?	YES	STOCK MARKET	
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	BANK	
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	BANK	It is important to monitor the implementation results of the LED, since this law is the one that strengthens the disposals of this
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	BANK	
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	BANK	
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	BANK	
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	BANK	
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	BANK	
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	NO	BANK	
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	BANK	
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	BANK	
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	BANK	In the matters of immediate seizure, the order must come directly from the Attorneys Office (MP for its acronym in Spanish)
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	BANK	
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	BANK	
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	BANK	CURRENTLY, THIS COUNTRY COUNTS WITH THE APPLICABLE REGULATION IN ORDER TO COMPLY WITH WHA
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	CREDIT CARD	
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	FINANCIAL CO.	
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	FINANCIAL CO.	The obligated persons comply with the monitory established by the Superintendency of Banks.
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	FINANCIAL CO.	Now this recommendation can be fully comply with the recent approval and disclosure of the Decree 55-2010 "Ley de Extinci
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	INSURER	No

NO. SUBSECTION IN CONSULTATION PAPER	ISSUE	QUESTION	ANSWER	PRIVATE SECTOR	RESPONSE ADDITIONAL COMMENT
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	INSURER	
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	INSURER	
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	INSURER	
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	NO	MONEY TRANSMITTER	THE DOUBT ABOUT THIS RECOMMENDATION FOR SOME FINANCIAL ENTITIES, WAS THE FACT THAT FOR SOME ONES, APPLYING WHAT THIS RECOMMENDATION SAYS MAY BE COMPLICATED IF THEY DON'T HAVE A COURT
5.0	TARGETED FINANCIAL SANCTIONS IN THE TERRORIST FINANCING AND PROLIFERATION FINANCING CONTEXTS	Do you agree with subsection 5 of FATF's Consultation Paper regarding financial sanctions?	YES	STOCK MARKET	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	BANK	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	BANK	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	BANK	It should be strengthen the management of dissemination of ROS and other information regarding potential money launderin effective channel.
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	BANK	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	BANK	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	BANK	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	BANK	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	BANK	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	BANK	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	BANK	It is important that Financial Intelligence Units communicate the results of the RTS received.
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	BANK	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	BANK	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	BANK	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	BANK	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	NO	CREDIT CARD	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	FINANCIAL CO.	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	FINANCIAL CO.	The Special Verification Intendency, constantly requests information from the obligated persons, also it make it easier to prov law enforcement entities.
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	FINANCIAL CO.	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	INSURER	The level of access to information is crucial to the results of these entities, it also should be considered with due caution, infor Blacklists can be centralized and shared as reference sources for referrals.
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	INSURER	I think if this could be implemented it would greatly facilitate the work and scope of action of compliance officers.
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	INSURER	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	INSURER	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	MONEY TRANSMITTER	
6.0	THE FINANCIAL INTELLIGENCE UNIT: Recommendation 26	Do you agree with subsection 6 of FATF's Consultation Paper regarding Recommendation 26?	YES	STOCK MARKET	
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	BANK	
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	BANK	
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	BANK	The Compliance of this recommendation should be assessed, to know those countries that do not provide the necessary ass
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	BANK	
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	BANK	
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	BANK	It has to be regulated to all the participant countries, always keeping the information confidentiality.
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	BANK	

NO. SUBSECTION IN CONSULTATION PAPER	ISSUE	QUESTION	ANSWER	PRIVATE SECTOR	RESPONSE ADDITIONAL COMMENT
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	BANK	
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	BANK	
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	BANK	
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	BANK	
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	BANK	
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	BANK	Whenever the cooperation is in both ways, the exchange is convenient so that the cooperation exists.
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	NO	BANK	
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	CREDIT CARD	
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	FINANCIAL CO.	
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	FINANCIAL CO.	The cooperation must be reciprocal between the competent authorities and with other countries whenever the duly reciprocal
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	FINANCIAL CO.	
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	INSURER	No
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	INSURER	
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	INSURER	
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	INSURER	
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	MONEY TRANSMITTER	
7.0	INTERNATIONAL COOPERATION	Do you agree with subsection 7 of FATF's Consultation Paper regarding R.40 International Cooperation?	YES	STOCK MARKET	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	BANK	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	BANK	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	BANK	When indicating a due diligence about the client, you should consider the specific procedures to carry out this labor. Also ab impact on business management carried out by financial institutions.
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	BANK	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	BANK	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	BANK	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	BANK	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	BANK	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	BANK	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	BANK	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	BANK	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	BANK	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	BANK	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	BANK	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	BANK	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	BANK	

NO. SUBSECTION IN CONSULTATION PAPER	ISSUE	QUESTION	ANSWER	PRIVATE SECTOR	RESPONSE ADDITIONAL COMMENT
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	NO	BANK	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	CREDIT CARD	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	FINANCIAL CO.	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	FINANCIAL CO.	Definitely it is necessary to impose fines to the countries that don't implement GAFI's recommendations and to keep the assets comply.
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	FINANCIAL CO.	Definitely it is necessary
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	INSURER	No
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	INSURER	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	INSURER	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	MONEY TRANSMITTER	
8.1	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.1 Adequate/inadequate Implementation of FATF	Do you agree with subsection 8.1 of FATF's Consultation Paper?	YES	STOCK MARKET	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	BANK	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	BANK	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	BANK	The risk-based approach should not only be focused on the supervisory body, parameters must be created to be implemented as a guide to develop this management.
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	BANK	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	BANK	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	BANK	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	BANK	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	BANK	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	BANK	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	BANK	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	BANK	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	BANK	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	BANK	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	BANK	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	CREDIT CARD	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	FINANCIAL CO.	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	FINANCIAL CO.	The Superintendency of Banks is already working with the financial institutions in order to implement Risk Manuals.
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	FINANCIAL CO.	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	INSURER	No
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	INSURER	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	INSURER	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	MONEY TRANSMITTER	
8.2	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.2 Risk-based approach supervision	Do you agree with subsection 8.2 of FATF's Consultation Paper?	YES	STOCK MARKET	
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	BANK	
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	BANK	
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	BANK	It is important to provide clear and specific guidelines for PEPS client control.

NO. SUBSECTION IN CONSULTATION PAPER	ISSUE	QUESTION	ANSWER	PRIVATE SECTOR	RESPONSE ADDITIONAL COMMENT
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	BANK	
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	BANK	
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	BANK	
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	BANK	
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	NO	BANK	It will take a lot of administrative work to obtain information. Nowadays is difficult to obtain information about PEPs and their c yes I agree that should be included within the list PEP.
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	BANK	As possible in along with Financial Institutions and Financial Intelligence Units to create lists of relatives and close associates diligence.
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	BANK	There must be cooperation by al government authorities in order to develop a complete list of PEPS, in which include the far
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	BANK	Regarding with the identification of relatives of foreign PEPS our scope is almost nothing equally with partners. It is difficult to
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	BANK	
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	BANK	It is necessary to evaluate how to proceed to establish close associates, this because it carries an additional difficulty when re account the requirement.
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	NO	BANK	There would be a restriction to access to all information about the relatives, as well as associates by financial institutions.
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	CREDIT CARD	It is necessary to evaluate the establishment of close associates, because it carries out an additional difficulty.
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	FINANCIAL CO.	
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	FINANCIAL CO.	The only way to have identified the relatives of PEPS and those who serves for international organizations and their families, i update this information to all financial institutions.
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	FINANCIAL CO.	
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	INSURER	Must care for proper registration of a PEP at least at a local level, to stay updated and to have a reliable reference source, an associates when required.
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	INSURER	
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	INSURER	The competent authorities should have local information of PEPS and share it with financial institutions.
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	MONEY TRANSMITTER	
8.3	OTHER ISSUES INCLUDED IN REVISION OF FATF STANDARDS 8.3 Further consideration of Politically Exposed Persons	Do you agree with subsection 8.3 of FATF's Consultation Paper?	YES	STOCK MARKET	
9.0	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	Open Question	BANK	Is important the feedback about the above matters of the FATF Recommendations, and to expose the comments of the Obli
9.0	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	Open Question	BANK	Is important to consider that the above matters and the rest of the 40 + 9 recommendations, must the adopted by every cou specifically states which facts must be compliant. There has to be considered to not generate an unnecessary over-regulation t institutions. There are other types of institutions and entities that require prudencial regulations for the LD/FT prevention, whic prevention systems.
9.0	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	Open Question	BANK	Any effort that improves the LD/FT prevention regulation is possitive for Guatemala, taking into consideration the vulnerabilitie
9.0	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	Open Question	BANK	The unification of the procedures in all the countries will help to strengthen the controls, procedures and having more knowle
9.0	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	Open Question	BANK	We agree.
9.0	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	Open Question	BANK	Non.
9.0	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	Open Question	BANK	THERE HASN'T BEEN A WIDE COMMUNICATION BETWEEN THE GOVERNMENT AUTHORITIES AND THE PEOPLE SOCIAL PROBLEMS THAT THE LD/FT CRIMES MAKE, AND THE WAY TO COLABORATE IN ORDER TO ERADICATE
9.0	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	Open Question	BANK	We consider the standardization of all the FATF recommendations very important worldwide, and it should make a constant s compliant.
9.0	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	Open Question	BANK	We consider that the standars review is good in order that the countries perform best practices in the LD/FT prevention, and
9.0	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	Open Question	BANK	IN GENERAL, THE ADJUSTMENTS THAT THE DOCUMENT, THE COUNTRY AND THE FINANCIAL INSTITUTIONS ST OTHERS ARE BEING INTRODUCED LIKE THE LED.
9.0	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	Open Question	CREDIT CARD	IS IMPORTANT TO EVALUATE THE RECOMMENDATIONS FOR IMPROVE AND STRENGTH THE LD/FT PREVENTIO
9.0	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	Open Question	FINANCIAL CO.	The Only way of fighting against ALD/CFT is through the help of international institutions, that have as primary aim to teach tr regulations.
9.0	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	Open Question	FINANCIAL CO.	The review of the recommendations are considered positive, and they will help to strengthen even more the controls, to prev works.
9.0	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	Open Question	INSURER	In my opinion, based on the general knowledge of the CHN operations and since I work on the Insurance and Bonds Depart consider that the adjustments that will be presented and approved are positive in order to minimize the risk of being surprised
9.0	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	Open Question	INSURER	Is important to strengthen the recommendations with an view that is based on the risk and, at the same time, consider the lim application of the measures in order to not affect them. It will be very convenient that the modifications consider the explanati on the type of activity that the obligated person makes, since in practice is not applicable to leave them too general for some i
9.0	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	GENERAL COMMENTS ON FATF'S CONSULTATION PAPER	Open Question	MONEY TRANSMITTER	AS COUNTRY, IT WILL HELP TO SET BETTER CONTROLS, ALLOWING TO MITIGATE THE LD/FT RISK; RISING OUF

Mr. John Carlson
FATF/GAFI
2, rue Andre Pascal
75775 Paris Cedex 16
FRANCE

20th September 2011

Dear Mr. Carlson,

Re: FATF Consultation Paper, Second Public Consultation: *The Review of the Standards – Preparation for the 4th Round of Mutual Evaluations*

On behalf of the International Banking Federation (IBFed), we welcome the opportunity to submit these comments on issues the Financial Action Task Force (FATF) considers as it prepares for the Fourth Round of Mutual Evaluations. These comments supplement those we submitted on January 12, 2011, and address additional concerns identified by FATF members as FATF ensures the 40 Recommendations and 9 Special Recommendations (www.fatf-gafi.org) are up-to-date and relevant to detect and deter money laundering and terrorist financing around the globe.

This has been an extensive review that has been underway for over two years. While the review is both limited and focused, seeking to address deficiencies and emerging threats while maintaining the necessary stability in the Standards as a whole, the IBFed appreciates the important collaboration with the private sector. IBFed also appreciates changes made since the first Consultation Paper since they reflect many of the suggestions IBFed recommended in January. Going forward, IBFed and our members hope that FATF will continue providing opportunities for consultation with the private sector.

Beneficial ownership: Recommendations 5, 33 & 34

The current standards require transparency about legal persons and arrangements but the recently concluded third round of mutual evaluations found a “generally low level of compliance.” While FATF does not propose changing the existing standard, FATF does plan to clarify existing guidance to better outline the expectations for identification and verification of customers, including persons in senior management positions.

IBFed appreciates efforts by FATF to clarify expectations for identifying and verifying persons associated with non-individual customers as this has been a source of confusion. Clarifying what measures might be used to properly implement the existing requirements on beneficial ownership would help as financial institutions encounter difficulties in attempting to identify the ultimately controlling natural person or owner when the customer is not an individual.

At the outset, it would help to clearly articulate that this standard applies to all non-individuals and not just trust entities. Unfortunately, the term beneficial ownership gets confused with the term beneficiary, but the two are different and distinct legal constructs. Therefore, clearly stating that beneficial ownership is the control or ownership interest in any legal entity would be useful. In addition, it would help to specify that these standards apply to all legal persons or legal arrangements and that the term is not limited to corporations.

When addressing beneficial ownership, the first step is *identification* of the individuals covered so that whenever a customer of a financial institution is not an individual, the guidance helps determine who and which officials should be subjected to customer due diligence. Having guidance that outlines which individuals are meant when determining who controls a legal entity or who has the ownership interest worth attention would be helpful. And, given the breadth and variety of legal arrangements around the globe, general principles that help identify which individuals are of concern would be good.

If a company is a *publicly traded company*, information about beneficial ownership is very likely already available. For publicly traded companies, not only is there information available about the structure of the company, its management officials and its owners, but identification of these individuals is subjected to separate standards and supervisory expectations that verify that information. Therefore, it is less necessary for a financial institution to evaluate the data when opening an account or monitoring the account when it involves a publicly traded company. This guidance for publicly traded companies should also apply to any wholly-owned subsidiary or even controlled subsidiaries of a public company.

If there is a publicly-traded company, it still may be appropriate to place restrictions on *bearer shares* or *nominees*, since these forms increase the risks for money laundering or terrorist financing. At the same time, FATF should acknowledge that there may be legitimate reasons to use bearer shares or nominee names. For example, in some instances, need for confidentiality may be critical for perfectly legitimate business transactions that require the use of nominees. As a result, it is important to permit some level of flexibility and it may be more appropriate for FATF to identify these types of ownership as inherently risky but grant individual jurisdictions and financial institutions flexibility to implement controls to mitigate the risks rather than create an absolute bar that may have unintended consequences.

For any non-individual customers, but particularly entities that are not publicly traded, guidance should consider the availability of *public registries* that identify the ownership and management of a legal entity. Governmental authorities create these structures and IBFed believes it is incumbent on these same governmental authorities to create and maintain public registries. In creating and licensing these entities, governmental authorities are best-positioned and, in fact, the logical place for this responsibility. However, public registries are not always readily available nor do public registries always cover any and every type of legal entity.

The availability of public registries also goes to the second step in the process, *verification* of the individuals identified. Where public registries exist, authorities should make them available to financial institutions to verifying information provided by a customer. Where registries do not exist, the guidance should outline what steps should be taken to verify identity, and it is important that is be a risk-based approach. Equally important in the guidance is that while financial institutions may obtain information from customers about those who own or control a non-individual customer, FATF should acknowledge that without public registries, there may be no way for a financial institution to verify the information.

IBFed recommends that any guidance also takes into account what alternate mechanisms are available in different jurisdictions. Of course, the steps deemed reasonable will vary with the risk presented by the type of legal entity, but should also vary with the practical means available to verify identity. In some instances, faxed documents, cell phone photographs of documents or other means to verify records or addresses may be appropriate, but where it is reasonable under the circumstances, the guidance should take that into account and allow sufficient flexibility to financial institutions to determine what is reasonable.

Ideally, having public registries for any legal entity may be a worthwhile goal, but it is important to consider the practicalities and costs involved with creating such registries where they are not already in place. For example, if FATF issued a standard for a public registration system for corporations, setting up the system for newly created corporations alone would be challenging, particularly where they do not exist. Adding to that requirement a need to register the many existing corporations would be extremely complicated and burdensome. And, corporations are just one type of legal entity. There are many different types of legal entities, some that have existed for a very long period of time, and many that have not been registered in the past. Therefore, while public registries are an ideal goal, the practicalities and costs must be balanced against the burdens and use of resources needed to set them up. Where they do exist, they should be fully utilized. Where they do not exist, the goal should be to work towards a universal registry system over time. However, the obligation and costs for such registries properly lies with government authorities and should not be delegated to the private sector.

Finally, it is important to acknowledge that there are different levels of risk associated with different legal entities. Therefore, any guidance or standards should also outline the different risks associated with different legal entities. And, the guidance should articulate the definition and scope of “persons holding senior management positions.” Clarifying the measures expected to identify which persons are deemed controlling person as well as which individuals are deemed to be controlling persons would be appropriate.

Data protection and privacy: Recommendation 4

With increased international attention to data security and cybercrime, the potential for conflicts between data security, privacy and the varying standards in different jurisdictions is becoming increasingly challenging for financial institutions, particularly those that operate globally. The globalization of trade and finance requires consistent approaches and IBFed welcomes FATF taking steps to provide guidance to help balance these competing interests.

If financial institutions are expected to transmit information across borders, it is important to have clear and well-articulated standards and mechanisms for sharing information. It is also

important that financial institutions not be placed in the awkward and untenable position of having to comply with domestic standards on privacy and data security but be required to provide information to a subsidiary in another jurisdiction which may have conflicting standards. As a result, it is important to balance data security and privacy in such a way that allows governmental authorities and financial institutions to share information across borders without losing or sacrificing protections established for the information in the country where it is held. Similarly, it is important to create universally accepted standards that define when information can be shared.

The lack of protections for shared information has been a significant barrier to sharing information that could prove extremely useful to detecting and deterring money laundering and terrorist financing. Where information might lose the security and privacy protections in place in one country if released to a governmental authority or a financial institution in another country, even an affiliated financial institution, domestic authorities ban its release. This leads to inefficiencies and lost opportunities to combat fraud and criminal activities. Therefore, any step that FATF takes to overcome these obstacles is welcome.

Group-wide compliance programmes: Recommendation 15

Another question FATF is considering is whether financial groups subject to group supervision should be expected or required to have group-wide AML programmes. In fact, many internationally active financial institutions already institute such programmes for a variety of reasons, beginning with operational efficiencies and coordinated compliance efforts.

One of the distinct advantages to a group-wide programme is that it facilitates information sharing for global risk management and fraud prevention. However, it is equally important for FATF and individual regulatory authorities to recognize and acknowledge that legal and regulatory mandates in individual jurisdictions also come into play that affect and can limit these programmes. Different jurisdictions often impose different requirements and the result is that a financial institution is subjected to more than one regulatory regime.

The primary distinction is between the requirements in the country where the financial institution is chartered or based, the home country, and any other jurisdiction where that financial institution has a branch or operations, the host country. The mandates that apply to operations in the home country may not be identical or may even conflict with the mandates of the host country and financial institutions cannot be obligated by one regulator to break the rules of another one. Therefore, it is important for FATF to develop understandings and expectations that are clearly articulated and that provide appropriate guidance for resolving these conflicts or identifying whether it is the rules of the home country or the host country that control.

Special Recommendation VII (Wire transfers)

The goal behind recent changes to requirements for wire transfers has been to ensure transparency. While IBFed certainly appreciates the need for transparency, it is important that FATF acknowledge that rules should not be applied in a one-size-fits-all manner. When developing expectations for international wires, FATF should also acknowledge that individual countries have independent and varying payment systems with different settlement systems and transaction methods that have evolved over many years. These variations must

be taken into account to avoid jeopardizing an efficient and effective payment system. Therefore, any changes to Special Recommendation VII should avoid an overly detailed approach and focus more on general principles.

If changes to existing standards are recommended, it is important to explain what gaps are being addressed and why existing standards are insufficient. It is equally important to provide a careful analysis of the costs associated with these changes to demonstrate how the benefits from the changes will more than offset the costs. At the same time, FATF should consider that any changes are likely to cause disruptions to international payment systems at a time when many economies already are fragile, and this should also be factored into the equation of recommending changes.

The most important element for international wires and the point that should be the primary focus in setting standards should be the information an originating institution must include. It is the originating institution that is best positioned to ensure that all necessary information is included.

As FATF states, it is important that financial institutions not be expected to obtain information on parties to a transaction who are not their customers. IBFed agrees. While banks can screen for missing data-fields, it is neither practical nor possible to verify the content of information fields. A financial institution with no relationship to the originating customer cannot be expected to verify or provide missing data, and so the obligation must rest entirely with the originating institution that has the direct connection to the customer. For example, with certain cover payments, it may not always be possible for an intermediary institution to detect whether the transaction is an interbank transaction and whether information is missing, elements that FATF should consider when developing expectations and guidance. Ultimately, it is the responsibility of supervisors and appropriate authorities in the country where the originating financial institution is located to ensure that information is properly provided.

It is also important to distinguish between risks associated with different international payment systems, where there are clear differences between low-volume, high-value wholesale systems and high-volume, low-value retail systems. The need for the same level of information for all systems is unnecessary and not commensurate with the risks. This factor is also relevant when determining the need and use of thresholds for screening. Therefore, rather than creating a standard expectation for all wires, FATF should distinguish between the types of wires, the different systems and the risks associated with each type of system and develop expectations accordingly.

On the other hand, as stated in the FATF decision of 2008¹ and confirmed by the Basel Committee in its guidance of May 2009², "The European Union (EU) and the European Economic Area (EEA) are considered here as one jurisdiction," and so it is important from a payments perspective that the European Union continues to be clearly recognised as a single jurisdiction.

¹ See note to assessors under criteria VII.3 of FATF methodology p.54: <http://www.fatf-gafi.org/dataoecd/16/54/40339628.pdf>.

² Basel Committee on Banking Supervision's document "Due diligence and transparency regarding cover payment messages related to cross-border wire transfers" of May 2009, § 11

Targeted financial sanctions in the terrorist financing and proliferation financing contexts (Special Recommendation III)

Special Recommendation III addresses the freezing and confiscation of terrorist assets in accordance with United Nations resolutions. The primary change proposed for this Recommendation would be to focus entirely on targeted sanctions but not widening the scope of the existing requirements.

IBFed member financial institutions are committed to the fight against terrorist financing and apply existing sanctions rules, including those prescribed by the United Nations Security Council Resolutions (UNSCR). However, an issue that confronts financial institutions is balancing the many differing mandates of different sanctions programs. In part, this is the product of different countries implementing sanctions programmes that support that particular country's unique international relationships. It is therefore important for FATF to acknowledge the many variations in sanctions programs. While the UNSCR may serve as the basis, individual jurisdictions may not and frequently do not have identical sanctions programmes.

While the goals of freezing funds of designated persons, blocking transactions and reporting seized or blocked assets to competent authorities are extremely important, and while failure to comply with these requirements should be subject to fines and other penalties, IBFed urges FATF to work with the private sector to streamline and coordinate the application of sanctions across borders. Before outlining what should be done with sanctions and what penalties are appropriate for non-compliance, it would be more useful to outline how and when financial institutions can address conflicts in sanctions programmes.

In addition to addressing conflicts between sanctions regimes, another constant challenge faced by financial institutions is verifying that a possible match is a true match with the specially designated individual or entity on a sanctions list. FATF should encourage all governmental authorities to provide sufficient resources to help financial institutions resolve questions about whether a subject is truly the entity or individual covered by the sanctions programme, and this should include a reasonable timeframe for resolving uncertainties. Resolving these questions and conflicts are important to avoid unnecessary disruption of international commerce and to avoid unfairly penalizing innocent parties.

FATF also asks whether sanctions should be extended to proliferation financing. IBFed does not believe that it should. When discussing the role financial institutions can and should play in helping to detect and deter proliferation financing, a common theme arises. Fundamentally, international payments systems which have evolved over many decades were not designed to detect or identify illicit transactions. Instead, payment systems were created to move funds from one point to another efficiently and expeditiously. Similarly, the documents used to accomplish that goal, such as letters of credit and bills of lading, were never intended to be used to combat criminal activities. For the great majority of transactions, financial institutions do not have the necessary information that would let them distinguish between a transaction involving weapons of mass destruction and ordinary and perfectly innocent transactions. While a financial institution may be able to offer a limited supplemental and secondary role, the primary responsibility for detecting weapons of mass destruction properly rests with customs and export control officials at the border. It is customs officials that are best positioned to detect possible illicit cross-border movement of

goods and it is therefore customs officials that can and should be given the primary responsibility.

The Financial Intelligence Unit: Recommendation 26

Recommendation 26 outlines expectations that each country establish a financial intelligence unit (FIU) as a national centre for information on possible money laundering or terrorist financing. The proposed change to Recommendation 26 would update the interpretive note to provide additional clarification and better reflect the Egmont Group³ standards. The revision would focus on core principles of receipt and analysis of reports of suspicious activity and other information, including dissemination of that analysis.

Two critical points should be recognized. First, financial intelligence units (FIUs) and law enforcement agencies must acknowledge the costs associated with collecting information, whether it requires new processes and procedures, added software or more personnel. Whenever new information is requested, FIUs should be able to demonstrate that the benefits from the information collected are justified and outweigh the costs. In calculating these costs, in addition to the costs to the private sector, any costs for FIUs to properly use and analyze the data should also be considered as well as the impacts that may result from the data collection. Too many times, new information is collected without proper regard to the impact of its collection, including the possibility that transactions may be driven to underground or black market providers where they become virtually undetectable.

Second, it is important to ensure that effective and timely feedback is provided to financial institutions. Timely feedback gives financial institutions information that is useful for monitoring for criminal activity. It also provides financial institutions with guidance on how to submit data in the most helpful way for law enforcement needs. And finally, effective and timely feedback is vital to allow the private sector to identify priorities and develop an appropriate risk-based approach to combating money laundering and terrorist financing.

International cooperation: Recommendation 40

To facilitate international cooperation and information sharing across jurisdictions, FATF proposes to create modalities for “diagonal cooperation” and prohibit the use of unduly restrictive measures that constrain cooperation, efforts that IBFed supports. In addition, it would be appropriate for individual jurisdictions to ensure that they act in the spirit of reciprocity and not take independent unilateral actions. For example, unilateral demands for tax reporting and compliance without coordination undermine the spirit of cooperation and should be avoided.

Other Issues included in the revision of the FATF Standards

In addition to the preceding issues, there are a number of other elements FATF is considering.

Country Risks. Current standards outline expectations for steps to take when dealing with countries that do not adequately apply the FATF recommendations. Changes to the risk-

³ The goal of the Egmont Group is to provide a forum for FIUs around the world to improve cooperation in the fight against money laundering and financing of terrorism and to foster the implementation of domestic programs in this field. See www.egmontgroup.org.

based approach for these countries would be reflected in risk assignments for certain countries and would include strengthened obligations on financial institutions to identify and mitigate risks when dealing with those countries. When FATF places a country on the watch-list, providing expanded countermeasures to address those weaknesses would help financial institutions and governmental authorities properly assess the risks and determine appropriate steps to address the risks and so this is a step that IBFed supports.

Risk-based Supervision. FATF has been re-assessing the use of the risk-based approach for AML compliance supervisions. With the many demands placed on financial institutions

around the world following recent economic turmoil, including a host of new regulations and capital requirements, emphasizing the risk-based approach in AML/CFT efforts becomes increasingly important to ensure resources are targeted properly and efforts focused where they will be most productive.

Politically Exposed Persons (PEPs). The role of PEPs in international finance is one that merits continuing dialogue and analysis. This is an area where a risk-based approach is not only necessary but critical. At the outset, it should be acknowledged that different PEPs present different risks.

Guidance is badly needed to identify which individuals are PEPs. For example, it has been noted that a high-level official may have very little control over a country's finances while a low-level bureaucrat may have almost *carte blanche* over the public purse. While a specific country-by-country list of PEPs may not be possible or appropriate (due to the safety risks to those so identified), some outline to help identify PEPs is important. Additional guidance outlining how to determine how long an individual remains a PEP after leaving office would also be useful.

Equally important and also needed is guidance that helps identify which family members and associates of government officials are considered PEPs. Identifying a PEP can be difficult, but when it comes to family members and associates, it can be extremely challenging to identify whether an individual has a connection to a PEP. Even if a connection is identified, a financial connection may be even more challenging if not impossible to isolate. Therefore, IBFed welcomes an ongoing dialogue with FATF to articulate and define how to identify a PEP, how to identify associates of a PEP and how to identify family members of a PEP. Since it is the activities of the PEP that should be the focus, this dialogue should include further discussion whether it is truly necessary to include family members and associates.

Once a PEP is identified as a PEP, guidance and standards that identify the risks associated with a PEP and the appropriate steps to mitigate those risks would also be useful. For example, it may be entirely appropriate to identify a PEP at account opening but determine that the risks only require monitoring of transactions to detect unusual activity. However, once unusual activity has been detected, the necessary diligence may need to increase. Again, IBFed welcomes the opportunity to work with FATF to address these issues.

Outside of existing challenges with PEPs, FATF proposes that individuals entrusted with prominent functions by international organizations should be treated the same as domestic PEPs. However, there are outstanding questions whether it is entirely appropriate for an

international body to impose standards with respect to purely domestic issues, including defining what steps are required for domestic PEPs. While it may be appropriate to outline additional due diligence for government officials, it is not entirely clear that a well-developed standard for “domestic PEPs” yet exists. Clearly, further definitions are needed, starting by defining what is meant by “international organization” and “prominent function.”

Thank you for the opportunity to share our views on these critical issues. IBFed looks forward to a continuing dialogue with FATF to develop recommendations and steps that create an efficient and effective system that helps protect the international finance system from abuse and misuse by criminals and terrorists.

Yours sincerely,



Sally Scutt
Managing Director
IBFed



Robert Rowe
Chairman
IBFed Financial Crime Working Group



ICSA

INTERNATIONAL COUNCIL of SECURITIES ASSOCIATIONS

September 16, 2011

Giancarlo Del Bufalo
President
Financial Action Task Force
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75016 Paris
France

Dear Mr. Del Bufalo:

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

ICSA members generally support the recommendations set out in FATF's most recent consultation paper (hereinafter referred to as the Report). In particular, ICSA members strongly support the FATF's proposal to require that details of beneficial ownership be made readily publically available. At the same time, we still have some concerns in specific areas. These concerns, which are discussed more in depth below, are the following:

- There is a continued lack of precision in the definition of beneficial ownership. This is difficult to avoid since the terms used to describe beneficial ownership, such as "controlling ownership interest", are inherently ambiguous and therefore subject to differing interpretations.
- To eliminate as much of the ambiguity as possible, we suggest that FAFT should adopt a risk-based approach to identifying and verifying beneficial ownership. Such an approach would include specific ownership thresholds that would apply to beneficial owners, consistent with those that have already been established in a number of jurisdictions.

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

- ICSA continues to recommend that FATF adopt a risk-based approach that treats all PEPs equally, whether they are domestic or foreign PEPs. Such an approach, which would also apply to the family members and close associates of both foreign and domestic PEPs, would require financial institutions to undertake enhanced CDD only if the financial institution deemed a specific PEP, whether ‘foreign’ or ‘domestic’, to represent a higher risk.

As noted above, ICSA strongly supports the FATF’s proposal to require that details of beneficial ownership be made readily publically available. However, we have a number of recommendations that would help to ensure that the information provided on beneficial ownership is both comprehensive and updated on a regular basis. Our detailed comments on these and other issues are below.

1 Beneficial Ownership: Recommendations 5, 33 and 34

1.1 Recommendation 5

ICSA members appreciate the FATF’s attempt to provide greater clarity regarding the definition of beneficial ownership. However, we remain concerned that, even with the additional information that would be available if the proposals in the Report for Recommendations 33 and 34 were implemented, financial institutions would still face considerable difficulties in identifying and verifying the identity of beneficial owners because of the continued imprecision in the concept of beneficial owner.

Regarding the first proposal, to identify and verify the identity of the customer, ICSA agrees that financial institutions should obtain the basic information regarding the identity of their customers including, as is specified in the Report, the name of the customer, legal form, proof of existence, the powers that regulate and bind the entity and the address of the registered office or place of business.

However, we suggest that the requirement to obtain the names of individuals holding senior management positions at the client could be both problematic and of limited usefulness. First, there is no clarity regarding what is actually meant by the term “senior management”. For example at one firm the position of Senior Vice President may indicate a very senior position while for another firm the same title would not indicate a particularly senior position. Second, any information that is collected regarding the senior management of a specific firm is only valid on the day that the information is documented and, therefore, it is of limited usefulness.

To identify the beneficial owner, the Report proposes that financial institutions should obtain information about the identity of the natural persons, if any, who ultimately have a “controlling ownership interest in the customer”. If the ownership interests are widely dispersed the Report proposes that, “...information would be required on the identity of the natural persons exercising control through other means; or in their absence on the identity of the senior managing official”. The Report goes on to say that the requirements, “...would not apply if the customer or its owner

is a company listed on a recognized stock exchange and subject to proper disclosure requirements.”

We agree in theory with the proposal that financial institutions should obtain information about the identity of the natural person(s) who ultimately have a controlling ownership interest in the customer, as long as that information is publicly available (as discussed below). However, there are a number of practical problems with the proposal. First, the FATF does not specify what level of ownership would be required in order for an individual to have a “controlling ownership interest”. Since there is no hard and fast rule that financial institutions can follow, the requirement could be interpreted differently by different financial institutions and by regulators in different jurisdictions.

Second, we question the usefulness of the second step in the proposed requirement, which would apply when ownership interests were widely dispersed. In that case, FATF proposes that financial institutions should obtain information, “...on the identity of the natural persons exercising control through other means; or in their absence on the identity of the senior managing official”. The concepts of “control through other means” and “senior managing officials” are both quite ambiguous and raise questions regarding which individuals would be identified. For example, the board members of a customer could be identified by a financial institution as beneficial owners because they could be seen as “having control through other means”. However, taken individually each board member does not have the power to influence the outcome of the company and use it as a vehicle of money laundering and terrorist financing. Similarly, as noted above, there is no clarity regarding what is meant by the term “senior managing official”, as similar titles at different firms could have very different implications regarding the extent of control exercised by the individual in question.²

The Report also proposes that financial institutions should identify and verify the identity the beneficial owners of a legal arrangement by obtaining the identify of, “...the settler, the trustees, the protector (if any), the beneficiaries or class of beneficiaries and any other natural person exercising ultimate effective control over the trust...”. Consistent with the comments made above, because FATF does not define what is meant by the term, “exercising ultimate effective control”, the proposal would involve a judgment on the part of financial institutions that would result in divergent results between firms and may be subject to second guessing by regulators/examiners.

Because of the difficulties inherent in both defining and verifying beneficial ownership and the risk that the requirement could result in administrative processes that do not actually contribute to the fight against money laundering, we suggest that financial institutions should be permitted to use a risk-based approach to determine when it is necessary to obtain beneficial ownership information. Reliance on the risk-based approach would allow the financial institution to determine, as a result of its own evaluation, when and if beneficial ownership information

² We also note that while FATF lists the types of information that should be gathered to identify and verify a customer, it stays silent as to the ones related to the identification and verification of beneficial owners. ICSA suggests that FATF clarify that the types of information to gather for beneficial owners is consistent with the customer information in the Recommendation.

needed to be collected for a specific client and whether verification was warranted, thereby allowing securities firms and other financial institutions to more efficiently allocate their limited AML/CFT resources. For example, it is generally the case that beneficial ownership information is collected at time of the commencement of the relationship. However, in keeping with a risk-based approach, in those relationships that a financial institution deems to be of lower risk in accordance with its own evaluation, we suggest that it would be appropriate for the financial institution to only collect beneficial ownership information when an event triggers the financial institution to place more scrutiny on that specific client. In effect, consistent with the risk-based approach, we suggest that the identification and verification of beneficial ownership could be event driven rather than automatic at the outset of a relationship.

In addition, we suggest that the application of the risk-based approach to the identification and verification of beneficial ownership should include exemptions for particular entity types in order to harmonize practices around the world. For example, as the FATF proposed in the Report, the beneficial ownership requirement, "...would not apply if the customer or its owner is a company listed on a recognized stock exchange and subject to proper disclosure requirements." The risk-based approach to the identification of beneficial ownership should also include an exemption for the identification of authorized individuals who work in trading rooms, as there are other processes in place in the firms to ensure that only authorized persons have access to trading systems, mainly stemming from fraud prevention measures. Requiring these firms to establish and communicate to counterparties lists of authorised traders therefore does not add to the fight against money laundering and creates legal risk for firms, as these lists become obsolete very quickly.

Finally, we suggest that the application of the risk-based approach to the identification and verification of beneficial ownership should include ownership thresholds similar to those already in place in various jurisdictions. Both because of the definitional and practical difficulties involved in identifying beneficial owners, as discussed above, and in order to ensure greater consistency on a global basis, we suggest that the FATF should formally establish in its Recommendations standard thresholds for beneficial ownership for both lower risk and higher risk relationships.³ As is the case in jurisdictions which already have established specific thresholds for identifying and verifying beneficial ownership, the Recommendations could also provide for some specific exemptions, which each financial institution could make use of in accordance with its own risk-based approach. As a first step in this process, we suggest that FATF should carry out a review of those jurisdictions that have implemented specific thresholds and exceptions for beneficial owners, such as the EU, Canada and Australia, and examine how financial institutions in those jurisdictions have implemented the requirements.⁴

³ This standard threshold would be for AML/CFT purposes only, and would be separate from thresholds that have been established by regulators for other purposes.

⁴ For example, the EU provides for a percent threshold to define what constitutes beneficial ownership and allows the private sector to utilize exceptions, for example if the customer is publicly traded on a recognized exchange or is regulated by an approved regulator.

1.2 Recommendations 33 and 34

ICSA members do not believe that privately owned financial institutions or any private sector bodies should be charged with collecting information on beneficial ownership when that information is not publicly available, as is currently the case in most if not all jurisdictions. Since corporate entities can be formed only with the approval of public sector bodies, only the public sector has the capacity to compel firms and other legal entities to supply the necessary information, which would in turn allow financial firms to identify and verify the identity of beneficial owners. Therefore, ICSA supports the FATF proposal that details of beneficial ownership be made readily publically available. ICSA notes that such a proposal is consistent with the November 2009 Stockholm Declaration by the European Commission to bring greater transparency to beneficial ownership details of companies, the recommendation by Deloitte for greater transparency of beneficial ownership details following their review of the implementation of the EU's Third Money Laundering Directive and the October 2009 UK Treasury's "Foot Review" recommendation for greater transparency of beneficial ownership of companies and trusts. It is also consistent with the World Bank's recent recommendation that jurisdictions establish and maintain: (1) publicly available registries, including company registries; and (2) national bank registries with account identification information, including information on beneficial owners.⁵

In addition, we suggest that the information on beneficial ownership that is included in the official register of companies should be updated on a regular basis and should be available to private sector entities at minimal cost. Moreover, to encourage the full disclosure of this information, we believe that public sector officials need to have the ability to levy appropriate and proportionate fines and/or criminal penalties on firms that do not provide the required information for the registries. If there were no legal penalties or those penalties were not sufficient to act as a deterrent, some beneficial owners may evade the requirements in order to preserve their anonymity.

We also note that the FATF's proposal is broadly consistent with the OECD's Tax Transparency Project, one of whose aims is to assist national governments to identify which of their nationals and residents own or control assets located in another jurisdiction, for the purpose of ascertaining possible tax evasion/avoidance.⁶ ICSA respectfully suggests that national governments and financial institutions both have the objective of ascertaining beneficial ownership of corporate and other legal arrangements and that FATF explore, with their OECD colleagues, how mandatory public disclosure of relevant details under Recommendations 33 and 34 be harmonised with the work being undertaken in the Tax Transparency Project.

On another note, ICSA supports the FATF's proposal of prohibiting bearer shares but suggests that the concept of bearer shares should be defined, as it can cover very different types of

⁵ Kevin M. Stephenson, et. al. (May 2011), "*Barriers to Asset Recovery: An Analysis of the Key Barriers and an Analysis for Action*", World Bank and UNODC Stolen Asset Recovery Initiative.

⁶ Along similar lines, ICSA also welcomes the recent introduction to the US Congress of the Incorporation Transparency and Law Enforcement Assistance Act which, if approved, among other measures would require U.S. States to obtain the names of beneficial owners of corporations or limited liability companies (LLCs) formed in their jurisdictions, ensure that the information is updated, and provide the information to law enforcement upon receipt of a subpoena or summons.

securities in different jurisdictions, some of which are properly registered and not transferrable without proper re-registration. Because of the differences in the way that different jurisdictions define bearer shares, it is crucial that FATF clarify what is meant by this term.

In addition, ICSA supports the FATF proposal that nominee shareholders be required to declare details of their nominee status and details of their principals. However, ICSA respectfully suggests that an exemption be granted to regulated financial services companies that control nominee companies which offer administrative services to the customers of the financial services companies. Such services are generally offered to assist customers with the holding of investments and the collection of dividends and interest payments rather than offering a “shield” to preserve anonymity.

2. Data Protection and Privacy: Recommendation 4

ICSA supports the FATF proposals regarding Recommendation 4. At the same time, however, we also encourage FATF to require or otherwise encourage governments to ensure that their AML and data protection agencies are well coordinated with one another.

3. Group-wide Compliance Programs: Recommendation 15

ICSA supports the FATF proposals regarding Recommendation 15. However, we also suggest that Recommendation 15 should be amended in order to ensure that local bank secrecy laws do not prohibit group subsidiaries and branches from transferring customer data and due diligence documentation to other group subsidiaries, branches and/or the head office for AML/CFT purposes. This is important since if a group subsidiary is unable to transfer relevant customer details, including Suspicious Activity Reports because of strict local banking secrecy laws, that branch or subsidiary is effectively a black hole, from a group AML point of view. The branch or subsidiary is unable to notify other group members and headquarters if it has concerns about a specific client and Group headquarters cannot properly manage its AML risk on a group basis since it does not have information about what is happening in the branch or subsidiary.

4. Other Issues included in the revision of the FATF Standards

4.1 Adequate/inadequate implementation of the FATF Recommendations

As you are well aware, the IMF has recently published research on international compliance with the FATF standards. The IMF found that in general compliance with the FATF standards was low due to a variety of factors, including the quality of the domestic regulatory framework and the level of economic development in the individual country.⁷

As the IMF report notes, one clear conclusion of the research was that elements of the FATF standards that have been in place longer have higher compliance ratings. Thus, the degree of

⁷ Concepcion Verdugo Yepes (July 2010), “*Compliance with the AML/CFT International Standard: Lessons from a Cross-Country Analysis*”, IMF Working Paper, WP/11/177.

compliance for the 40 AML Recommendations was considerably higher than for the 9 Special Recommendations on CFT, which were added to the standard relatively recently. Even more striking, Recommendations concerning designated nonfinancial businesses and professions, which were made subject to the FATF standard only in 2003, had some of the lowest compliance scores, averaging only 12.1 percent of the theoretical maximum. The IMF report also notes, diplomatically, that "...it appears to be easier to enact legislation and set up government institutions than to ensure that the system functions well on an ongoing basis."⁸

We understand that many of the policy implications stemming from the IMF report are beyond the control of FATF. At the same time, however, we welcome the results of the IMF's work in this area and look forward to working with the FATF in its efforts to improve global AML/CFT standards and implementation in response to research conducted by the IMF.

Returning to the FATF Report, we note that the FATF proposes that financial institutions should not rely solely on the FATF country assessments but should instead use their own resources to consider the overall risk posed by a country. Apart from the fact that the concept of "overall risk" is unclear, especially with respect to ML/TF, a privately owned financial institution is certainly not better placed than the FATF when assessing the ML/TF risk of a country. By requiring all financial institutions to carry out their own risk assessments, without having the ability to rely on the FATF's reviews, FATF would be placing an unnecessary burden on those firms. Private sector organisations generally do not have the resources that would allow them to make such assessments, which we suggest should be properly left to FATF or national governments. We understand that in some cases a financial institution might have a particular view on an individual country, for example because it has subsidiaries in that jurisdiction or a long standing relationship with it. In that case, we believe that the financial institution should be able to consider its view of the country while also taking into account the results of the FATF assessment when deciding whether or not enhanced due diligence should be applied. However, this should be a possibility and not an obligation. ICSA therefore suggests that financial institutions should continue to be able to rely on the FATF assessments (and lists) or similar assessments (and lists) produced by national governments.

4.2 Further consideration of Politically Exposed Persons

The Report proposes that:

1. Individuals who have been entrusted with prominent functions by an international organizations should be considered PEPs and treated in the same way as domestic PEPs; and,
2. The requirements for foreign and domestic PEPs should apply equally to family members or close associates of such PEPs. This would mean that enhanced CDD measures would be required automatically for family members and close associates of a foreign PEP and could be required (on a risk-based approach) for family members and close associates of a domestic PEP.

⁸ Ibid., pg. 11.

In relation to the first proposal, the addition of a new category of PEP may not be a significant issue in practice, as most financial intermediaries will simply add the category to their existing due diligence and customer identification and verification processes. However, it will be necessary for FATF to more precisely define the scope of what is considered to be an “international organization”, and what constitutes the performance of “prominent functions” of behalf of that organization. This is important since there are a number of international organizations that have been delegated powers by governments or whose members are government representatives, or whose primary role is to set standards or rules that governments or government agencies of the member countries of the organization agree to abide by, or that have a governance role in relation to international activities, or is the governing body of a sport, or is an international body that has humanitarian and charitable goals.

The addition of a new category that encompasses these types of organizations would be consistent with the concept of political exposure, given that these types of organizations perform government-like or governance functions. However, a new “international organization” category need not include organizations that are more in the nature of a collective of like-minded domestic organizations or associations, where the international body does not have a governance power or ability to exercise discretion or control over its members.⁹

Regarding the second proposal, ICSA continues to recommend that FATF adopt a risk-based approach that treats all PEPs equally, whether they are domestic or foreign. Reliance on a risk-based approach to PEPs would be consistent with the FATF’s general endorsement of the risk-based approach. Under a risk-based approach, FATF would require financial institutions to undertake enhanced CDD on a specific PEP only if the financial institution deemed that individual, whether ‘foreign’ or ‘domestic’, to represent a higher risk. Treating all PEPs in a consistent manner would provide greater clarity for financial institutions that operation on an international basis, as this would allow those firms to have a harmonised group policy and a consistent approach towards PEPs.¹⁰ Reliance on a risk-based approach for all PEPs would also help to eliminate possible confusion, since internationally active financial institutions work with a multiplicity of national regulators.

Responding specifically to the recommendation in the Report, we agree that the risk-based approach should be applied to the family members and close associates of domestic PEPs. However, it is not clear to us why the family members and close associates of foreign PEPs should automatically be considered to be of higher risk than the family members and close associates of domestic PEPs. Therefore, consistent with our recommendation above, we suggest

⁹ We also suggest that a new category of “international organization” should explicitly exclude corporations or companies that operate on a multinational basis as these organizations do not perform any government-like or governance functions that are consistent with the concept of political exposure and the need to protect against corrupt activities by persons who are politically exposed. If these types of entities were to be included, there would be a vast increase in the number of persons who would need to be treated as PEPs because they perform or are entrusted with “prominent functions” on behalf of the organization. This would become unmanageable for financial intermediaries with AML obligations, and the associated costs would be prohibitive.

¹⁰ Under the current policy, a domestic PEP for one subsidiary of an internationally active financial group is a foreign PEP for another subsidiary of the group, which may results in an inconsistent groupwise AML policy.

that the risk-based approach should be applied to the family members and close associates of both foreign and domestic PEPs.

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

Best regards,

A handwritten signature in black ink, appearing to read 'K. Hwang', with a long, sweeping tail stroke extending downwards and to the right.

Kung Ho Hwang, Chairman
International Council of Securities Associations

September 16, 2011

FATF Secretariat
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75775 Paris
Cedex 16,
France

DELIVERED VIA E-MAIL: fatf.consultation@fatf-gafi.org

Second Consultation Paper: The Review of the Standards—Preparation for the 4th Round of Mutual Evaluation

Dear FATF Secretariat:

On behalf of the International Network of Insurance Associations, the undersigned insurance associations submit their comments in response to FATF’s second Consultation Paper entitled “*Review of the Standards—Preparation for the 4th Round of Mutual Evaluation*” [Second Consultation Paper] issued on June 27, 2011.

The International Network of Insurance Associations (INIA) is an organization of national and multinational insurance associations that represent the interests of, and advocate on behalf of, life, health, general insurance, and reinsurance companies. A key priority for INIA members is to present and provide expertise on the interests, individual characteristics, and experiences of the insurance industry when international regulatory initiatives are under consideration. The working groups of INIA include those dedicated to international insurance regulation and systemic risk, G-20 developments, and anti-money laundering/counter-terrorist financing standards.

INIA fully supports effective, risk-based global anti-money laundering [AML] and counter-terrorist financing [CTF] standards that are relevant and up-to-date. We appreciate the opportunity to comment on the second Consultation Paper and efforts of FATF to assist through guidance countries and industries in combatting money laundering and terrorist financing.

General Comments on the Second Consultation Paper

We generally welcomed the discussion in the first Consultation Paper of the life insurance industry. Relevant, effective AML/CTF standards must necessarily be appropriate to the products and operations of a given financial industry. Particularly welcome was the recognition in the first Consultation Paper that some terms and requirements in the FATF standards were different when applied to the life insurance industry and needed to be addressed.

As a result, we regret that the second Consultation Paper does not include further discussion of concerns of the life insurance industry. A primary concern raised in our January 2011 comment letter is whether risks for life insurers have been correctly identified and, if so, whether standards proposed for prevention and mitigation are proportionate to the risk. This concern was specifically raised in the context of proposed customer due diligence standards for named beneficiaries and classes of beneficiaries.

Insurance remains a relatively low-risk industry compared to others in the financial services sector¹, and as an intermediated business, life insurers often rely on other financial institutions (banks, broker-dealers, *etc.*), which are subject to significant AML/CTF regulation, in the CDD process. Nonetheless, we are unaware of any other financial services industry for which the elaborate and ongoing customer due diligence for third-party payees proposed for life insurers has been imposed, and neither should it be imposed on life insurers. Contract owners can change beneficiaries throughout the duration, often decades, of the contract, and life insurers typically have no legal grounds on which to withhold or even unduly delay payment to a valid and legitimate beneficiary. Of course, a suspicious activity report would be filed if suspicion arises at the time of paying out the insurance proceeds.

As noted in our prior comments, if a CDD requirement must apply to life insurance beneficiaries, we strongly agree with the principles in paragraph 118 of the FATF RbA Guidance for the Life Insurance Sector: “Normally, and in the absence of indicators of higher risk, the anti-fraud checks regarding the identity of the beneficiary at the time of payout would be adequate.” That is, this should be permitted to take place at the time of payout and, as well, normal watch for

¹ The insurance industry’s vulnerability is not regarded by the International Association of Insurance Supervisors (IAIS) to be as high as for other sectors of the financial sector. See the IAIS Guidance Paper on Anti-Money Laundering and Combating the Financing of Terrorism, October 2004, page 1. This certainly remains the case with life insurance. However, because none of the elements that give rise to money laundering and terrorist financing concerns as conceptualized in the consultation papers are present in the reinsurance of products (seamless transfer of funds, investment, stored value, and transferability), this is even more the case with respect to reinsurance, which should be expressly excluded from the scope of the application paper as should health and property & casualty/general insurance.

suspicious transactions during the duration of the policy while it is under the control of the policyholder should suffice.²

Finally, we would like to observe that the insurance companies represented by the members of the INIA are proud of the products and services that they offer to their customers and consistently work hard to ensure that they comply with all applicable laws and regulations, both in form and substance. We believe that reviews of the insurance industry identify as particularly commendable the efforts of insurers to prevent and mitigate the impact of financial crimes, including fraud and AML/CTF. We feel strongly about efforts, as portrayed in materials that have accompanied the issuance of the consultation papers, which appear to single out or characterize our industry as failing to perceive the risks associated with insurance products and customers or as lacking in compliance with applicable laws and regulations. We would appreciate consideration of this, and our legitimate concerns with FATF proposals regarding life insurance, in future public statements, proposals, recommendations, and other guidance.

Specific Comments on the Second Consultation Paper

- Express Adoption by FATF of the Risk-Based Approach

The second Consultation Paper has several references to the risk-based approach and its importance in developing and implementing AML/CTF measures. We believe that it is necessary for FATF to expressly adopt the risk-based approach as part of the FATF Recommendations going forward. Otherwise, it may be regarded by member countries as a mere suggestion without any obligation to implement a risk-based approach as part of their formal AML/CTF regulatory regime.

- Recommendation 5

INIA appreciates the clarification in the second Consultation Paper of the types of measures that financial institutions should take to identify, verify, and understand their customers. We support the satisfactory identification of beneficial owners of a legal person that execute a life insurance product contract. (We note that in the absence of a central government registry of legal persons and arrangements, including trusts, complete verification of beneficial owners may not be

² We note that the Financial Crimes Enforcement Network of the U.S. Department of the Treasury since 2003 has conducted since four studies of suspicious activity reports filed on activities related to insurance companies and/or insurance products with [the most recent study being released in January 2010](#). The conclusions of these studies more closely align with the 2004 assessment of the IAIS at note 1 as a relatively low-risk financial services industry with respect to AML/CTF. For a study of why insurance is generally a lower-risk business than banking and requires a different regulatory approach, we recommend CEA's June 2010 study, [Insurance: a unique sector—Why insurers differ from banks](#).

possible.) However, for the reasons set forth in our general remarks above, we recommend that satisfactory identification of persons with only a contingent interest (*e.g.*, beneficiaries) take place only at the time of payout as it is only then that such identification is cost-effective, relevant, and certain and that the measures proposed be consistent with the use of an insurer's anti-fraud checks.

In this regard, it is useful to again highlight the difference in life insurance products between the "beneficial owner" and the "beneficiary" of a life insurance policy. The beneficial owner, as referred to by the FATF Recommendations, is the party owning and controlling the assets. There may be up to three persons relevant to a life insurance contract, none of whom seem to coincide with the proposed concept of "beneficial owner." These persons are the policyholder, the insured, and the nominated beneficiary³. From an AML perspective, there may also be a role for the person paying the premium. However, in many countries, it is not mandatory to designate a "nominated beneficiary" in a life insurance policy or the "nominated beneficiary" can be indicated by local law. In life insurance policies where a "nominated beneficiary" is designated or indicated by local law, the "nominated beneficiary" can change multiple times during the duration of the policy. A nominated beneficiary thus has no vested rights regarding the insurance policy until the insured event occurs, (*e.g.*, the death of the insured) and its identity is not relevant during the lifetime of the contract.

Consequently, the nominated beneficiary should not fall under the requirement to establish the beneficial ownership, their identification and verification, until such time as there will be a payout to the nominated beneficiary. The policyholder, including legal persons, at issuance of the life insurance contract should be identified and verified.

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

Furthermore, INIA suggests establishing a central government registry for trusts and partnerships where such a registry does not yet exist in order to have international consistency and to allow time and cost efficiency for insurers identifying and verifying the beneficial owners. The registry could be used throughout the process, from policy issuance to payout, when non-natural persons are involved.

³ The "nominated beneficiary" can be both the nominated beneficiary and the generic beneficiary.

- Recommendations 33 and 34

INIA does not support proposals to make financial institutions repositories of beneficial ownership and legal persons information on behalf of competent authorities. Financial institutions provide products and services to their customers and, in the course of doing so, will obtain pertinent information at the point of sale that is relevant to the transaction, including information to satisfy the financial institution that the transaction is neither unlawful nor suspicious. In certain instances, it may be appropriate for a financial institution to provide its findings to a competent authority pursuant to local law (*e.g.*, suspicious activity reporting) or legal process (*e.g.*, a subpoena). We note that each FATF member country is required to perform a risk analysis of its AML/CTF risks. At a minimum, each country should be allowed to make its own determination of which approach to collect beneficial ownership is most appropriate for its risk profile (*e.g.*, competent authority, financial institution, hybrid approach, etc.) Countries should continue to have the flexibility to make that determination based on the nature, scale, and risk profile of the market it has oversight for.

--Data Protection and Privacy

INIA welcomes the FATF's intent to mitigate any conflicts between data protection and privacy obligations and the implementation of AML/CTF measures by means of potential changes to the FATF Standards. However, it remains unclear, how "appropriate safeguards" in Paragraph 14 would be designed in regard to cross-border flows of information. We are concerned about the potential for new requirements impacting insurers. With respect to money laundering, it is of paramount importance for the compliance regime of insurers that the mandated AML/CTF measures be covered as regards data protection requirements. The problem is that sometimes the demands of the supervisory authority to the insurers for collecting and archiving data do not correspond to the data protection requirements the data protection/privacy authorities consider admissible.

Not clarifying the interplay between the AML/CFT and data protection requirements would undoubtedly present enormous future problems for all parties concerned. The FATF's proposal for effective cooperation and coordination mechanisms on this issue between the AML/CFT authorities and those responsible for data protection is not only sensible but desirable. Moreover, it is in sync with the Insurance Core Principle 25 – Supervisory cooperation and coordination – of the International Association of Insurance Supervisors.

While INIA supports the need to balance maintaining an individual's right to privacy and implementing effective tools in combating money laundering and terrorist financing, it remains vital that the framework recognizes the need for insurers and other entities to share information. An insurer's internal financial intelligence units must be able to comb through the firm's transactional databases and customer lists in an attempt to spot potential criminal activity or identify sanctioned or suspect individuals and corporations. Access to all the insurer's record-

keeping systems is absolutely necessary, as complex financial crime and fraud can involve many accounts, products, services, geographies and customer types. It is a huge problem for insurers when different supervisory authorities have different perspectives and views on the same issue. In consequence, the FATF's proposal for cooperation and coordination between authorities and our request for the same objective are crucial, especially while interpreting the existing laws and issuing recommendations.

--Group-wide compliance programs

Paragraph 16 states: "It is proposed that financial groups (which are subject to group supervision under the Core Principles) should be required to have group-wide programmes against money-laundering and terrorist financing..." For greater clarity, the words "which are subject" should be replaced with "if they are subject". Many international insurance groups are structured under a non-operating, non-regulated holding company, with separate regulated insurance companies in multiple countries. These insurance companies operate within single countries and, as required by IAIS Core Principles, are each subject to local national laws (including AML/CTF legislation). Any risk assessment conducted by an insurance company that is a member of an insurance group does take into account potential risks arising from cross border transactions. Criminals and/or terrorists may establish multiple account relationships at multiple insurers, making their activity more difficult to track.

- Other Issues Included in the Revision of the FATF Standards

--Adequate/inadequate Implementation of the FATF Recommendations

INIA generally supports consideration by FATF of examples of stronger measures that may be adopted against jurisdictions that fail to implement adequate measures to adopt FATF's recommendations. We caution, however, against imposing unduly harsh or unrealistic measures on financial institutions in such jurisdictions where government entities themselves may be struggling to manage economic and/or political risks. Financial institutions in these countries should not be summarily excluded from participation in international markets. Consideration should be given to examples of financial inclusion that can be used as a mechanism to educate and promote the adoption of AML/CTF control measures by financial institutions in such jurisdictions.

--Further Consideration of Politically Exposed Persons

In its consideration of Politically Exposed Persons ("PEPs"), INIA strongly believes that application of the risk-based approach should be consistent: all money-laundering and terrorist financing risks should be assessed individually based on their own set of circumstances and merits. The Consultation Paper should not predetermine higher risk situations; instead, the risk-based approach should be applied to all situations without exception, including those involving

either foreign or domestic PEPs. Otherwise widening the scope of PEPs would place significant administrative burdens on financial institutions without any confidence of the correct identification of who is, and who is not, a PEP or family member/associate of a PEP. For consistency and cost-efficiency reasons, the PEP regime in its entirety should be coherent with the overall risk-based approach to the AML/CTF structure. Consideration should be given to the constructive role that governments can play in identifying PEPs.⁴

INIA appreciates the opportunity to submit these comments on FATF's second Consultation Paper entitled "*Review of the Standards—Preparation for the 4th Round of Mutual Evaluation.*" Please let us know if you have questions or need additional information.

Sincerely,

American Council of Life Insurers (ACLI)
Association for Savings and Investment South Africa (ASISA)
Brazilian Insurance Confederation (CNseg)
Canadian Life and Health Insurance Association (CLHIA)
European Insurance and Reinsurance Federation (CEA)
Insurance Bureau of Canada (IBC)

⁴ We also note that further clarity is needed with respect to the following:

- the concept of "once a PEP, always a PEP" and, specifically, whether it is part of the FATF standards or not;
- the treatment of domestic PEP's versus foreign PEP's;
- definitions "family," "close associates," and 'prominence in an international organization' in as far as they relate to PEPs.

September 16, 2011

Via email fatf.consultation@fatf-gafi.org

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

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

Ladies and Gentlemen:

The Investment Company Institute (“ICI”)¹ appreciates the opportunity to comment on *Consultation Paper: The Review of the Standards – Preparation for the 4th Round of Mutual Evaluations (Second Public Consultation)* (June 2011) (“Paper”) by the Financial Action Task Force (“FATF”). We previously provided comments regarding FATF’s October 2010 consultation paper concerning its work in this area.² The ICI and its members are committed to assisting the government of the United States and FATF in deterring and preventing money laundering and terrorist financing.

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

- Clarifications regarding policies and procedures for Recommendations 5, 33 and 34 and beneficial ownership information;
- Data protection and privacy;
- Group-wide compliance programs; and
- Expansion of category of persons considered politically exposed persons (“PEPs”).

¹ The Investment Company Institute is the national association of U.S. registered investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$12.9 trillion and serve over 90 million shareholders.

² Letter from the Investment Company Institute to the FATF Secretariat, January 7, 2011 (“January Letter”) available at <http://www.ici.org/pdf/24890.pdf>.

Beneficial Ownership Information

As discussed in our January Letter, US mutual funds are required to develop and implement an anti-money laundering (“AML”) program reasonably designed to prevent them from being used to launder money or finance terrorist activities. The legislative history of the US law requiring financial institutions to develop such programs acknowledges that the law is not a “one-size fits all” requirement. The AML program rule for mutual funds also reflects this approach.³ Similarly, the US customer identification program rule for mutual funds also specifies that mutual funds utilize risk-based procedures for verifying the identity of each customer that opens a new account.

In the Paper, FATF is proposing to specify in Recommendation 5 the types of measures that financial institutions would be required to undertake to identify and verify the identity of customers that are legal persons or legal arrangements and to understand the nature of their business and their ownership and control structure. FATF also proposes to specify the information that “would normally be needed in order to satisfactorily” accomplish those tasks. For Recommendation 33, FATF is seeking to clarify the steps countries should take regarding beneficial ownership information for legal persons, including specifying what would be considered adequate, accurate and timely beneficial ownership information. FATF proposes a similar approach for Recommendation 34 and legal arrangements. For both legal persons and legal arrangements, FATF is also considering specifying what is involved in an effective set of measures to prevent the misuse of legal persons and arrangements.

In our January Letter, we urged FATF to proceed cautiously in order to respect the different but complementary purposes of the FATF Standards and FATF guidance. For example, FATF’s Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing – High Level Principles and Procedures (June 2007) is described as supporting the development of a common understanding of what the risk-based approach (“RBA”) involves and providing insights into “good public and private sector practice” in the design and implementation of an effective RBA.⁴ In contrast, FATF Standards set forth minimum standards for jurisdictions to implement with detail according to their particular circumstances and constitutional frameworks.⁵ Accordingly, we believe that FATF efforts to provide more specification regarding Recommendations 5, 33 and 34 belong in guidance.

We appreciate that FATF is concerned with compliance; however, we believe that FATF could better foster compliance through guidance, a vehicle that is more flexible and can therefore address the varying circumstances and legal regimes around the world. We believe that problems of compliance of

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

⁴ RBA Guidance, paragraph 1.3.

⁵ FATF Standards, FATF 40 Recommendations (June 20, 2003, incorporating amendments of October 22, 2004), Introduction.

concern to FATF are indicative of bona fide challenges presented by obtaining beneficial ownership information rather than disregard of the recommendations.

Accordingly, we believe that guidance would better advance and serve FATF's goals. Industry and governments share the common goal of preventing and deterring money laundering and terrorist financing and we therefore urge FATF to maintain a dialogue with industry to develop approaches that can be effectively implemented by financial institutions. We have serious reservations regarding many of FATF's proposals on beneficial ownership information.

FATF's proposed changes to Recommendation 5 specify measures that are highly prescriptive. Consistent with our January Letter, we continue to believe that it is not necessary for FATF to propose such changes for the identification of customers. We also have concerns regarding the ability of firms to implement the proposed measures. Some of the required measures are vague and/or pose significant operational issues for effective implementation (*e.g.*, mere "names" are of limited use without more information, "senior management" is vague and may not correspond with any control or authority over a customer, what is "widely dispersed," what is "control through other means"). We also have serious concerns regarding the cost of implementing the measures, particularly in light of the limited reliability of the information and that it would only be current as of the time received by a financial institution.

We remain convinced that a robust risk-based approach best addresses this difficult area, allowing firms to effectively deploy resources and to also adapt to changing circumstances. One of the hallmark characteristics of the RBA and Recommendation 5 is the ability of a firm to design, change and implement an effective AML program, including a customer identification program, that takes account of the varying and changing risks associated with the different types of businesses, clients, accounts and transactions it may handle now and in the future. We urge FATF to not specify the information to be collected in this context.

With respect to verification, we asked FATF in our January Letter to further evaluate this issue in light of the inability of many financial institutions to reliably verify beneficial ownership information with relevant authorities. We urge FATF to incorporate this circumstance into its consideration of changes regarding the verification of beneficial owners. In addition, for Recommendations 33 and 34, FATF is proposing measures to require companies or trustees to hold the information and make it available to authorities. While such measures would be helpful, we are uncertain whether the legal authority to compel legal persons and legal arrangements to collect, hold and produce such information to authorities or financial institutions may be available in all jurisdictions. There may be legal prohibitions on obtaining or disclosing certain information. In the United States, there are no official listings of beneficial owners of corporations or limited liability companies formed under state laws despite recent interest in developing such listings. Also, the recent US efforts do not address the issue of beneficial ownership in the context of partnerships or trusts. In the United States, it remains unclear when, or if, such lists will be forthcoming. Accordingly, it is essentially impossible for financial

institutions (wherever located) to reliably verify beneficial ownership information for most US entities.⁶

Without a means for reliably verifying beneficial ownership information, we question whether such information is truly helpful to financial intelligence units or law enforcement, particularly considering the costs associated with obtaining the information. We therefore recommend that firms be allowed to continue to utilize risk-based procedures for identifying and verifying the identity of beneficial owners.

Lastly, we urge FATF to support the essential role that reliance upon third parties that themselves are subject to AML rules and effective supervision may play with respect to beneficial ownership information. We encourage FATF to support extending a jurisdiction's discretion regarding the types of entities that can be relied upon. We believe that FATF's support of an expansion of reliance with respect to firms that are subject to supervision and AML requirements in other FATF jurisdictions would be supportive of its efforts regarding beneficial ownership.

Data Protection and Privacy

We strongly support FATF's efforts to mitigate conflicts between data protection and privacy laws and laws regarding anti-money laundering and combating the financing of terrorism ("AML/CFT"), including for international groups and consolidated risk management programs seeking to use cross-border flows of information. We believe that it is essential for authorities to coordinate and cooperate on these issues.

Group-Wide Compliance Programs

We support FATF's efforts to facilitate group-wide compliance programs; however, as FATF recognizes, certain data protection or privacy laws limit these programs. In addition, AML/CFT laws may impact the operation of group-wide compliance programs. For example, whether a "group" operates cross-border or includes entities not subject to AML/CFT obligations may impact whether a group-wide compliance program is possible. In the United States, for example, there are limits on the ability of firms to share information related to suspicious activity reporting. A US mutual fund may only share a suspicious activity report ("SAR"), or any information that would reveal the existence of a SAR, with an affiliate that is itself subject to a SAR regulation issued by specified US regulators. In addition, the mutual fund affiliate that has received the SAR from the mutual fund is not permitted to share the SAR, or any information that would reveal the existence of the SAR, with its own affiliate, even if subject to SAR regulation. Accordingly, efforts to facilitate group-wide compliance programs

⁶ We understand that similar challenges exist in other jurisdictions. In addition, there also can be challenges accessing such information, if it exists, as there may be limits on its availability to the public.

are complicated by AML/CFT laws. We recommend that FATF take account of this issue in its efforts regarding group-wide compliance programs.

Politically Exposed Persons (PEPs) – Expansion

FATF is considering applying requirements for domestic and foreign PEPs equally to family members and close associates of a PEP. In addition, FATF is considering whether persons carrying out prominent functions for international organizations should be treated as domestic PEPs. FATF has not defined the terms “international organization” or “prominent functions,” which are broad and would be difficult to implement absent a clear description or definition.

In specified circumstances, US law requires enhanced due diligence of accounts with senior foreign political figures. The RBA also contemplates different procedures for customers identified as higher risk, which could include a domestic PEP in some circumstances. As we stated in our January Letter, we believe that the RBA is the most effective mechanism for the consideration of a customer’s risk or, as appropriate, their status as a PEP. Accordingly, we do not believe the proposed changes are necessary.

If you have questions or require additional information, you can reach me at (202) 326-5813.

Very truly yours,

/s/ Susan M. Olson

Susan M. Olson
Senior Counsel – International Affairs

cc: Mr. Chip Poncy, Director, Office of Strategic Policy
Office of Terrorist Financing and Financial Crimes
US Department of Treasury

Mr. Alan Cox, Assistant Director, Office of Outreach Resources
Financial Crimes Enforcement Network
US Department of Treasury

16 September 2011

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

Dear Sir

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

The IMA represents the asset management industry operating in the UK. Our Members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of around £3.4 trillion of assets, which are invested on behalf of clients globally. These include authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. Our Members also represent 99% of funds under management in UK-authorised investment funds (ie. unit trusts and open-ended investment companies).

We are grateful for the opportunity to comment on the proposed further changes to the FATF's 40-9 recommendations. These comments focus on two specific aspects with regard to the identification of legal entities and beneficial owners.

The first concerns the proposal (first bullet, paragraph 8) that financial institutions should be required to obtain the entity's governing constitution (eg. memorandum and articles in the case of a company) and the names of persons in senior management positions. In contrast with the following bullet regarding beneficial owners, there is no reference to any concession where the customer is a publicly listed company. We assume this is an oversight and urge that such a concession be included in any final recommendation.

The second concerns access to beneficial ownership information. We note that the FATF is considering whether or not companies (paragraph 10) and trustees (paragraph 12) should be obliged to hold information on beneficial ownership, and that such information should be accessible to competent authorities through various sources, including financial institutions. We would argue that financial institutions should themselves have such a right of access for the purposes of meeting their customer due diligence obligations and ask that this be considered in any final recommendation.

We hope these comments are helpful. If you wish to discuss further either of the points we have raised, please do not hesitate to contact me.

Yours faithfully



David Broadway
Senior Technical Adviser

**Comments on the FATF-GAFI
consultation paper**

**“The Review of the Standards -
Preparation for the 4TH Round of
Mutual Evaluations – Second
Public Consultation”**

September 2011

Introduction

ABI would like to thank the Italian delegation of the FATF, based at the Ministry for the Economy, and the FATF itself for the opportunity of participating in the consultation for review of the 40 FATF Recommendations on Anti-Money Laundering (AML) and the 9 Special Recommendations on Counter-Terrorist Financing (CFT), and also thanks in advance for their time in considering the comments formulated.

In general terms, ABI agrees with the content of the second consultation paper, "The Review of the Standards – Preparation for the 4th Round of Mutual Evaluation". Specific comments on the amendment proposals for certain standards are provided below.

1. Recommendation 5 - Beneficial Ownership

The main change proposed to Recommendation 5 is to "specify more clearly the type of measures that financial institutions would be required to undertake in order to: a) identify and verify the identity of customers that are legal persons or legal arrangements, and b) understand the nature of their business and their ownership and control structure".

This proposal is particularly welcome given the due diligence difficulties our financial intermediaries face in relation to identifying the "beneficial owner". In other words and in a general sense, the intention of introducing greater clarity on the identification of true beneficial owners is particularly appreciated: on this aspect it is hoped that there can be a secure reference format for the documentation to be obtained during customer due diligence so as to identify the effective beneficial owner and/or details on "mind and management".

However, we would like to mention immediately the need to find the right balance between the quantity and quality of information the intermediaries are expected to acquire and control in order to meet such obligations and the costs related to expected updating and adaptation of their current procedures.

In this respect, therefore, we consider that inclusion among the information to be obtained by intermediaries of that relating to "persons holding senior management positions" (paragraph 8, first bullet) would be inappropriate.

In fact, in addition to weighing heavily on the adequate verification obligations required of intermediaries – in particular the need to keep customer data updated - this new obligation would not result in substantial clarification of the customer's ownership and control structure.

Moreover, it should be remembered that financial intermediaries are in any event expected to identify and verify officers with powers to represent companies.

Regarding this problem, ABI's position is in line with that already emerging at FBE level, which indicated that "the extension of beneficial ownership to 'management' structures is impractical. Management generally has 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 is the current understanding in many countries."

However, if it is decided to include senior management among the information to be obtained in relation to "beneficial ownership", we ask that the FATF also indicates unequivocal and useful criteria for such information so that intermediaries can comply with the obligation in question.

Regarding the specific methods for identifying effective ownership (paragraph 8, second bullet) we feel it would be useful to clarify the concept of control of a legal person being suitable in identifying the beneficial owner, though it is understood that the provisions vary in this respect among the different countries, even in reference to different control thresholds.

It should be remembered that, in addition to a substantial criterion, Italy also uses a numeric criterion to identify the effective owner, i.e. a natural person holding 25% + 1 of the share capital. Though it does not answer all problems and situations – as in the case in which share capital distribution is traceable to organisations operating under different laws with non-harmonised characteristics - this criterion in any event offers objective data that provides a sure reference on "control" in certain circumstances.

Also with regard to the notion of "control through other means" (paragraph 8, second bullet) we hope that the FATF will provide greater clarification and/or examples.

Lastly, ABI believes that the reference to identification of the "class of beneficiaries" of a customer as part of a "legal arrangement" should be eliminated from paragraph 8, third bullet, as inappropriate to a context relating to acquiring and verifying identification data for certain persons.

In this respect, rather, it should be clarified, with a specific provision that if the asset and/or income beneficiaries of the legal arrangement are indicated only in reference to pertaining to a class or type of person, risk assessment of the relations with that customer will be based on information regarding the other parties in question, i.e. the settlor, trustee, protector or any other identifiable natural persons (for example, the effective owner of the trustee if relating to a legal person), together with the type of beneficiary class if this is significant per se.

2. Recommendation 33 – Legal Persons

On Recommendation 33, the FATF intention is to “clarify the steps countries should take to ensure compliance – in particular the types of mechanisms which should be used to ensure timely access to beneficial ownership information regarding legal persons”.

ABI considers that all legal persons being made responsible for the availability and disclosure of information on the respective chain of control relates to a more general principle of legal liability.

ABI also agrees with the intention of applying similar measures to legal persons other than companies, e.g. foundations, associations and other international legal persons (“anstalt, limited liability partnership”), if necessary guaranteeing a certain flexibility in the interpretation and application to these of Recommendation 33.

In operating terms, attributing such an obligation to legal persons would mean that financial intermediaries' obligation to identify the effective owner would become considerably easier and faster.

At present, identification of the “ultimately controlling natural person of a legal person” can prove difficult. Such verification, in fact, calls for in-depth research which in certain member states, where legal persons have no obligation to disclose their related effective ownership, can be particularly problematic. In these cases, therefore, the financial intermediaries have to rely almost exclusively on information provided by the legal entity itself or by the person acting on its behalf.

With regard to the actual methods for guaranteeing transparency of legal persons and access to beneficial owner data, among those currently under consideration by the FATF, ABI believes that the option in paragraph 10, first bullet, point (a) would be preferable, according to which “companies should be responsible for holding both basic information and information about their beneficial ownership; and that beneficial ownership information should be accessible in the jurisdiction to competent authorities”, for example through the register of companies, other bodies and authorities and financial institutions which hold such information.

The proposal illustrated in paragraph 10, first bullet, points (a) and (b) seems to be limited to the principle, which in our opinion stands to reason, that the competent authorities can access information on the effective owners of customer companies through financial institutions, without considering the problem of how to better describe the content of the obligation of suitable verification required of the financial institutions themselves. On this last point, we would again point out that imposing an obligation to indicate the beneficial owners in public registers of companies would be a valid means of sensitising customer companies and their

management. The same considerations apply with regard to paragraph 12, second bullet.

3. Recommendation 34 – Legal Arrangements

With reference to Recommendation 34, ABI agrees in general with the considerations illustrated previously in relation to extending application of the criteria of Recommendation 33 to other legal arrangements. However, we agree that the FATF should carefully consider whether and how the requirements of Recommendation 34 should be applied in countries whose laws do not provide for the creation of legal arrangements such as trusts. ABI also agrees with the need to achieve the right balance between the responsibilities of countries which are the source of law for such legal arrangements and those which are not.

4. Recommendation 4 – Data Protection and Privacy

The FATF has considered “the impact of data protection and privacy on the implementation of AML/CFT measures and the potential for changes to the Standards to mitigate any conflicts between them. Data protections and privacy rules can in some cases limit the implementation of AML/CFT requirements, and a number of different FATF Recommendations may be affected. The FATF is aware that the interplay between AML/CFT and data protection requirements is of particular concern for international financial services groups seeking to transfer information across borders for consolidated AML/CFT risk management, and has considered how to ensure that such cross-border flows of information are permitted, subject to appropriate safeguards”.

This issue is known to be highly problematic for banking groups with cross-border activities, called upon to prepare group AML policies to comply with regulations on the protection of personal data. To facilitate the task of these intermediaries, therefore, the GAFI proposal, which aims to identify mechanisms to streamline the international transfer of such data and at the same time guarantee adequate protection for the data, is particularly welcome.

In any event, ABI hopes that all initiatives on this issue lead to optimum cooperation and coordination between AML regulations and the regulations for personal data protection.

5. Recommendation 15 – Group-wide compliance programmes

The FATF proposes changes to Recommendation 15 so that "financial groups (which are subject to group supervision under the Core Principles) should be required to have group-wide programmes against money laundering and terrorist financing".

ABI agrees with this objective, which has also been followed in Italy¹.

6. Special Recommendation VII – Wire Transfers

The consultation paper provides a general development path to achieve the objective of enhancing payment transparency. The banking industry, which for some time has been implementing all possible measures to guarantee significant information tracking regarding customers issuing or beneficiaries of a payment order, to combat illegal activities and terrorism financing, is in full agreement with this objective. In this respect, ABI wishes to emphasise that with regard to the review of SR VII this objective of greater transparency cannot be achieved by imposing obligations on payment service providers that they might not be able to fulfil, or by increasing the control measures in such a way as to obstruct the smooth execution of the transactions. The objective of payment transparency and correct, permanent tracking must be combined with the flow of operations governing the execution of a payment transaction. In this sense, references in the text of the consultation paper to coherence between regulatory action and straight-through processing (STP) is particularly appreciated.

With regard to the SEPA and standards that could be imposed by the GAFI, there needs to be a focus on the development of these to avoid conflict with current work to define regulations at European level for migration to the SEPA, taking into due consideration its particular features.

In this respect, the declination phase of the principles expressed – also given the current operating practices – will be crucial.

From this perspective, it should be pointed out that the provision of paragraph 17, second bullet, according to which cross-border electronic fund transfers (EFT) should include full originator and beneficiary information, could result in an unwanted extension to Regulation no. 1781/2006/EC which, as you are aware, envisages particular rule only in relation to incomplete or missing originator data. This could further hinder the implementation of SEPA regulations and compliance with the short deadlines for the execution of payments, but with no substantial advantage gained in combating money laundering. In effect, it is not by a formal obligation to enter beneficiary data that the originator FI performs suitable

¹ See Bank of Italy Measure of 10 March 2011 on "implementing provisions relating to organisation, procedures and internal controls".

verification of its originator customer, but the anti-money laundering regulations that require the intermediary to assess the risk associated with its customer based on customer activities, the type of customer counterparty, etc. In addition, introducing the obligation of full beneficiary information would mean that cases of discrepancy between the unique ID code of the beneficiary and references indicated in the payment order would also need to be regulated.

From another point of view, ABI fully agrees with the FATF's intention to not require banks to verify the identity of parties to a transaction who are not their customer. Accordingly, it is acknowledged that intermediary banks are not able to verify the identity of either the originator or the beneficiary.

Lastly, it goes without saying that in this context the European Union should be considered a single jurisdiction.

7. Special Recommendation III – Targeted Financial Sanctions in the Terrorist Financing and Proliferation Financing Contexts

ABI wishes to point out that the changes proposed to Special Recommendation III are not particularly relevant to Italy, as the Italian banking system is already obliged to take all the action which, according to the FATF, are necessary to implement the targeted financial sanctions in relation to persons associated with terrorist financing. In particular, Italian Legislative Decree 109/2007, issued in implementation of Directive 2005/60/EC requires that obliged parties:

- freeze the funds and economic resources of the persons indicated in EU regulations;
- reports the related freezing measures applied to the Financial Intelligence Unit (FIU) and to the Special Assessment Unit of the Guardia di Finanza (Tax Police) in relation to economic resources;
- report as suspect to the FIU any transactions, relations and all other available information attributable to person mentioned in the lists circulated by the FIU;
- report suspect transactions which, based on available information, are directly or indirectly attributable to terrorist financing.

Furthermore, ABI also considers it important to include measures to combat the proliferation of mass destruction weapons in Special Recommendation III. The risk is real and international activity to combat it will intensify in the future. In this respect In Italy, they have issued operating instructions for supervised intermediaries on the conduct to adopt and controls to be performed in any relations and transactions with counterparties directly or indirectly involved in programmes for the development of mass destruction

weapons². The main objective of these instructions is to invite Italian operators to implement control procedures able to identify customers or transactions at high risk of involvement in proliferation programmes. Therefore over and above cases in which the names are included on lists prepared by the European Union for asset freezing, where high-risk transactions are identified, intermediaries will need to obtain additional information and if necessary decide whether a suspect transaction should be reported to the FIU. In any event, intermediaries have to report to the FIU on all freezing action taken.

8. Other Issues Included in the Revision of the FATF Standards

8.1. Risk-Based Approach

In coordination with the position taken at FBE level, ABI is “in favour of stressing the importance of a risk-based approach in order to avoid supervisors and legislators applying more prescriptive rule-based obligations and supervisory techniques which undermine the principles and benefits of adopting a risk-based approach to manage and mitigate money laundering and terrorist financing risk”.

8.2. Further consideration of Politically Exposed Persons (PEPs)

The FATF is considering two issues regarding PEPs:

- “the basis on which additional due diligence should be applied to family members and close associates of PEPs”
- “whether persons carrying out prominent functions for international organisations should be considered as PEPs”.

In this context, ABI wishes to reiterate the need to establish principles that alleviate the difficulties currently faced by intermediaries in identifying and verifying such persons.

In line with the position adopted at FBE level, therefore, ABI agrees on the introduction of specific criteria to identify “family members and close associates of PEPs”.

In this respect the FBE recently commented that the “identification of family members and close associates is a real challenge for Financial Institutions in the absence of authoritative lists of PEPs. Clarity is required in terms of the

² See Bank of Italy Measures of 10 November 2009, “Operating instructions on conduct and controls to be adopted by operators in relations with counterparties involved in programmes for the proliferation of mass destruction weapons”.

role of governments and legislators in supporting the development of lists and assisting Financial Institutions in meeting their obligations in respect of PEPs.”

It is inevitable therefore that, here too, in the absence of financial institutions' options for matching information provided by customers to data provided in authoritative lists regarding PEPs, the financial institutions can only rely on declarations made by the customer concerned.

September 16, 2011

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

Japanese Bankers Association

Anti-money laundering/counter-terrorist (AML/CFT) is critical issues for Japanese financial institutions. Japanese Bankers Association (JBA) wishes to express its appreciation for being given the opportunity to participate in the revision of FATF Recommendation to create a more effective and practical system. JBA appreciates look forward to continuing the dialogue with FATF to develop recommendation to discuss the market practice and practicalities of the industry.

1. “1.Beneficial Ownership: Recommendations 5, 33, and 34”

(1) “1.1 Recommendation 5”

The main change proposed in Recommendation 5 is to specify more clearly the types of measures that financial institutions (and through R.12, DNFBPs) would be required to undertake in order to (a) identify and verify the identity of customers that are legal persons or legal arrangements, and (b) understand the nature of their business and their ownership and control structure. (*Paragraphs8*)

- Regarding paragraph 8, we believe the financial institutions (FIs) should be provided with more than just specification and clarification on the types of measures to increase the level of customer due diligence. We emphasize the application of risk-based approach in this area. Based on risk associated with legal persons or legal arrangements, the measures and guidance on information that would normally needed to identify and verify the identity of beneficiary owners should be clarified. Specifically, we believe FATF should provide specification and clarification on these measures, and also provide proposal to when and how measures should be applied, for we believe not all measures should be required across the board. The determination on which and how these measures to be applied to that particular legal persons and legal arrangements should be based on risks. (i.e., mitigation on requirements for customer due diligence should be considered according to the risk level).

- When determining the level of customer due diligence according to risks, risk factors, such as organization structure or location of said legal persons or legal arrangements should be taken into consideration.
- For example, the difference in the degree of transparency on funds flow and money laundering risk is apparent when normal “company” (with business activities) and legal arrangement whose ownership structure and actual business status lack transparency with or without clear intentions are compared. Thus, the types of measures to identify the customer and verify its identity should not be “one-size-fits-all”.

To identify the customer and verify its identity: - the name, legal form, and proof of existence; the powers that regulate and bind the entity (*e.g.*, the memorandum and articles of association of a company) and the names of persons holding senior management positions (*e.g.*, senior managing directors); and the address of the registered office (or main place of business).

- Scopes of power, control and responsibilities associated with “senior management positions”, may vary in each legal person and legal arrangement. Moreover, the decisions to execute financial transactions may not be related to a senior management or executive position. Therefore, the definition and scope of "persons holding senior management positions (*e.g.*, senior managing directors)" must be clarified.

(2) “1.2 Recommendation 33 – Legal Persons”

The FATF is considering whether:

(a) Companies should be responsible for holding both basic information and information about their beneficial ownership (as noted above in the context of Recommendation 5); and that beneficial ownership information should also be accessible in the jurisdiction to competent authorities through one or more other mechanisms, including financial institutions, professional intermediaries, the register of companies, or another body or authority which holds such information (*e.g.*, tax authorities or regulators), or

(b) That competent authorities should be able to access beneficial ownership information from one or more of: the company itself; financial institutions, professional intermediaries, the register of companies, another body or authority which holds such information (*e.g.*, tax authorities or regulators); or by using the authorities’ investigative and other powers. (*Paragraphs 10*)

- If companies are to be responsible for holding information about their beneficial ownership in addition to basic information, the definition of "beneficial ownership" should be defined in the way that is practical for companies. Also, if this additional requirements will be implemented as it was proposed above, the arrangements to mitigate additional burden on companies to meet the new requirements should be in placed.
- If these arrangements stated above are difficult to accomplish, the competent authorities should become responsible for identifying the beneficiary ownership information; and the responsibility of the private sector (companies, financial institutions, professional intermediaries) should be limited. In addition, we would note that information that FIs can access is limited in both quantity and in qualities.
- Companies listed on recognized stock exchanges, state-owned companies, and financial institutions and DNFBPs that are subject to AML/CFT supervision should be exempted from the requirements on beneficial ownership identification.

2. "2. Data protection and privacy: Recommendation 4"

The FATF is aware that the interplay between AML/CFT and data protection requirements is of particular concern for international financial services groups seeking to transfer information across borders for consolidated AML/CFT risk management, and has considered how to ensure that such cross-border flows of information are permitted, subject to appropriate safeguards. (*Paragraphs 14*)

- If FATF is requiring FIs to transfer information across borders for consolidated AML/CFT risk management, FATF should acknowledge the differences of laws and regulations on data protection and privacy in various jurisdictions, and then provide clear and effective framework for these transfers of information for this purpose.
- For example, regarding the proposal to change Recommendation 15, if the Financial Group will be required to share information on clients, accounts, transactions to oversea branches and subsidiaries in different jurisdictions for purpose of global risk management, the changes on data protection and privacy regulations would be the precondition of the implementation of this requirement.

3. “3. Group-wide compliance programmes: Recommendation 15”

It is proposed that financial groups (which are subject to group supervision under the Core Principles) should be required to have group-wide programmes against money-laundering and terrorist financing; and that these should include policies and procedures for sharing information within the group for purposes of global risk management. (*Paragraphs16*)

- "Financial groups (which are subject to group supervision under the Core Principles)" requires a clear definition.

It is proposed that, at a minimum, group-level compliance, audit, and/or AML/CFT functions should be provided with customer, account, and transaction information from branches and subsidiaries when necessary for AML/CFT purposes. (*Paragraphs16*)

- Please refer to the comments on 2:2 above.

4. “4. Special Recommendation VII (Wire transfers)”

SRVII should be applicable to all types of EFT, including serial and cover payments, taking into account the guidance issued by the Basel Committee on Banking Supervision¹.

1 Due diligence and transparency regarding cover payment messages related to cross-border wire transfers (May 2009).

- With regards to SRVII, we should view “Wire transfers” as cross-border transfers that will not include domestic transfers. Domestic transfers should be discussed separately, for payment systems and transaction processing methods varies from country to country. Any study of effective AML/CFT management, the FATF should take these differences in payment systems and transaction processing methods into considerations.

Ordering financial institutions (FIs) should be required to include, on all cross-border EFT, full originator information (name, account number or unique transaction reference number, and address, as currently required) and full beneficiary information (name, and account number or unique transaction reference number). (*Paragraphs17*)

- In paragraph 17, if to “including full beneficiary information” should be interpreted as “to assure that there are no missing fields on beneficiary information”, this suggestion is a workable practice.

Intermediary financial institutions (FIs) should be required to screen cross-border transactions in a manner which is consistent with straight-through processing.² (*Paragraphs 17*)

2 To take freezing action and comply with prohibitions from conducting transactions with prohibited parties, as per the obligations which are set out in the relevant UNSCRs, such as S/RES/1267(1999) and its successor resolutions, and S/RES/1373(2001).

- The Foreign Exchange Trade Act of Japan requires screening against asset freeze provided by Japanese Ministry of Finance which includes list of subjects designated by UNSCRs, as it is described in footnote 2 of The Consultation Paper. Thus the procedures to screen against cross-border transactions in line with UNSCRs have been already implemented in Japanese banking industry. Nonetheless, if the proposal also includes requirement to assure there is no unusual information on originator or beneficiary, it is not feasible.
- When cover payment instruction is sent by MT202 instead of MT202COV, because there is no information on originator or beneficiary, it is impossible for FIs to distinguish between cover payment related to interbank settlements from customer related cover payment; and for this reason the detection is difficult.

Beneficiary FIs receiving EFT which do not contain full originator or beneficiary information, as required, should be required to take measures that are consistent with automated processes. (*Paragraphs 17*)

- The definition of “automated process” is not clear, we would ask FATF to provide specific and descriptive definition.
- With respect to full originator information, the process to detect missing mandatory fields, and revert Ordering FIs if there is missing information is feasible to Beneficiary FIs.

The FATF is also seeking input on: (i) what types of procedures are currently being used by intermediary FIs for dealing with EFT which lack full originator information as required, and whether any of these procedures are risk-based; (*Paragraphs 18*)

- With respect to dealing with EFT which is missing mandatory originator information, and if the transaction was processed through serial payment, the process will be held and the intermediately FIs will request the Ordering FIs for full originator information.
- When cover payment instruction is sent via "MT202COV", detection of missing fields by intermediary FIs are possible. However, current practice does not require Intermediary FI to request full originator information from Ordering FIs (If the cover payment instruction was sent via MT202, it is impossible for Intermediary FIs to even detect missing field).

(ii) whether and what kind of procedures FIs apply to cross-border EFT to detect whether information with respect to parties that are not their customers is meaningful; *(Paragraphs18)*

- In many cases, it is impossible for the FIs itself to determine whether information on parties that are not their customers is "meaningful," partly because of linguistic issues. If FIs are to detect whether information is “meaningful”, authorities need to provide guidelines or relative rules that contain narrow definition of “meaningful.” The definition of “Meaningful” should also be clear as black and white to maintain the practicalities of the practice or authority should by narrowing the subject of detection by applying risk-based approach.

and (iii) whether financial institutions apply screening procedures to cross border EFT below the threshold, and if so, how such procedures are applied. *(Paragraphs18)*

- FIs use screening procedures for all cross-border wire transfers, and there are no thresholds in these screening procedures.

5. “5. Targeted financial sanctions in the terrorist financing and proliferation financing contexts”

Respect prohibitions on making any funds or other assets, economic resources, or financial or other related services, available, directly or indirectly, wholly or jointly, for the benefit of designated persons; entities owned or controlled, directly or indirectly, by designated persons; and persons and entities acting on behalf of or at the direction of designated persons, unless licensed, authorised or notified or otherwise, in accordance with the relevant UNSCRs. *(Paragraphs20)*

- "Directly or indirectly" requires a clear definition and scope.
- FIs would be able to refuse any funds or other assets, economic resources, or financial or other related services, available, only when FIs learned that entities owned or controlled "directly or indirectly" as the result of investigations or reviews. However, there are limitations to the scope of the investigations or review that financial institutions should undertake; the detailed and practical guidelines should be provided to define the subject and extent of investigations or reviews by FIs.

6. "8. Other Issues included in the revision of the FATF Standards"

(1) "8.2 Risk-based approach in supervision"

The FATF has considered how the risk-based approach affects supervision, including risk as a basis for the allocation of supervisory resources, and the supervision of how financial institutions themselves apply a risk-based approach to AML/CFT. It is proposed that a risk-based approach should apply to the supervision of financial institutions and DNFBPs, including by Self-Regulatory Organisations. *(Paragraphs29)*

- The specific content of "a risk-based approach" should be clarified.

(2) "8.3 Further consideration of Politically Exposed Persons;"

It is proposed that individuals who have been entrusted with prominent functions by an international organisation should be treated in the same way as domestic PEPs. It is also proposed that the requirements for foreign and domestic PEPs should apply equally to family members or close associates of such PEPs. This would mean that enhanced CDD measures would be required automatically for family members and close associates of a foreign PEP, and could be required (on a risk-based approach) for family members and close associates of a domestic PEP. *(Paragraphs30)*

- The definition and scope of "international organisation" and "prominent functions" require further clarification.
- 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.
- 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.

- 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.

Financial Action Task Force
Consultation on review of standards for 4th round of mutual evaluations
Fatf.consultation@fatf-gafi.org

Brussels, 16 September, 2011

RESPONSE TO THE SECOND FATF CONSULTATION PAPER ON THE REVIEW OF THE STANDARDS PREPARATION FOR THE 4th ROUND OF MUTUAL EVALUATIONS

Leaseurope welcomes the opportunity for continued dialogue¹ with the Financial Action Task Force ('FATF') and the possibility to raise further comments in response to the second consultation paper on the review of the standards preparation for the 4th round of mutual evaluations.

As a member of the European Banking Industry Committee ('EBIC'), we fully endorse the EBIC response.

Below are our comments, responding to some of the recommendations proposed in the current consultation document.

1. Politically Exposed Persons ('PEPs'): Recommendation 6

Whilst we welcome further clarification concerning the requirements with respect to family members and close associates of PEPs, we foresee difficulty in identifying those individuals who conduct prominent functions for international organisations. At the very least there will be new compliance questions that leasing companies would have to ask. **We therefore urge the FATF to provide a clear definition and a comprehensive list of the types of targeted organisations as well as of the respective positions that are to be considered as prominent functions.**

¹ To view our response to the first consultation please click [here](#)

2. Data protection and privacy: Recommendation 4

Leaseurope welcomes the FATF recommendation which would lay down a general obligation requiring **authorities** responsible for AML and data protection to have effective mechanisms in place to enable them to co-operate effectively. However, in the first instance, we urge the FATF to ensure that **both** AML and data protection **legislation** are compatible, so as to allow the industry to comply fully with AML and data protection requirements placed upon it.

3. Beneficial Ownership: Recommendations 5, 33 and 34

Regarding the compliance requirements pertaining to beneficial ownership Leaseurope welcomes the initiative by the FATF to clarify what is to be expected of countries and financial institutions when:

- Identifying the customer and verifying its identity;
- Identifying the beneficial owners of a legal person and taking reasonable measures in verifying their identity; and
- Identifying the beneficial owners of a legal arrangement and taking reasonable measures in verifying their identity

as these requirements vary between Member States.

However, whilst it is advantageous for there to be a list of specific measures to be put in place **we encourage the FATF to explore practical ways of implementing these**. In this context we would like the FATF to take note of the European initiative concerning the [interconnection of business registers](#), that Leaseurope also supports, which aims to link European company registers therefore making individual company data, available in one place. In theory this initiative should allow for all of the information requested to be easily accessed by companies subject to AML rules thus facilitating compliance with the same.

Please feel free to contact me or Sarah Shipley for additional queries.

Yours sincerely,



Tanguy van de WERVE

About Leaseurope

As a Federation, Leaseurope brings together 45 member associations in 32 European countries representing the leasing, long term and/or short term automotive rental industries. In 2009, these associations represented more than 1 300 leasing firms and more than 780 short term rental companies. The scope of products covered by Leaseurope's members ranges from hire purchase to finance leases and operating leases of all asset types (automotive, equipment and real estate) and also includes the rental of cars, vans and trucks. Leaseurope represents approximately 93% of the total European leasing market.

Further information on Leaseurope and its members can be found at www.leaseurope.org.

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www.leaseurope.org



September 16, 2011

Financial Action Task Force Secretariat
2 rue André Pascal
75775 Paris Cedex 16
FRANCE

By email: fatf.consultation@fatf.gatf.org

Dear Sir/Madam:

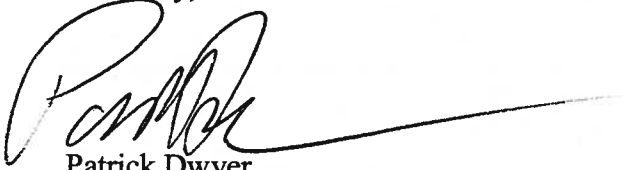
Thank you for the opportunity to comment on the Consultation Paper: The Review of Standards – Preparation for the 4th Round of Mutual Evaluation. We applaud the FATF's open and transparent consultative process and the continued involvement of the private sector in the review process. We offer specific comments on Recommendation 4 and Special Recommendation 7 in the Consultation Paper.

With regard to Recommendation 4: Data Protection and Privacy (Paragraphs 14 and 15), we support the efforts to advocate toward improved coordination between AML/CFT requirements and data security/financial privacy laws to improve the implementation of AML/CFT measures. However, we encourage the FATF to address this issue not strictly from a cross-border perspective but also from a domestic perspective. This conflict between AML/CFT objectives and data protection/financial privacy standards should be addressed for both the domestic and cross-border implementation of AML/CFT measures. Additionally, we would welcome FATF standards that permit and encourage information sharing and cooperation among companies that are subject to AML/CFT measures, so that such companies can respond to AML/CFT issues in a more coordinated manner than what is often permitted by current data protection/financial privacy laws.

With regard to Special Recommendation VII: Wire Transfers (Paragraph 17), MasterCard supports the application of SR VII to all types of Electronic Funds Transfers (EFTs). We advocate for a risk-based approach for SR VII to allow countries be able to tailor the application to domestic EFT transactions in a way to promote financial inclusion while balancing AML/CFT risks. MasterCard appreciates the clarification in the last bullet point regarding the role of originators and intermediaries to verify the identity of parties to an EFT transaction who are not their customer. The recognition of the critical customer verification responsibilities of the parties in an EFT transaction, and incorporating that recognition into AML/CFT standards, implementing laws and rules will yield productive transparency results and reduce operational confusion.

Thank you again for the opportunity to comment. Please do not hesitate to contact me if you have any questions regarding our input.

Sincerely,

A handwritten signature in black ink, appearing to read 'Patrick Dwyer', with a long horizontal flourish extending to the right.

Patrick Dwyer
Vice President, Global Public Policy
MasterCard Worldwide

Dear FATF Secretariat,

Please find attached the observations we received from the Mexican Banking Association (ABM) to the document entitled "**The Review of the Standards-Preparation for the 4th Round of Mutual Evaluation. Second Public Consultation**".

As you may see, the ABM's concerns are mainly the following:

1. Beneficial ownership: In Mexico there are different levels of AML/CFT identification and due diligence requirements depending on the level of risk of the corresponding account. In this sense, the ABM suggests that the level of new requirements for beneficial owners should be focused in the high risk accounts.

2. Wire transfers: The ABM considers that for the new requirements in wire transfers it would be convenient to evaluate which are the current practices and means by which electronic transfers are made, in order to establish the minimal requirements that would have to be considered in order for a transfer not to be rejected. Additionally, for the specific case of international transfers, it is necessary that the different jurisdictions allow in their legislation for the sharing of information among the financial entities that send and receive the transfers, in order for them to be able to provide the information they are requested by the entities that belong to the chain of payments.

3. FIU's request for additional information: The AMB suggests the establishment of protocols for the way financial entities must provide the information. Also that they receive feedback from the FIU's.

4. PEP's: The AMB suggests that there should be a common understanding within the different jurisdictions on the extent of the concept of families and associates of PEP's.

Best regards,

Unidad de Inteligencia Financiera

México

Secretaría de Hacienda y Crédito Público
Constituyentes 810,
Colonia Lomas Altas
C.P. 11950, México, D.F.
uifmex@hacienda.gob.mx

**COMMENTS RECEIVED FROM THE MEXICAN BANKING ASSOCIATION
(ABM) TO THE FATF DOCUMENT ENTITLED: “The Review of the Standards -
Preparation for the 4th Round of Mutual Evaluation. Second Public
Consultation”.**

BENEFICIAL OWNERSHIP: RECOMMENDATIONS 5, 33 and 34

We consider that the purpose of this recommendation is to provide the Financial Institutions with more specific faculties in order to:

- (i) Identify the customer and verify its identity;
- (ii) Identify the beneficial owners of a legal person and take reasonable measures to verify its identity from its creation, elaboration of the company's By Laws and verify the names of staff members. It is also important to verify the address of the principal offices and confirm the identity of the shareholders and of those who have the corporative control over the entity , and also the identity of the administrative officers; and
- (iii) To identify the beneficial owners of corporate vehicles (legal arrangements)

The process of identifying the beneficial ownership must be linked with the actual risk it encompasses and not applied to all cases. This would allow delimiting the performance of such identification to higher risk clients.

SPECIAL RECOMMENDATION VII (WIRE TRANSFERS)

FATF wants to strengthen the transparency of wire transfers through obtaining feedback on the procedures that are commonly used by the financial mediators on all the funds transfers, specifically on the cross-border ones.

On this regard we consider that before the FATF issues a recommendation, it is important that it conducts an assessment of the practices and means by which electronic transfers are performed in order to determine or establish minimum standards.

On the other hand, in the case of international wire transfers, it would be desirable that the jurisdiction's domestic legal framework allow the financial institutions which send, receive or act as correspondents to share information among them, in order to meet the requirements of information required by the entities part of the payment chain.

THE FINANCIAL INTELLIGENCE UNIT: RECOMMENDATION 26

It is recommended that when requesting information, the Financial Intelligence Units on the one hand, point out clear instructions and lines of action to their own

entities, and on the other, provide feedback of the inquiries that are being carrying out.

OTHER ISSUES INCLUDED IN THE REVISION OF THE FATF STANDARDS

Regarding the FATF consideration to apply more due diligence to family and close associates to PEPs, first it is necessary to define and establish common standards for all jurisdictions regarding what should be understood by family or “close associates” (term that under Mexican law does not exists). Even the definition of Politically Exposed Persons is ambiguous.

Additionally, FATF should require member jurisdictions the obligation to define who are their PEPs, in all categories, update them and make it of public knowledge.



PMPG

Payments Market Practice Group

The Payments Market Practice Group is an industry association¹ 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 market practice guidance around FATF SR VII and the introduction of the MT 202 COV. As an industry organization with a mission to develop “best-in-class” market practices, the PMPG comments below are focused on the potential impact on the global payments market place.

14 September 2011

Dear FATF Secretariat,

The PMPG welcomes this opportunity to provide further comments on Section 4 ‘Special Recommendation VII (Wire transfers)’ of the June 2011 second public consultation paper, which seeks input on a number of questions outlined in paragraph 18. We have elected to answer questions (i) and (ii) with a single commentary because the procedures followed by intermediary financial institutions (FIs) in both scenarios are similar.

- (i) *What types of procedures are currently being used by intermediary FIs for dealing with cross-border wire transfers which lack full originator information as required, and whether any of these procedures are risk-based;*
- (ii) *Whether and what kind of procedures FIs apply to cross-border wire transfers to detect whether information with respect to parties that are not their customers is meaningful;*

Commentary:

Intermediary FIs employ both intraday and post transaction monitoring procedures. Intraday monitoring of mandatory fields will determine if critical account party is missing or presented incorrectly. Intermediary FIs will attempt to repair these transactions in real time. Alternatively, they will revert to the party sending the transaction and request additional information.

To maintain intraday processing efficiency and maximum straight through rates, Intermediary FIs will also conduct post-transaction monitoring as a further review of originator information to monitor compliance with local regulations and international standards. On a post-transaction basis, an Intermediary FI may review originating parties on cross-border wire transfers to determine if some or all of the following conditions exist²:

- 1. Incomplete or missing account numbers (for example, account numbers of 3 characters or fewer);*
- 2. Incomplete or missing names (for example, names with 3 or fewer characters);*
- 3. Names coded as numbers or other typographic characters;*
- 4. Obscuring phrases like "our client", "our good customer" given in place of a name;*
- 5. Incomplete address*

¹The PMPG is an international group of payments subject matter experts with representation from Asia, Europe and the Americas.

² Each element of this control list is subject to review by local regulators who decide on their implementation within the national/regional laws (for example, EC regulation 1787).

When a clear pattern emerges from these reviews, the Intermediary FI will take the issue back to the sending correspondent of the cross-border wire transfers.

However, experience suggests this type of post-transaction review is not consistent and varies by institution, and even within an institution procedures can vary between regions based on guidance from regional and/or country authorities. Intermediary FIs may also employ a risk-based assessment in their review process and these procedures will vary by region/country, based on local regulation.

These practices will help identify questionable elements in data fields to some extent. As described, Intermediary FIs will take action when they discern a clear and consistent pattern. Market practices indicate that this is the practical extent to what an Intermediary FI can evaluate and address. Intermediary FIs do not have procedures to detect whether information with respect to parties that are not their customers is meaningful. Intermediary FIs cannot define or assess what is meaningful or accurate information as it relates to the parties in a transaction. The implementation of any or all of these practices would not assure that all instances of meaningless, incomplete, or inaccurate information would be detectable.

(iii) *Whether financial institutions apply screening procedures to cross-border wire transfers below the threshold, and if so, how such procedures are applied*

Commentary:

Financial institutions typically apply sanctions screening procedures without regard to amount thresholds. There are also examples of market practice where risk based procedures are applied based upon the country of origin. Typically an automated screening function is utilized, with the appropriate manual review to support the process and to investigate cross-border wire transfers identified as part of the monitoring procedure. This of course can be more complex depending upon the regional/country guidance of screening procedures.

Should the FATF consider further changes to SR VII, the PMPG recommends that it considers the position and comments of the banking industry and relevant representative bodies and provide clear guidance which leads to uniform adoption. As demonstrated by the responses to the questions above, implementation of SR VII varies greatly between and within jurisdictions where different processing requirements have been adopted. These differences create substantial confusion and disruption to global payments processing. It would be highly desirable to avoid this confusion in the future by providing more specific guidance related to implementation by national jurisdictions.

We would like to thank you for the opportunity to comment on the proposed revisions to Special Recommendation VII and remain available to further engage in the industry assessment of any potential impact on the global payments market place and practices.

Respectfully submitted,

Günther Gall and Roy DeCicco
Co-chairs PMPG



Mr. Luis Urrutia

President

Financial Action Task Force (FATF)

2, rue André Pascal

75775 Paris Cedex 16

France

Brussels, 16 September 2011

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

Dear Mr. Urrutia,

PayPal welcomes the opportunity to provide comments on the proposed changes to the FATF Recommendations as set down in the Second Consultation Paper released in June 2011.

PayPal enables any individual or business with an email address and bank account or credit/debit card to securely, easily and quickly send and receive payments online. The service builds on the existing financial infrastructure and utilises one of the world's most advanced proprietary fraud and money laundering prevention systems to create a safe, global, real-time payment solution. PayPal was launched in the United States in 1998 and was bought by eBay Inc. in October 2002.

Within the European Union, the PayPal service qualifies as electronic money and is offered by PayPal Europe S.à r.l. & Cie, S.C.A. ("PayPal") a credit institution regulated by the Luxembourg *Commission de Surveillance du Secteur Financier* (CSSF).

We have identified a couple of issues in the Second Consultation Paper that we would like to comment upon.

1. Beneficial Ownership

1.1 Risk-based approach

Money launderers may try to hide behind complex business structures and multiple agents. For this reason, PayPal agrees with the FATF that it is important for financial institutions to better understand their customers' ownership and control structure to be able to identify suspicious activities or relationships from an AML or CFT standpoint.

However, existing obligations require financial institutions to identify beneficial owners of all legal persons, regardless of the actual risk posed by those legal persons or by the transactions made. Such a broad obligation means that a lot of time and resources are spent both by PayPal and our customers to collect and analyze beneficial ownership information (see also the issue relating to information access discussed under 1.2 below). However, the information provided by our customers and/or our own researches will often lead us to conclude that the shareholding of the legal person is diluted in a way that no individual owns more than 25% of the entity's capital.

Therefore, we believe that a risk based approach could be applied to beneficial ownership identification requirements.

1.2. Access to information

PayPal strongly supports the possibility to verify beneficial ownership related information through official public channels, because we believe it is the only way for financial institutions to fully comply with applicable requirements.

Obtaining information from private sources is very costly but is not really efficient. Indeed, the information accessible through private sources cannot be verified and therefore cannot be fully relied upon.

In addition, our international customers often have very complex corporate structures (with more than three layers). Even if our customers are willing to help us identify their ultimate beneficial owner and comply with our AML/CFT requirements, they may simply be unable to do so because there is no such ultimate beneficial owner or because if there is, they are so far from the customer that they do not actually have any real control over the customer or the customer's transactions.

Finally, providing extensive beneficial ownership information to financial institutions puts an additional burden on our international customers who may not be subject to the same requirements in other countries/regions where they operate.

To summarize, substantial amounts of time and money are spent in collecting information that is hardly usable.

Requiring public authorities to collect basic information and information about companies' beneficial ownership and to make that information accessible to financial institutions would



not only facilitate the identification of beneficial owners but may also discourage some criminals from using complex corporate structures.

2. Politically Exposed Persons (PEPs)

Currently, to identify PEPs and comply with applicable requirements, financial institutions are using information provided by private companies. One of the issues that financial institutions have to deal with is that those private companies do not necessarily use the same definition of PEPs. For example, some companies consider that a person who has been once classified as PEP will always remain a PEP, regardless of whether he or she has retired later on. In addition, access to this information is very costly, which puts an additional burden on financial institutions.

We strongly believe that governments are best placed to collect and maintain accurate PEP related information and make that information accessible to financial institutions in an efficient manner. As a matter of fact, any individual falling within the definition of a primary PEP has been appointed by a governmental body. Before hiring individuals, governmental bodies will generally perform background checks, looking at those individuals' family and business associates as well as their income and assets.

That is the reason why PayPal supports the creation of official public lists of PEPs.

We hope you will find the above comments useful and remain at your disposal should you have any additional questions.

Yours sincerely,

Fabienne Weibel

Head of Government Relations, EMEA



SwissBanking

ASA | SVV

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

SwissHoldings

Verband der Industrie- und Dienstleistungskonzerne in der Schweiz
Fédération des groupes industriels et de services en Suisse
Federation of Industrial and Service Groups in Switzerland



FORUM SRO | OAR | OAD



Swiss Association
of Trust Companies

FATF/GAFI
2, rue André Pascal
75775 Paris Cedex
France

E-mail: fatf.consultation@fatf-gafi.org

Basel, 16 September 2011
PBA/FHA/IRO

Comments on the consultation paper entitled “Review of the FATF Standards – Preparation for the 4th Round of Mutual Evaluations (second public consultation)”

Dear Sirs

Thank you for giving us the opportunity to comment on the second public consultation of the 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 representing 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. economiesuisse has established a special working group to follow financial market regulations including the fight against money laundering. This working group includes the interested business organisations and has extensively discussed all FATF proposal in order to coordinate the present comments.
- ❖ **Swiss Bankers Association (SBA)**, the leading professional association of the Swiss financial centre. Its main objectives are to preserve and promote ideal conditions at home and abroad for Switzerland's financial centre. Established as a professional association in Basel in 1912, it currently has 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 re-insurers – and total 74 insurance companies.

- ❖ **SwissHoldings**, a cross-sector business association that represents the interests of major industrial and services companies (excluding the financial sector) based in Switzerland and focussed 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**, an association of Switzerland's self-regulatory organisations, and thus of the non-banking sector, with eleven regular and two associated members. 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).
- ❖ **Swiss Association of Trust Companies (SATC)**, an organisation whose purpose is to engage in the furtherance and development of trustee activities in Switzerland in order to ensure a high level of quality and integrity and the adherence to professional and ethical standards in the trust business in Switzerland.

As the wording of the Consultation Paper lacks concreteness it is a difficult task to comment on its contents. Having access to the concrete wording of the proposed changes in the Recommendations would therefore be preferable.

1. Preliminary remarks

In accordance with our comments on "Consultation Paper 1" from January 2011, we once more emphasize, that the revision of the review of the FATF Recommendations should be postponed until the currently applicable standards are fully implemented in the member states; hence the revision of the FATF Recommendations is premature.

Furthermore, we would like to point out that although the individual suggestions must be examined in more detail, the suggested changes result in immense additional costs for financial institutions. In some cases, the proposed requirements extend well beyond the framework of combating money laundering and the financing of terrorism, and must therefore be regarded as inappropriate. It is essential that a clear cost/benefit analysis be conducted when considering these changes.

The signing parties strongly support the fight against money laundering and the financing of terrorism and the adoption of efficient and effective measures to achieve this goal. However, we do not comprehend why the leeway permitted in the implementation of regulations should now be limited by specifying them. Rather than making these specifications, which result in limitations, the focus should be on achieving the optimum implementation of existing regulations. In our view, narrower descriptions will not strengthen the fight against money laundering and the financing of terrorism, as countries are required to incorporate the FATF recommendations in their own legislation. The path chosen should not result solely in formalities and the clarification of intergovernmental disputes, but should mainly reinforce the efforts to combat money laundering and the financing of terrorism.

2. Key points

In order to create an overview as well as for clarification purposes, we summarize our main concerns with regard to "Consultation Paper 2" as follows:

- Unclear and inconsistent alterations regarding beneficial owners (Rec. 5, 33 and 34)
- Overly strict and inconsistent rules for keeping a register of beneficial owners, bearer shares and nominee shareholders (Rec. 33)
- An effective prevention against money laundering and terrorist financing can only be implemented via the organs of a structure but not through a jurisdiction (Rec. 34)
- No expansion of international cooperation for the purpose of exchanging information between the responsible authorities (Rec. 40)

The relevant explanations can be found below under Comment 3.

3. Comments on the individual recommendations and suggested changes

3.1. Beneficial ownership

Ad Recommendation 5

Because of the inconsistent alterations regarding to the beneficial owners we do not agree with the proposed changes. Thus, we assume that the pursuit of clarity will not entail a requirement to identify the beneficial owner in the same manner as the contractual partner, as if the wording "to identify the beneficial owner" may suggest. If in effect identification of the beneficial owner is meant to be identical to the identification of the contractual partner, the wording must be changed to "to establish the beneficial owner". In this regard, we also reject more extensive measures for verifying beneficial owners. It is vital that a clear distinction be made between beneficial owners and beneficiaries.

The suggested changes pertaining to the identification of contractual partners and the understanding of their business activities as well as determining beneficial owners have already been implemented in Switzerland. Swiss financial intermediaries have the obligation to identify the contractual partner (legal entities and asset-holding entities), verify their identity and determine the beneficial owners. In summary, the Swiss standard realised on a risk based approach already meets the FATF Recommendations on beneficial ownership. Accordingly, the FATF certified Switzerland to have a very good system in its last country examination, including the risk based approach.

Ad Recommendation 33

We welcome the fact that the FATF recognizes that there is no additional need for transparency among listed companies and thus has not planned any provisions to this effect. Listed companies are already subject to disclosure obligations under stock market law.

However, the general implementation of new regulations for legal entities will lead to unnecessary administration costs for the producing economy and should clearly be rejected.

The benefits of introducing a requirement to maintain a register of beneficial owners are far outweighed by the costs of such a measure. Moreover, the requirement that the basic information in registers be available to the public is already met in Switzerland through the Commercial Register, which is available to the public and can be viewed free-of-charge worldwide via the basic data. We would like to emphasize that all persons representing companies and foundations entered in the Commercial Register have been formally and personally identified at a counter or by notarisation – this includes the provision of an identification document.

The measures to combat abuse of bearer shares are very extensive. Suggestions a to b are generally rejected. Suggested changes a and b would lead to the elimination of bearer shares, which is rejected due to its far-reaching impact. Possible abuse could be sufficiently avoided by means of the existing system in place in Switzerland to determine the beneficial owner.

The suggested measures in connection with combating abuse with regard to nominee shareholders also go too far. Solution a requires changes to other legal areas as well as intervention in the private sphere, which is not desirable. In this area too, the existing method of determining beneficial owners is sufficient for the purposes of combating abuse.

The call for similar measures in connection with foundations, institutions and limited liability partnerships is also rejected. The existing provisions are wholly sufficient: financial intermediaries must identify and maintain written records on beneficial owners after applying the risk-based approach. More extensive measures are not required.

The FATF's aim of striking a balance between avoiding unnecessary burdening of the producing industries and collecting required information in the financial sector (RBA) can best be achieved by adopting the Swiss standards for distinguishing between operational companies that use their own resources to develop a business activity and vehicles that serve financial control, governance and optimisation purposes. No further recommendations are therefore necessary.

Finally, the FATF intends via Recommendation 33 to specify the requirements in connection with the steps that the countries must undertake in order that the required information on beneficial owners can be accessed quickly. The requirements create a conflict regarding the right to the protection of privacy. It must therefore be ensured that an automatic exchange of information is not introduced through the back door (see the comments below regarding Rec. 4 and 40). In addition, Swiss administrative, criminal and civil law already provide the responsible authority (particularly in the areas of legal and administrative assistance) with sufficient access to information on shareholders and beneficial owners.

Ad Recommendation 34

What is unsettling and must be clearly rejected are the suggestions regarding responsibility between countries with applicable jurisdiction which forms the legal basis for agreements (so-called applicable law), and countries with non-applicable jurisdiction, but where the actual administration of a mandate takes place. The result could be that a large part of regulatory responsibility regarding trusts, foundations, fiduciary companies, etc. would have to be administered in countries with applicable law, rather than in the country actually responsible for the administration of the mandate, as has been the case. The benefits of such a regulation would not outweigh the costs and increase administrative expenses. Only the Trustee or a Foundation Council, both who owe a fiduciary obligation vis-à-vis the beneficiaries, have systematic access to all relevant data, such as names, addresses and background of beneficiaries or other persons connected to a Trust or

Foundation. Consequently, an effective prevention against money laundering and terrorist financing can only be implemented via the organs of a structure but not through a jurisdiction which is merely the source of law. Equal concepts of public registers of trusts and the like do not assist to accomplish the desired objectives but rather introduce inefficient processes without any potential measurable benefits. A recommendation to register confidential private information relating to the creation and management of a trust would affect the competitiveness of various trust jurisdictions, while nobody would expect for example a public register of will executors to contain confidential and private information.

The suggested changes made under Recommendation 33, such as the registration and related disclosure of beneficial owners as well as the assets of a mandate such as a trust, must also be clearly rejected. This type of registration obligation (especially for international succession planning) would massively infringe upon the protection of privacy.

A similar guarantee of quick access to information regarding beneficial owners for asset-holding entities such as trusts, fiduciary companies and entailed estates may not, we wish to repeat, be permitted to result in an indirect exchange of information sneaking in through the back door.

3.2. Data protection and privacy

Ad Recommendation 4

There is the possibility of a conflict between the duties related to the fight against money laundering and the rights deriving from data and privacy protection. For this reason, the implementation must only be carried out within the limits of national laws so that it does not result in a circumvention of national data protection laws and legislation on protection of privacy.

Another reason for this restriction is to ensure that international financial intermediaries are not faced with unsolvable problems. The exchange of information must remain limited, in particular due to the lack of international (i.e. extending beyond the EU) standards on the protection of personal data.

Financial intermediaries cannot and should not be forced to disregard recognised regulations on the protection of personal data by submitting this data to states with insufficient levels of protection.

3.3. Group-wide compliance programmes

Ad Recommendation 15

The changes suggested by the FATF that group-wide programmes aiming to combat money laundering and to exchange information are to be introduced for financial intermediary groups are generally a good idea. This will relieve the parent company of some of the burden. However, the changes could come in conflict with national regulations because information is being exchanged.

In addition, there is the danger of placing companies at a disadvantage if they are domiciled in a country with very strict requirements and consequently necessitates all branches

to fulfil the requirements for these group-wide programmes, while companies domiciled in a country with fewer regulations are at an advantage.

Swiss law already recognizes such group-wide harmonization regarding the most important policies (see Art. 5 of the Ordinance of the Swiss Financial Market Supervisory Authority on the Prevention of Money Laundering and Terrorist Financing (FINMA Anti-Money Laundering Ordinance, AMLO-FINMA)).

3.4. Special Recommendation VII (wire transfers)

It seems logical that in addition to originator details, questions regarding beneficiary data should be regulated. In this regard, however, it must be ensured that only those financial intermediaries who are actually able to perform a check must do so and that all other financial intermediaries are released from a respective obligation. Taking into account the cost/benefit aspect, it must be noted that due diligence cannot be performed for every stage of transfers involving multiple stages.

In particular, if a UN sanction is affected, payments for intermediaries are rejected. These duties must be performed by the paying or receiving bank. Intermediary banks are only able to do this to a limited extent as not all information is available to them.

Swiss law already takes this aspect into account. It stipulates that an intermediary (i.e. the correspondence bank) must only perform manual risk-based spot checks with regard to completeness of data (see Art. 34 para. 2 AMLO-FINMA).

Furthermore, it has to be noted, that such increased requirements regarding wire transfers can have negative effects on trade and industry which clearly have to be avoided.

3.5. Targeted financial sanctions in the terrorist financing and proliferation financing contexts

We welcome the suggested measures in principle and they have already been implemented in Switzerland. However, we would like to stress that the proposed measures should not extend beyond those of the UN resolutions.

3.6. The Financial Intelligence Unit

The suggested measures seem reasonable and our FIU will provide a response with regards to the content.

3.7. International cooperation

Ad Recommendation 40

The proposal for an automatic exchange of information between FIUs must obviously be rejected. Any exchanges of information may only take place within the framework of national legislation (legal and administrative assistance) and the national legislator must define who can exchange which information with whom and under which conditions within the framework of the relevant administrative assistance.

If Recommendation 40 is modified as suggested despite our rejection, strong safeguards must be put in place. These safeguards must also be agreed upon at the international level in order to create a completely level playing field.

3.8. Other issues included in the revision of the FATF Standards

Due to the fact that the recommendations have not been implemented in some countries, the question of implementing the standards for individual partners is no longer of importance. The key issue is in fact the risk concerning individual countries and their implementation of the recommendations. This approach is clearly rejected as it could increase pressure on individual countries. It could result in a black list, which is not the aim here.

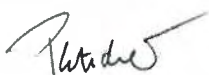
However, consistent implementation of the risk-based approach under supervision would be very welcome. In this regard, a standard national risk policy in dealing with national PEPs is also required. The standard should help countries to define risk policies which are based on the degree of domestic corruption and the obvious irregularities in the shadow economy as a corruption-like part of the economy. It should be pointed out that the money laundering risk related to domestic PEPs in Switzerland is low. For this reason, a pragmatic procedure tailored to each individual country is preferable to a general broadening of regulation.

Furthermore, we must also stress, as previously explained in the response to "Consultation Paper 1", that an expansion to include domestic PEPs in Switzerland is fundamentally rejected.

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

Yours sincerely

economiesuisse



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Member of the Executive Board



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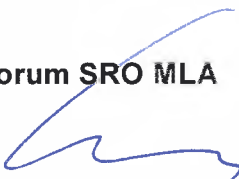


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Dr. Josef Bollag
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Swiss Association of Trust Companies



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12 September 2011

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Doc Ref: STUARTG/#89862_V1

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Attention:
Mr J Carlson: fatf.consultation@fatf-gafi.org

Dear Sir

FATF Consultation Paper – The Review of the Standards (June 2011)

With reference to the above-mentioned 2nd Consultation Paper, we support the comments being tabled by the IBFed (International Banking Federation), in addition to the following specific comments from a local perspective:

1. Recommendation 5

The difficulties in identifying and verifying “beneficial owners” of any legal arrangement continue. The absence of appropriate and correct public registries makes verification extremely difficult. However, on the justifiable presumption that most legal entities are honest and law-abiding, the identification and verification burden will be considerably lightened if FATF required all legal entities to self-declare their beneficial ownership. Such self-certification (which could be part of audited financial statements) would, we believe, reduce the compliance burden by over 80%, allowing scarce resources to be focussed on only suspicious entities. This option would also be far less burdensome on the public sector responsible for maintaining public registries.

Ad the first bullet point on page 6 of the document it is noted that FATF is considering this option (to which we obviously agree), but also that this information should be accessible inter alia through financial institutions. We disagree that financial institutions should become the *de facto* public sector registers, and note that in most cases bank-client confidentiality and other privacy requirements could prohibit such proposals.

Ad the 2nd bullet point on page 7 the proposal is that “competent authorities in all countries are able to access information...”. It is unclear if this proposal means all countries only within own jurisdiction,

or all countries across all jurisdictions. Clarity is recommended on the exact expectation.

2. **Targeted financial sanctions in the terrorist financing and proliferation financing context**

Section 22 on page 9 notes that the FATF is still considering including “proliferation financing” within its scope. We have motivated on several occasions before that the financial sector is unable to provide any **support to governments’ anti-proliferation efforts due to the difficulties associated with “dual use” items. We again recommend that the FATF not engage itself or its members in this impossible effort, which is best left to trained and experienced customs officials.**

3. **Other issues included in the revision of the FATF Standards**

Ad section 27 we note the requirement on financial institutions to apply enhanced due diligence against certain countries. However, South African experience highlights how extremely difficult this can be for financial institutions in the absence of clear UN resolutions, e.g.

- **when Nigeria was on the “special watch” designation some years ago** the then President of the country was actively engaged with the South African President, as were various other persons, in joint African Union initiatives. No financial institution in South Africa could have taken any actions at business level that potentially disrupted these political initiatives (fortunately commercial ties between the 2 countries were less developed at that stage);
- our Financial Intelligence Centre was putting pressure on local banks to cut their ties with Iran at the same time as the Department of Trade and Industry was hosting a trade delegation from Iran (it was only when the UN published a specific list of banned Iranian entities and individuals that these efforts were focussed).
- **“international relations”** per definition requires the involvement of the Ministry and Department of International Relations – local financial institutions are caught up between the National Treasury (wanting compliance with FATF Standards) and International Relations/Trade and Industry (wanting to further relationships and trade).

4. **Further consideration of Politically Exposed Persons**

Ad section 30 PEPs remain a difficult subject, and in particular the absence of a risk based approach (i.e. the presumption that all PEPs are high risk). The proposal to ratchet the compliance burden associated **with PEPs by “automatically” requiring enhanced CDD measures for family members and close associates of the PEP** is high cost low effect. Furthermore, the main challenge with this proposal is actually identifying these individuals in the first place, given privacy and confidentiality requirements. To date very little of such additional information, if any, is contained in the commercially available name lists for PEPs.



5. **International Name Screening**

Banks in most countries have implemented "name screening" programmes for certain account opening and payment processing systems. Typical screening databases include the UN list of terrorists and terrorist organisations, the USA's OFAC list, or other regional or country lists of terror suspects. FATF should be aware of a new development in South African company law that could potentially impact such screening operations:

- provision is made for certain "special characters" (as to be declared by the relevant Minister) in the name of the company (application delayed for 3 years)
- another provision allows for the registration number to default as the company's name (together with an enterprise type designation, e.g. "Limited"). This number contains "/" in it.

We are informed that the SWIFT international payments system deals with such special characters by suppressing or changing them. This will, by implication, impact on any name screening process for pass through or beneficiary banks. If the trend to enable special characters in company or personal names were to spread, and such names be altered for data transmission purposes, the reliability of customer identification, verification and name screening processes could be impacted.

6. **Conclusion**

We again thank the FATF for the opportunity to comment on its deliberations, and are available to clarify any of the above points if necessary.

Yours sincerely



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9 September 2011

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Dear Sirs

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

The Hong Kong Association of Banks welcomes the opportunity to provide comments on the above Consultation Paper released by the Financial Action Task Force (FATF) in June 2011.

On behalf of our members, we would like to set out our views as follows:

1. Beneficial ownership: Recommendation 5

It would be impracticable to follow the proposed requirement of verifying the identity of the settler, trustees, protector, beneficiaries / class of beneficiaries and other natural persons exercising ultimate control over the trusts. This is because trusts may be in varying forms, e.g. family trust, and some may not even have any identifiable beneficiaries when they are formed.

2. Beneficial ownership - legal arrangements: Recommendation 34

We have grave concern with Recommendation 34 for the following reasons:

- In many jurisdictions including Hong Kong, trustees are not regulated by a governmental body.
- There are private individuals such as lawyers who act as trustees are not subject to regulation even in countries where professional trustees are regulated.
- Trusts are useful to settlors because of their confidential nature, which are in many cases for perfectly legitimate reasons. Requiring the trusts be accessible by authorities would forbid many legitimate arrangements which have been allowed by common law for centuries.

Chairman Bank of China (Hong Kong) Ltd
Vice Chairmen The Hongkong and Shanghai Banking Corporation Ltd
Standard Chartered Bank (Hong Kong) Ltd
Secretary Eva Wong Mei Seong

主席 中國銀行（香港）有限公司
副主席 香港上海匯豐銀行有限公司
渣打銀行（香港）有限公司
秘書 黃美嫦

- The Recommendation cannot and should not be retrospectively applied to established trusts.

3. Group-wide compliance programmes: Recommendation 15

While we appreciate the Recommendation that there should be policies and procedures for sharing information within a financial group for purposes of global risk management (including AML / CFT), there is always a conflicting force driven from data privacy prospective in a large number of equivalent jurisdictions. Banks would have immense difficulty in complying with this requirement unless the interplay between AML and data protection requirements, which restricts if not prohibits cross border data transfer, is resolved.

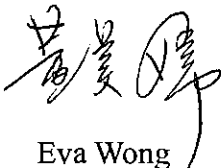
Small and medium-sized financial groups may not have established group-wide compliance programme for AML / CFT. If the Recommendation is implemented after refinement, sufficient lead time and flexibility should be allowed for financial groups of different sizes and business portfolios to design their own programmes in the light of their own circumstances.

4. Other issues included in the revision of the FATF Standards – Paragraph 27

It is proposed in Paragraph 27 that “financial institutions should be required to apply enhanced due diligence measures on the basis of the overall risk posed by a country....., rather than only on the basis of adequate or inadequate compliance with the Standards; and that the type of enhanced due diligence measures applied should be effective and proportionate to the risks. This would take the place of the current requirement to apply ‘special attention’ to countries that do not sufficiently apply the FATF Recommendations.” The proposed approach seems to base solely on country risk. We suggest that the current approach is more appropriate as it allows financial institutions to take into account all other relevant factors, such as business nature, product risk, years of business/operation, etc., and take appropriate action, including enhanced due diligence where applicable.

We hope the FATF would find our above comments useful. If you have any questions or require any clarification, please do not hesitate to contact us.

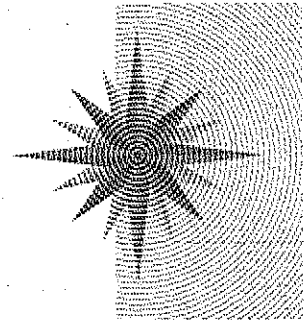
Yours faithfully



Eva Wong
Secretary

c.c. The Hong Kong Monetary Authority
(Mr James Tam, Head (Banking Supervision))

the Wolfsberg Group



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HSBC
JP Morgan Chase
Societe Generale
UBS

September 16, 2011

Dear Mr del Bufalo,

The Wolfsberg Group¹ once again wishes to express its appreciation for being given the opportunity to comment on the Revision of the FATF 40+9 Recommendations. We are conscious that the consultation process provides not only for more effective engagement between the public and private sectors, but also 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. We are all the more cognizant of the opportunity that the second consultation phase presents, as we fully understand, from a very practical perspective, the difficulties presented by some of the topics under discussion and are appreciative of the fact that many of the suggestions we made in our comment letter to the first round were taken into account. Our comments are structured as per the format used in the Consultation Paper.

Section 1.1 Recommendation 5

Section 1.1 of the Second Consultation Paper outlines the measures that financial institutions would be required to undertake in order to (a) identify and verify the identity of customers that are legal persons or legal arrangements and (b) understand the nature of their business and their ownership and control structure. We suggest that, in some respects, the measures outlined are very prescriptive and, as such, are at variance with a risk-based approach (RBA) adopted by FATF.

Risk Based Approach and Beneficial Owners

In the Wolfsberg Group's comment letter to the first FATF Consultation Paper,² we expressed our support for FATF's proposal to incorporate the RBA in the Recommendations and we set forth the reasons for the validity of the RBA. We did note that the first Consultation Paper contained

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 <http://www.wolfsberg-principles.com/comment-letters.html>

suggestions of a prescriptive approach in certain areas, which appeared to be inconsistent with the RBA. One such area was the establishment of the identity and verification of identity of beneficial owners: we observed that the RBA should also be applied in this area to determine when, whether, in what circumstances and to what level of due diligence, beneficial ownership should be ascertained. Section 1.1 of the second Consultation Paper, however, continues to reflect a prescriptive approach in this regard.

In the interest of noting the complexity in this area, we would reiterate that the movement towards the RBA in the establishment of beneficial ownership is not uniform. In particular, we highlighted as an example, FATCA (Foreign Account Tax Compliance Act contained in the Hiring Incentives to Restore Employment Act of 2010), which will have direct effect on financial institutions 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 a far more in-depth and prescriptive approach to beneficial ownership.

Set forth below are specific comments in response to matters raised in Paragraphs 8-12 of the second Consultation Paper.

Identification of Persons Holding Senior Management Positions; Senior Managing Officials

The first bullet under Paragraph 8 sets forth information to be obtained, ostensibly for the purpose of identifying customers and verifying their identity, which includes a requirement to identify the "names of persons holding senior management positions." It is not clear how identifying such persons constitutes, or relates to, identification of the "customer" per se: customers contemplated by Paragraph 8 are either legal persons or legal arrangements and the requirement to identify such entities should contemplate basic information about such entities (i.e. name, address, etc. of those entities). We would distinguish between (i) establishing customer identity, which should be done for customers generally and (ii) more general due diligence, which should be risk based. Obtaining additional information beyond the basic identification information, e.g., information pertaining to persons holding senior management positions, may, in certain (risk-based) instances be appropriate as a general due diligence matter, but a requirement to do so in all cases should not be mandated prescriptively. The conflation of basic customer identification and general customer due diligence, as the first bullet in Paragraph 8 suggests, does not allow for the flexibility and discretion of the appropriate application of the RBA.

The second bullet under Paragraph 8 sets forth a requirement to identify and, even more problematically, verify, the identity of beneficial owners. We discuss above why such a requirement with respect to beneficial ownership should be risk based. We would also note that the requirement in certain instances to identify and verify the identity of a "senior managing official" would seem to be an exercise beyond basic customer identification and more a matter of general due diligence, which, as highlighted above, should be risk based.

Moreover, we see a practical problem in identifying "persons holding senior management positions" or a "senior management official." It may not be apparent which individuals constitute such officials, given the wide spectrum of possible ways in which entities are managed. We note, incidentally, that terms such as "mind of management," contemplated by the first Consultation Paper, are even less

clear in this respect and we welcome FATF's relinquishment of the use of this term in the second Consultation Paper.

Beneficial Owners and Beneficiaries

In response to the language set forth in the third bullet under Paragraph 8, it should be noted that a beneficiary is not, for AML purposes, like a beneficial owner of a private investment company. Thus, in private banking, if an account is maintained for a trust, the private banker will understand the structure of the trust sufficiently to determine the provider of funds (e.g. settlor), those who have control over the funds (e.g. trustees) and any persons or entities who have the power to remove or direct the trustees. The type of inquiry to be applied to such persons would depend on the nature of their relationship to the trust and should be subject to an RBA.

As far as beneficiaries under a trust are concerned, the private banker should consider the persons for whose benefit the trust is established and understand the relationship between those beneficiaries and the settlor. If that relationship is not typical, i.e. giving rise to concern, the private banker should conduct further appropriate inquiry. In atypical situation, however, where the beneficiaries are, for example, members of the settlor's family, applying the same due diligence measures to beneficiaries that would be applied to settlors would not be warranted.³

Definition of Beneficial Ownership

Paragraph 9 of the second Consultation Letter states that the type of information listed in Paragraph 8, will "in effect define what is meant by beneficial ownership." We would reiterate our view that the meaning of beneficial ownership is dependent on the circumstances and not easily defined in the abstract. However, applying the RBA in determining whether beneficial ownership should be established, as we propose above, will necessarily lead a financial institution to consider factors informing what beneficial ownership is for AML purposes.

Section 1.2 Recommendation 33

Bearer Shares

The third bullet under Paragraph 11 specifies measures to be taken with regard to bearer shares. In the case of companies that are investment vehicles, the owners of the shares would typically be viewed as "beneficial owners" for AML purposes. The measures proposed in the third bullet of Paragraph 10, in providing controls with regard to determining who the beneficial owners of the bearer shares are, would not be unreasonable in this context, where due diligence with regard to the beneficial owner's source of wealth may be appropriate (e.g., in the context of private banking). In the context of operating companies, where the concern regarding "source of wealth" of beneficial owners is not pertinent for AML purposes (in that an operating company's assets typically derive from its business activities, notwithstanding that its shareholders (i.e. the beneficial owners) may at one point have made some capital contributions to the company), the measures contemplated by

³ See the Wolfsberg AML Private Banking Principles of May 2002 and the Wolfsberg FAQs on Beneficial Ownership of 2004: www.wolfsberg-principles.com

this bullet point would therefore not seem warranted. Indeed, imposing such measures in this context may be at variance with, if not disruptive of, long-standing commercial practices.

Nominee Shareholders

While the scope of the last bullet under Paragraph 10 is not entirely clear, we would suggest that due account be taken of the potential impact that the proposed recommendation could have on the numerous types of legitimate business transactions that rely on maintaining privacy of the buyer from the seller and of conflicts with data protection legislation in this area.

Scope of Paragraph 11

Paragraph 11 provides that measures similar to those outlined in Paragraph 10 should apply to the specified entities. We would suggest that there be additional flexibility in interpreting the requirements of Recommendation 33 to these entities, as well as for other types of legal persons with regard to nominators.

Section 1.3 Recommendation 34

We appreciate the interest in enabling competent authorities to access, through appropriate channels, the information contemplated by the second bullet under Paragraph 12.⁴ We would point out, however, that the introduction of registries of assets and trusts into the world of trusts would constitute a significant new element in this area, the potential impact of which merits careful assessment. Indeed, it is questionable whether such registries would be practicable as there are so many types of trust arrangements and different types of trustees, not to mention the challenges of keeping such registries current.

Sections 2 & 3: Recommendations 4 & 15

We commend the notions highlighted in R4 on data protection and privacy and in R15 on group-wide compliance programmes and acknowledge the difficulties that we all encounter in this area. We also commend the inclusion of the Basel Committee on Supervision's perspective in this complex area and the quest for consistency. We would note to that effect that the suggestions raised in paragraph 16 would therefore need to tie in to paragraphs 14 and 15.

Section 4: SRVII

We are pleased to see that many of the suggestions made in our previous comment letter are reflected in the second FATF Consultation Paper. There are several clarifications which we believe would further strengthen Special Recommendation VII and have outlined these below.

In paragraph 17 there are several references to "electronic funds transfers (EFT)." So as to avoid any confusion surrounding this term we would suggest that either the definition used in the *Revised Interpretative Note to Special Recommendation VII* of "wire transfer and funds transfer" be used or that, if the intent is to change to a new definition, this be aligned with the previous definition. This

⁴ Including the identity of the trustee and the beneficial ownership of the trust, provided this latter term is appropriately clarified; see the discussion above with respect to Paragraph 8.

would avoid any confusion that might surround the term, which might encompass products that are not intended to be included in SR VII such as, for example, credit and debit cards.

For clarification, in the second bullet point of paragraph 17, we would suggest deleting the word "full" in relation to beneficiary information since the term is defined in brackets as "name, account number or unique transaction reference number" and the word "full" may be interpreted more broadly than is defined in the text.

In section (ii) of paragraph 18, the term "meaningful" has been used and defined in footnote 4 as "used to describe information which has meaning on its face, but has not been verified for accuracy." While we appreciate this clarification, the use of "on its face" may be problematic in understanding the definition since, by their nature, electronic funds transfers consist of the transmission of data related to the transfer rather than specific documents. The term "on its face" is principally used in reference to printed documents rather than data elements. We would suggest that the definition delete the words "on its face" and read as "the term meaningful is used to describe information which has meaning, but has not been verified for accuracy." In addition, the determination of whether information is meaningful in the context of straight-through automated processing remains problematic. Systems can easily determine whether data in a specific message field is or is not present, however, it is almost impossible to determine if that information has relevant meaning in the context of a specific funds transfer and in an automated straight-through processing environment.

With regard to the questions posed in paragraph 18 we would refer you to the comments provided by the Payments Market Practice Group (PMPG) in their separate comment letter. The PMPG, as a representative body for the payments industry, reflects an industry consensus on the questions posed.

Section 5: Targeted financial sanctions in the terrorist financing and proliferation financing contexts

Financial institutions have robust and comprehensive risk based processes in place to screen relevant client details and payment instructions against lists provided by relevant competent authorities, including those prescribed in UNSCRs. Financial institutions have been able to respond expeditiously to any other ad-hoc search requests from such authorities. In addition, financial institutions have implemented necessary steps to block, reject and report funds, or other assets, of designated persons and entities to the appropriate and competent authorities.

We note with concern some of the words used in explaining how financial institutions should implement the obligations under the UNSCRs as follows:

The use of the words "indirectly," "wholly or jointly," "entities owned or controlled," "directly or indirectly" and "entities acting on behalf of or at the direction of designated persons" from the second requirement would not only be problematic in most instances, but are also unclear and would be virtually impossible to comply with.

There is a critical distinction to be made as to how financial institutions adopt and implement an effective risk based sanctions compliance programme for client relationships, versus dealing with other persons or entities in non-client relationships. As part of initial and periodic updates of client

due diligence/know your customer information, financial institutions should be in a position to discern and assess whether a client is a designated person or entity (assuming the second bullet of Paragraph 20 is modified as noted below). In accordance with applicable law and policy requirements, enhanced due diligence requirements may be triggered and financial institutions may identify other designated persons or entities beyond the client as part of this process.

However, when financial institutions are involved in transactions with non-client persons or entities (e.g., when acting as a financial intermediary for correspondent banking, party in a trade finance transaction, securities settlement, or other non-direct client relationships), there are no requirements to conduct due diligence on these non-clients other than to ensure that none of the relevant parties is designated.

We believe that it is incumbent upon the competent authorities, which designate persons or entities under the various sanctions programs to make every effort to identify and designate all persons and entities who/which should be designated, rather than require financial institutions around the world to identify independently persons or entities which may have a relationship with a designated party. The difficulties in requiring financial institutions to take ownership and responsibilities in actually making "designations" beyond the designated parties were recently illustrated with the Libyan and Syrian sanctions. In summary, we suggest that this bullet should read:

Respect prohibitions on making any funds or other assets, economic resources, or financial services, available for designated persons or entities unless licensed, authorised or notified or otherwise, in accordance with the relevant UNSCRs and applicable law.

Sections 6 and 7: Financial Intelligence Units and International Cooperation

While the Wolfsberg Group is not, of course, in a position to comment on any of the suggestions regarding more clarity relating to the role of, and standards required from, FIU's; or indeed on proposals to improve cooperation between competent authorities, we do, however, applaud all efforts taken by the public sector to ensure that as many barriers to effectiveness and efficiency as possible are removed and that cooperation is sought from all parties equally, with the aim of moving towards a more harmonised AML/CTF environment.

Section 8: Other issues included in the revision of the FATF Standards

As we mentioned in our first comment letter and have reiterated throughout the course of this letter, we fully support the application of the RBA, i.e. the use of the full range of measures from the most simplified to enhanced controls that reflects risk more accurately, thereby managing potential AML risk more effectively. We applaud, therefore, FATF's proposal to revise Recommendations 9, 21 and 22 so that they are fully consistent with the RBA.

We note that, generally, FI's already apply enhanced due diligence measures on the basis of the overall risk posed by a country, rather than merely looking at that country's compliance with FATF Standards, that multiple criteria are used to define country risk and that all decisions made with respect to the type of enhanced due diligence measures applied to any particular country are taken on the basis of a RBA.

We have no comments on paragraphs 28 or 29.

Further consideration of Politically Exposed Persons

We refer you to our response set out in the Wolfsberg Comment letter to the first FATF Consultation Paper that we believe that the RBA should be applied to domestic as well as foreign PEPs and to their families or close associates. We support the underlying rationale to reconsider the standard with regard to family members and close associates, but would recommend that the basis on which additional due diligence is carried out be according to the RBA.

Without further clarification, the definition of PEPs, close family members and associates runs the risk of being interpreted so broadly that, in practice, the resulting PEP lists could become unwieldy (some vendors' PEP lists currently exceed 500'000 entries) thereby impeding the appropriate management of this information. The focus should be on close family members and associates of officials having the requisite seniorities, prominence, or importance.⁵ Thus, the definition of PEP should reflect the setting of priorities in keeping with an RBA.

Furthermore, based on experience, it is the view of the Wolfsberg Group, that the term "international organisation" is too broad to characterise adequately, and allow for the suitable identification of, what might more appropriately be referred to as "supranational organisations."⁶ The latter term would better convey the public sector character of these organisations. We would therefore suggest that the definition be more targeted and specific, to allow for the unambiguous identification of these organisations or, given the composition of FATF delegations, perhaps FATF could propose a list of relevant organisations meeting such a specific definition (which may even include FATF itself). Such a list would serve to avoid any potential ambiguity in what FATF is seeking to achieve by extending the PEP definition to include such organisations.

With regard to supranational organisations, unlike in key departments of domestic governments, these organisations' internal procedures and limited authority over resources make them less vulnerable to corruption and bribery. We would therefore suggest that "prominent functions" be interpreted narrowly, where, for example, Heads of these organisations may meet this criterion. However, should senior representatives of international organisations also be defined as PEPs in the future, it should be clarified that only members of the Executive Board or officials who are engaged in a similar function are potentially contemplated and that banks be allowed to apply a RBA to determine whether such representatives should be classified as PEPs.

Again, with respect to "persons who have been entrusted with prominent functions" and in the interest of the organisations concerned, it would make the PEP classification and monitoring process more efficient for all parties were these organisations to provide their own list of Senior Managers, their close families and advisors. An additional benefit of this would be the demonstration that these same international organisations are supportive of an efficient and appropriate PEP process and its applicability to the requisite levels of their leadership, leading, indeed, by example.

We would like to reiterate the Wolfsberg Group's previous recommendation that FATF encourage its members to publish national lists of senior, prominent or important holders of public functions and, where possible, their close family members and associates, to assist Financial Institutions in the

⁵ Wolfsberg PEP FAQs 2008

⁶ The 2008 Wolfsberg PEP FAQs cite examples of supranational organisations such as the United Nations, the International Monetary Fund, the World Bank.

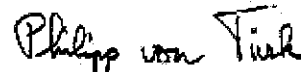
appropriate identification of PEPs. Such a process would imply that PEP classification would therefore be based on specific knowledge of local sources of information and circumstances (particularly useful with respect to family members and associates, about whom it is often difficult to find information), allowing for more well-informed monitoring of FIs' domestic, as well as cross border, PEP relationships.

Finally, the Wolfsberg Group would like to thank FATF for the opportunity to participate in the consultation process and note that we remain at the FATF's disposal should there be certain aspects, particularly of a technical nature, of the comments above or revisions proposed that you would wish to discuss further.

Yours sincerely,



David Bagley
Co-Chairman
The Wolfsberg Group



Philipp von Türk
Co-Chairman
The Wolfsberg Group