

MEMO# 25953

March 1, 2012

FATF Publishes Revised Recommendations

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TO: TRANSFER AGENT ADVISORY COMMITTEE No. 13-12 RE: FATF PUBLISHES REVISED RECOMMENDATIONS

On February 16, 2012, the Financial Action Task Force (“FATF”) published revised Recommendations following two years of consideration by member countries (“Recommendations”). [\[1\]](#) The Recommendations set out a comprehensive framework of measures which countries are encouraged to implement in order to combat money laundering and terrorist financing, as well as the financing of proliferation of weapons of mass destruction. The Recommendations are an international standard for countries to implement through measures adapted to their particular circumstances. The FATF Recommendations set out measures to:

- identify the risks, and develop policies and domestic coordination;
- pursue money laundering, terrorist financing and the financing of proliferation;
- apply preventive measures for the financial sector and other designated sectors;
- establish powers and responsibilities for the competent authorities (e.g., investigative, law enforcement and supervisory authorities) and other institutional measures;
- enhance the transparency and availability of beneficial ownership information of legal persons and arrangements; and
- facilitate international cooperation.

The revisions address new and emerging threats and also clarify and strengthen many existing obligations.

Important Changes and Clarifications to the FATF Recommendations

The Risk-Based Approach (Recommendation 1 with Interpretive Note). Recommendation 1 sets forth the standard that countries should identify, assess and understand money laundering and terrorist financing risks which affect them. Based on that assessment, countries should follow a risk-based approach, meaning adapt their anti-money

laundering/countering the financing of terrorism (AML/CFT) system to the nature of these risks by applying enhanced measures where the risks are higher and simplified measures where the risks are lower. The Interpretive Note indicates that in “strictly limited circumstances” and where there is a proven low risk of money laundering and terrorist financing, a country may decide to not apply certain recommendations to a particular type of financial institution or activity. A well-implemented risk-based approach should enable countries and financial institutions to target their resources more effectively.

Customer Due Diligence (Recommendation 10 and Interpretive Note). Recommendation 10 sets forth the general standard that financial institutions should be required to undertake CDD when establishing business relations, carrying out certain occasional transactions, [2] when there is suspicious activity [3] or when there are doubts regarding previously obtained customer identification information. CDD measures include identifying and verifying customers and identifying beneficial owners and taking reasonable measures to verify the beneficial owners. CDD also includes understanding and obtaining information regarding the intended nature of the business relationship and conducting ongoing due diligence. The extent of the CDD measures should be determined using a risk-based approach. [4] These requirements should apply to new customers, although financial institutions should apply the Recommendation to existing customers on the basis of materiality and risk, including monitoring at appropriate times.

The Interpretive Note provides additional detail on topics such as CDD and “persons acting on behalf of a customer,” CDD for legal persons and arrangements as well as reliance. For example, financial institutions are expected to verify that any person purporting to act on behalf of a customer is authorized and should identify and verify the identity of the person. The Interpretive Note also states that information typically needed to identify and verify a customer that is a legal arrangement or person includes: (1) name, legal form and proof of existence; (2) documents regarding the powers that bind the legal person or arrangement as well as names of relevant persons in senior management; and (3) the address of registered office or principal place of business. For beneficial owners of a customer that is a legal person or arrangement, financial institutions should identify beneficial owners and take reasonable measures to verify their identity through the following: the identity of natural persons exercising control or, if none, the relevant natural person holding the senior managing official position. For legal arrangements, such as trusts, the following information should be obtained: the identity of the settlor, trustees, beneficiaries and any other natural person exercising ultimate effective control over the trust. It is not necessary to identify any shareholder or beneficial owner of customers, or owners of controlling interests, that are listed on a stock exchange and are subject to disclosure requirements regarding transparency of beneficial ownership. Similarly it is reasonable to apply simplified CDD measures in lower risk situations such as in the case of financial institutions that are subject to requirements to combat money laundering and terrorist financing consistent with the Recommendations, have implemented those requirements and are supervised and monitored to ensure compliance. [5] On reliance, the Interpretive Note indicates that a financial institution is not expected to repeatedly identify and verify customers and may rely on previous steps it has already undertaken unless there are doubts regarding the information or there are material changes in the way the customer’s account is operated which are not consistent with the customer’s profile.

Transparency of Persons and Arrangements (Recommendations 24 and 25 and Interpretive Note): Recommendations 24 and 25 direct countries to implement measures to prevent the misuse of legal persons or arrangements for money laundering and terrorist financing,

including ensuring there is adequate, accurate and timely information on beneficial ownership, trusts (e.g., information on settlor, trustee and beneficiaries) and control of legal persons that is accessible by authorities. Countries are also directed to consider measures to facilitate access to such information by financial institutions. [6]

Reliance, Controls and Financial Groups (Recommendations 17 and 18 and Interpretive Notes): Recommendation 17 addresses reliance on third parties to perform certain CDD. Ultimate responsibility for CDD remains with the financial institution relying on the third party. [7] Recommendation 17 also addresses reliance on a third party that is part of the same financial group. Countries are permitted to determine in which countries a third party can be based and should consider information related to the level of country risk. Countries however may decide that consideration of the country level risk may be adequately mitigated by group AML/CFT policies.

Recommendation 18 provides that financial institutions should be required to implement group-wide programs against money laundering and terrorist financing. Such institutions also should ensure all foreign branches and majority owned subsidiaries of the financial group apply measures consistent with their home country requirements through group programs. [8] These programs should include policies and procedures for sharing information required for CDD and money laundering and terrorist financing risk management. Adequate safeguards on confidentiality and use of information also should be in place.

Powers and Responsibilities of Authorities (Recommendations 26-35): The FATF Recommendations relating to enforcement and Financial Intelligence Units have been expanded and the revisions also clarify the role and functions of the operational agencies responsible for combating money laundering and terrorist financing. The Recommendations set out the range of investigative techniques and powers which should be available to authorities, e.g., to obtain and analyze financial information about a suspected criminal's accounts and transactions.

International Cooperation (Recommendations 36-40). FATF enhanced the scope and application of international cooperation among authorities. The revised Recommendations are expected to support more effective exchanges of information for investigative, supervisory and prosecutorial purposes. This also will assist authorities in tracing, freezing, and confiscating illegal assets.

New Threats and International Priorities: In the Recommendations, FATF also has sought to address new threats and respond to international priorities, e.g., from the G20, including the following:

- Financing of Proliferation (Recommendation 7): Recommendation 7 was adopted to support consistent and effective implementation of targeted financial sanctions set by the UN Security Council.
- Politically Exposed Persons (PEPs) (Recommendation 12): FATF strengthened the recommendation regarding due diligence and PEPs. The existing requirement to apply enhanced due diligence to PEPs was extended from foreign PEPs, with new risk-based requirements applied to domestic PEPs and PEPs from international organizations, and to the family and close associates of all PEPs.
- Tax Crimes: FATF has expanded the list of predicate offences for money laundering to include certain tax crimes to bring the proceeds of tax crimes within the scope of authorities' powers to investigate money laundering. The smuggling offence also has

been clarified to include offences relating to customs and excise duties and taxes. FATF believes this will contribute to better coordination between law enforcement, border and tax authorities, and remove potential obstacles to international cooperation regarding tax crimes.

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endnotes

[1] The revised Recommendations are available at <http://www.fatf-gafi.org/dataoecd/49/29/49684543.pdf>. The original Recommendations were drawn up in 1990 as an initiative to combat the misuse of financial systems by persons laundering drug money. The Recommendations have been revised in 1996, 2001 and 2003.

[2] See Interpretive Note to Recommendation 10 at Section H, paragraph 22 (threshold for occasional transactions is USD/EUR 15,000, including single transactions or several that appear linked).

[3] See Interpretive Note to Recommendation 10 (need to take account of the risk of tipping off when performing CDD).

[4] See Recommendation 10 at page 15 and Interpretive Note to Recommendation 10 at section H, note 33.

[5] See Interpretive Note to Recommendation 10.

[6] See also Recommendation 16, Wire Transfers (beneficiary information).

[7] Third parties mean financial institutions or designated non-financial institutions that are supervised or monitored and meet the requirements of Recommendation 17. Interpretive Note to Recommendation 17 at paragraph 3.

[8] See also Recommendation 19 and Interpretive Note (higher risk countries).

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