

MEMO# 24890

January 19, 2011

Comment Letter on Consultation Paper of the Financial Action Task Force

[24890]

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TO: AML COMPLIANCE WORKING GROUP No. 1-11
TRANSFER AGENT ADVISORY COMMITTEE No. 7-11 RE: COMMENT LETTER ON
CONSULTATION PAPER OF THE FINANCIAL ACTION TASK FORCE

On January 7, 2011, the Institute submitted comments on Consultation Paper: Review of the Standards – Preparation for the 4th Round of Mutual Evaluations (October 2010) (the “Paper”) by the Financial Action Task Force (“FATF”). [\[1\]](#) We commented on the following:

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

On the RBA, we urged FATF to proceed cautiously. We stated that any clarifications should not narrow or otherwise circumscribe the ability of firms to design, change and implement an effective AML program that takes account of varying and changing risks associated with different types of businesses, clients, accounts and transactions. With respect to non-face-to-face relationships, we stated that nothing beyond the standard currently set forth in Recommendation 8 should be included in the INRBA. [\[2\]](#) We stated that there should be no suggestion that non-face-to-face contact results in a higher risk of money laundering or terrorist financing.

With regard to beneficial ownership and customer verification and identification, we urged that there be no changes. For customer identification, FATF proposes to clarify that the information needed varies according to the ownership and control structure of a person or legal arrangement. We asserted that, consistent with an RBA, financial institutions already recognize that the “information needed varies” and that additional or different customer

information may need to be obtained, including beneficial ownership information. We urged FATF to not specify additional information for collection. [3]

On “verification” of beneficial ownership, we focused our comments on the inability of many financial institutions to reliably verify beneficial ownership information, noting that it is essentially impossible for financial institutions (wherever located) to reliably verify beneficial ownership information for most US entities. [4] Given the problems with reliable verification, we questioned whether this information could be truly helpful to financial intelligence units or law enforcement without a means for reliably verifying the information. We noted that, with such substantial verification problems, we did not believe that the proposals could be viewed as meeting FATF’s own objective to ensure an effective implementation of the AML/CFT standards. We recommended that FATF not make any changes and that firms be allowed to continue to utilize risk-based procedures for identifying and verifying the identity of their customers.

On FATF’s proposal to require enhanced measures for domestic PEPs “if there is a higher risk, ” we asserted that such a requirement would be duplicative of existing policies and procedures under the RBA and therefore that no change was needed. We stated that with the existing RBA as well as the wide range and variety of persons that could be categorized as domestic PEPs, the RBA was the appropriate mechanism for consideration of a customer’s status as a domestic PEP.

On FATF’s consideration of extending a jurisdiction’s discretion regarding the types of entities that can be relied upon (e.g., to allow reliance on businesses other than in the banking, securities or insurance sector as long as they are subject to AML rules and effective supervision), we urged FATF to encourage jurisdictions to permit reliance on firms that are subject to supervision and AML requirements in other FATF jurisdictions. We stated that such an approach recognized the global nature of financial markets and supported FATF’s efforts to promote global AML standards.

Susan Olson
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[Attachment](#)

endnotes

[1] See [Memorandum](#) to AML Compliance Committee No. 17-10, November 19, 2010, FATF Review of Recommendations in Preparation for Fourth Round of Mutual Evaluations (summarizing FATF proposals).

[2] Recommendation 8 states that “financial institutions should have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions.”

[3] We also expressed concerns with FATF’s proposals regarding the information needed, including obtaining information on the “mind and management” of a legal arrangement or persons that have “effective control through other means.” We commented that the breadth and ambiguity of these proposals were highly problematic and that any information requirements regarding the “customer” of the financial institution had to be sufficiently straightforward to enable a wide range of financial institutions around the world to

understand and effectively implement them.

[4] We stated that we believed similar challenges were present in other jurisdictions and that there also could be challenges with access to the information, if it exists, due to limits on its availability to the public.

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