

**MEMO# 25504**

September 20, 2011

## **ICI Letter on the FATF Consultation on Review of the Standards (Second Public Consultation)**

[25504]

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TO: AML COMPLIANCE WORKING GROUP No. 4-11  
TRANSFER AGENT ADVISORY COMMITTEE No. 79-11 RE: ICI LETTER ON THE FATF  
CONSULTATION ON REVIEW OF THE STANDARDS (SECOND PUBLIC CONSULTATION)

On September 16, the Institute submitted a letter commenting on the 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”). The letter, which echoes many of the points from the Institute’s January 2011 letter to FATF, [\[1\]](#) provides comments 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”).

### **Beneficial Ownership**

In the Paper, FATF proposes 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.

The Institute’s letter states our belief that FATF’s efforts to provide more specification regarding Recommendations 5, 33 and 34 belong in FATF’s guidance supporting the

development of a common understanding of what the risk-based approach (“RBA”), rather than in the FATF standards. The letter also provides that, in our view, problems of compliance of concern to FATF are indicative of bona fide challenges presented by obtaining beneficial ownership information rather than disregard of the recommendations.

More specifically, the letter expresses serious reservations regarding many of FATF’s proposals on beneficial ownership information. For example, the letter explains that we continue to believe that it is not necessary for FATF to propose changes for the identification of customers as proposed with respect to Recommendation 5, and that a robust risk-based approach best addresses this difficult area, allowing firms to effectively deploy resources and to also adapt to changing circumstances. With respect to verification, the letter requests that FATF further evaluate this issue in light of the inability of many financial institutions to reliably verify beneficial ownership information with relevant authorities. The letter provides that, with respect to measures to require companies or trustees to hold the information and make it available to authorities, although 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.

The letter explains that, 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. The letter therefore recommends that firms be allowed to continue to utilize risk-based procedures for identifying and verifying the identity of beneficial owners.

Lastly, the letter urges 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. The letter encourages FATF to support extending a jurisdiction’s discretion regarding the types of entities that can be relied upon.

## **Data Protection and Privacy**

The letter expresses support for FATF’s efforts to mitigate conflicts between data protection and privacy laws and laws regarding AML/CFT, including for international groups and consolidated risk management programs seeking to use cross-border flows of information, and states that it is essential for authorities to coordinate and cooperate on these issues.

## **Group-Wide Compliance Programs**

The letter expresses support for FATF’s efforts to facilitate group-wide compliance programs, but notes that certain data protection or privacy laws limit these programs. It further explains that AML/CFT laws may impact the operation of group-wide compliance programs, and notes that US law limits the ability of US mutual funds to share suspicious activity reports with certain affiliates. The letter recommends 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.

The Institute's letter provides that, in specified circumstances, US law requires enhanced due diligence of accounts with senior foreign political figures, and that the RBA also contemplates different procedures for customers identified as higher risk, which could include a domestic PEP in some circumstances. The letter states that the RBA is the most effective mechanism for the consideration of a customer's risk or, as appropriate, their status as a PEP and that, accordingly, we do not believe the proposed changes are necessary.

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[Attachment](#)

**endnotes**

[1] Letter from the Investment Company Institute to the FATF Secretariat, dated January 7, 2011, available at <http://www.ici.org/pdf/24890.pdf>.

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