Comments of the KNF - Polish Financial Supervision Authority to the Consultative Document *Sound management of risks related to money laundering and financing of terrorism*, issued for comment by 27 September 2013.

Polish Financial Supervision Authority is pleased to be given an opportunity to provide its comments to the Consultative Document *Sound management of risks related to money laundering and financing of terrorism* issued by the Basel Committee on Banking Supervision.

Comments:

In paragraph 14, which is related to inherent risks, it would be beneficial to mention also the risks associated with the delivery channels for services and products. A basically low risk of a service or product can be significantly raised due to a risky delivery channel (especially when new or developing technologies are used) or the sole way in which a customer can access such service (simple logon without full credentials).

Paragraph 15 dealing with the information provided to the management board on AML/CFT issues should also require the information to be comprehensive, as to describe all the activities undertaken by the AML/CFT unit in a bank. The frequency of such reporting should be high.

Paragraph 21 discusses the relation between compliance and business lines within a bank, concluding that compliance officer should be free of any business-like responsibilities. It is necessary to further discuss potential conflict between the two lines in customer acceptance process. If the customer, in the process of assessment is given a high risk rating or, at some later stage, his behavior raises any form of suspicion, should the compliance function be equipped with decisive or only advisory role when it comes to declining the customer or terminating business relationship? This issues have met with different approaches in banks, so the opinion of the Basel Committee is welcomed.

Discussing the requirements for transaction monitoring software in paras. 26-28 it is necessary to stress that each program should have the ability to demonstrate a clear audit trail of processes and changes made, especially in transaction monitoring and customer risk classification.

The document in para. 34 suggests that banks should confine themselves to a customer declaration when it comes to the beneficial owner data. In principle this assumption is correct, however the FATF recommendations allow for simplified CDD measures to be applied to a designated category of customers. It seems prudent to say that for those customers the written declaration on beneficial owner may be sufficient.

Due to a statement in para. 38, that when a bank is unable to perform CDD measures it should not enter into any contract with the customer and consider closing down existing business relations a need arises to specify, if this refers to all CDD measures or just one of them. It seems prudent to suggest that in such cases banks should make individual decisions on a risk sensitive basis.

In para. 41 dealing with the numbered accounts, the second to last sentence suggest that a customer using such product may not at all be positioned in a high risk group. Prima facie this seems contrary

to the general thrust of FATF Recommendations, which always considered product favoring anonymity to be the risky ones. Therefore – in banks risk matrix – it is necessary to state that such a product in itself as bearing a high risk will indeed affect the risk rating of a customer using such product.

In chapter 6 letter b) on freezing of assets it is necessary to add a clear statement, that in a case of a positive match between a wire transfer and data on the sanctions lists, such a transaction must be stopped, until verified by compliance, even if the verification will be negative. It needs to be noted here that in many banks wire transfers are processed in batch, which means that stopping one transfer for further investigation, stops the entire batch of transfers. It is necessary to approach this issue in this manner, even though some of the banks may indeed be reluctant towards this solution.

In our opinion still some more attention should be paid to issues related to group level compliance for AML/CFT, especially in the context of data protection, which was mentioned in paras. 63, 74, 91, 92. Currently not even the EU has a unified standard when it comes to transferring personal data within the community for group purposes. Ongoing work in the Commission may bring a solution to this problem, however the outcome is still uncertain. It is worth to remember that – as stressed in the document – transferring within the group data on STR's and SAR's filed in the FIU is crucial for the provision of the effective group wide supervision. It is not without practical significance that transferring data on beneficial owner will always be problematic. The beneficial owner doesn't have to be a bank's customer, therefore he does not have to sign any consent to transfer his data, which without proper legal provisions may lead to serious consequences, including infringement of basic citizen rights. Therefore guidance cannot force banks to resolve a conundrum - which legal provision to observe, if following this path, regardless of undertaken precautions, will inevitably make them prone to legal actions by the supervisors or the customers.

From this point of view it is important to mention the ECJ ruling of 25th April 2013 (C-212/11) Jyske Bank Gibraltar vs. Administracion del Estado of the Kingdom of Spain. This ruling influences directly the obligations to report STR's and SAR's by banks conducting activities without any physical presence whatsoever in a given country, to FIU's other than in home jurisdiction.

When analyzing the appendix 2 on correspondent banking it is worth to point out the two following issues:

Appendix two is silent on one of the form of correspondent banking, that is RMA keys exchange. In bank practice very often such relations are established without extensive CDD being performed. The practice also shows that a lot of them are used to facilitate only a few transactions and then become dormant for an unlimited period of time. Lack of any periodic review of such relations poses a significant risk, also due to the fact that such exchange is used to facilitate transaction in international trade. This creates a possible risk of breaching European embargo regimes.

Point II.8. suggest that AML/CFT procedure of a respondent bank may be assessed on a basis of a questionnaire. Having regard to experiences of few European supervisors it is essential to indicate that this approach is no longer sufficient. The questionnaire prepared by the Wolfsberg Group becomes very often a part, of what the document calls, a paper gathering exercise. This is why it is worth to consider should the AML/CFT procedure be evaluated directly by the respondent bank.