Dear Sir/Madame,

BCBS *General Guide to Account Opening* (Consultative Document) (July 2015)

Thank you for the opportunity to comment on the consultative draft of the *General Guide to Account Opening* (General Guide).

CGAP (the Consultative Group to Assist the Poor) is a global partnership of 34 leading organizations that seek to advance financial inclusion. CGAP, which is housed at the World Bank, develops innovative solutions through practical research and active engagement with financial service providers, policy makers, and funders to enable approaches at scale. Our comments in this response are not necessarily representative of the views held by CGAP's members. They are however informed by CGAP's expertise and its objective to advance financial inclusion.

For purposes of this brief response, we confine our comments to the following two themes:

- Inconsistencies between the General Guide and the Financial Action Task Force (FATF) standards; and
- Identification and profiling elements identified as minimum requirements and challenges they pose for financial inclusion.

1 Inconsistencies between the General Guide and the FATF standards

We are concerned about the potential for inconsistencies, perceived or real, between standards issued by international financial standard-setting bodies. We therefore welcome the statement in the background section of the General Guide that:

"the content of the proposed guide is in no way intended to strengthen, weaken or otherwise modify the FATF standards. Rather, it aims to support banks in implementing the FATF standards and guidance, which requires the adoption of specific policies and procedures, in particular on account opening."

However, in our view, the issuance of blanket guidance on *minimum* customer identification and verification measures by banks in fact has the inherent potential to limit the risk mitigation options that FATF's risk-based approach provides to supervisors and regulated institutions. Moreover, the lack of a reference to the low risk exemption regime of FATF, as well as the lack of recognition of institutional assessments of lower risks as envisaged in the FATF Recommendations, do imply an apparently unintended strengthening of the FATF standards in relation to banks.

1.1 Specifying minimum customer identifiers

It is important to note that FATF refrains from prescribing customer identifiers. Instead, it leaves this matter to regulated institutions and regulators to determine, based on the assessment of risk within the national context. Domestic risks and risk levels are recognized throughout FATF's standards and guidance as inherently variable.

In its 2013 financial inclusion guidance paper (*Guidance on Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* (2013)) FATF stated the following:

"The FATF Recommendations do not specify the exact customer information (referred to by certain countries as "identifiers") that businesses subject to AML/CFT obligations should collect to carry out the identification process properly, for standard business relationships and for occasional transactions above USD/EUR 15 000. Domestic legislation varies, although common customer information tends to consist of name, date of birth, address and an identification number. Other types of information (such as the customer's occupation, income, telephone and e-mail address, etc.) are generally more business and/or anti-fraud driven and do not constitute core CDD information that must be collected as part of standard CDD - although such information could appropriately be part of enhanced CDD for higher risk situations." (par 75)

In this paragraph FATF did not set any *general identifier standards* but merely described customer *identification practices*, many of which reflected the influence of BCBS's earlier customer identification guidance in 2001 (*Customer Due Diligence for Banks*) and 2003 (*General Guide to Account Opening and Customer Identification*). The General Guide, on the other hand, limits the flexibility allowed by FATF by setting standards regarding the minimum information that banks should collect for identification and profiling purposes in relation to customers assessed as posing a standard level of risk.

While many, if not the majority, of financially excluded persons may pose lower money laundering and terrorist financing risks, that is not necessarily the case. FATF states as follows in its *Guidance on Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* (2013):

"In a financial inclusion context, newly banked and vulnerable groups often conduct a limited number of basic, low value transactions. Hence, they may present a lower ML/TF risk and this could appropriately be recognized as such by the risk assessment. However, it is important to keep in mind that underserved clients represent a very heterogeneous category with very different risk profiles in different jurisdictions. As a consequence, they cannot be classified as lower risk clients solely on the basis that they are low income individuals, who have recently been integrated into the formal financial system. Countries will need to clarify if and under what conditions and for which type of products and transactions low value clients can appropriately be subject to a simplified AML/CFT regime." (par 44)

The element of inflexibility introduced in relation to customers posing a standard risk may impact on financial inclusion initiatives aimed at that segment of the financially excluded population that poses that level of risk but is not able to meet those requirements. This is particularly likely for poor and low income customers in many countries, particularly emerging market and developing economies (EMDEs). It also has a potential impact on lower risk customers as it sets a high standard baseline that may inform the shape and content of simplified identification and verification measures.

The removal of the FATF-sanctioned flexibility to determine appropriate identification and verification measures domestically has the potential to perpetuate or even exacerbate financial exclusion (acknowledged by FATF to represent a money laundering and terrorism financing risk). By limiting the customer identification options that banks may choose and bank supervisors may allow, the General Guide therefore not only inadvertently strengthens the impact of the FATF standards on banks (contradicting the stated intention in the background section of the General Guide), but also potentially compromises banks' and countries' capacity to mitigate money laundering and terrorism financing risks through bringing financially excluded customers into the formal financial system.

1.2 Proven low risk exemptions are not mentioned

The General Guide does not make reference to the possibility of a limited "proven low risk" domestic exemption from the scope of some of the FATF Recommendations. FATF's standards allow such exemptions to be considered at the national level in cases where an appropriate risk assessment establishes risks to be low (FATF Recommendations INR 1 par 6a). Such an exemption may for example be considered in respect of basic transaction accounts that are subject to strict access, usage and balance limits – an increasingly common feature of regulation intending to promote financial inclusion, particularly in EMDEs.[1]

The absence of any reference to low risk exemptions may be viewed as an indication from BCBS that such an exemption should not be considered in relation to bank accounts, even if an appropriate national risk assessment as called for by FATF establishes such accounts to present a low risk.

Should such exemptions be recognised in the General Guide, it will be important to provide guidance regarding the application of these exemptions in relation to bank accounts.

1.3 Application of lower risk assessments limited

FATF's standards also enable countries to allow simplified customer due diligence in relation to *lowe*r risk customers, products and services. FATF envisages that risk assessments identifying risk levels will be undertaken at an institutional as well as at the national level.

The General Guide, however, only acknowledges the possibility of simplified customer due diligence where the risks are assessed as lower in a national assessment:

"*Not all this information may be required in lower-risk situations* ***according to the results of the national risk assessment***." (Emphasis supplied.)

[1] BCBS *Range of Practice in the Regulation and Supervision of Institutions Relevant to Financial Inclusion* (2015) 41: "Upper-middle-income and lower-middle-income respondents indicated significantly greater use of a risk-based approach than high-income and low-income respondents, particularly with respect to the following two requirements: **exemptions from standard CDD processes for lower-risk products or transactions**, and allowing simplified transaction monitoring based on lower-assessed risk." (Emphasis supplied.)

By its silence on the subject of *institutional* assessments of lower risk, the draft guidance implies that standard due diligence must be applied by banks even where they assess risks as lower in their institutional assessments.

The justification for such a restriction is unclear but the implications for financial inclusion initiatives are severe: the assessment of risks of financial inclusion products often take place only at an institutional level, as the FATF standards accommodate. The absence of any mention of institutional level assessments runs counter to the FATF standards and threatens to impact negatively on financial inclusion initiatives.

It is furthermore noted that no guidance is provided as to what information may not need to be collected in lower risk situations. Uncertainty about appropriate simplified customer identification and verification processes may also have a chilling effect on the design of financial inclusion accounts. This is particularly relevant as the BCBS's *Range of Practice in the Regulation and Supervision of Institutions Relevant to Financial Inclusion* (2015) found that 63% of low income countries and 56% of the more than 50 jurisdictions that participated in the survey allowed deposit-taking institutions to apply simplified customer due diligence requirements to the opening of lower risk accounts,[2] and that the most common means for countries to ensure that accounts pose a "lower risk" was by imposing low-value thresholds, whether for account balances, individual transactions, or total value of transactions, in a given period.[3]

2 Justification for identification elements identified as minimum requirements

The General Guide states that a bank should collect, at a minimum, the following information for the identification of an individual, where the risk level is assessed as standard:

- Legal name (first names and last name);
- Complete permanent address, whenever applicable;
- Nationality, an official personal identification number or other unique identifier; and
- Date and place of birth.

Such information may, however, not be available for significant portions of the population in some countries. Moreover, the justification for this particular set of minimum requirements is not clear. While the FATF standards generally require a bank to record the name of a customer, a person's permanent address is not necessarily a crucial minimum identifier. The financial inclusion barriers created by inappropriate address requirements are also well-documented. The phrase "whenever applicable" that qualifies the address requirement is of limited value as no guidance is provided as to when the complete permanent address may not be applicable.[4]

[2] BCBS *Range of Practice in the Regulation and Supervision of Institutions Relevant to Financial Inclusion* (2015) 12.

[3] BCBS *Range of Practice in the Regulation and Supervision of Institutions Relevant to Financial Inclusion (*2015) 41.

[4] For example, would it be inapplicable if the particular customer does not have a formal address or is it only inapplicable when a group of customers as a whole would normally not have addresses that are expressed in a European or Anglo-American style?

Banks are also guided to record a person's "nationality, an official personal identification number or other unique identifier." Where a person has a secure official personal identification number, recording that number together with a person's name should be sufficient to reliably identify the person. In that case the person's name and secure official personal identification number should suffice. The person's address and date and place of birth would then be superfluous as minimum identification requirements.

In addition to the identification particulars, the General Guide also requires data on key attributes of a customer when an account is opened for a new customer.[5] The data that banks are advised to collect on new customers therefore extends beyond identification and verification. Each additional piece of information that must be recorded has a cost impact and this is of significant concern in relation to low value, low return, bank accounts that are designed to increase financial inclusion, especially when standard risks are present. Though a footnote acknowledges that key attributes may not be required in lower risk cases, as mentioned earlier in relation to identification:

- no guidance is given as to what data might not be required in lower risk cases; and
- the language of the footnote limits its application to cases where the risk is assessed as lower in a national risk assessment (again, without reference to the possibility of an institutional assessment of lower risk, as permitted by FATF's standards).

In addition to the choice of minimum identifiers and the amount of data to be collected from new account applicants it is also important to point out that the selection of minimum identifiers and key attributes are not risk-based and have not been justified on the basis of their relevance to risk profiling.[6] This, it is submitted, gives rise to further tension between the General Guide and the risk-based approach of FATF.

3 The need for appropriate guidance

The BCBS showed its deep understanding of the variety and complexity of banking systems globally when it embedded the concept of proportionality in its 2012 revised *Core Principles for Effective Banking Supervision.* It took leadership on financial inclusion by establishing a Workstream on Financial Inclusion under the auspices of the Basel Consultative Group. We therefore believe that the BCBS is in a strong position to shape bank account opening practices that are sufficiently proportionate to support the financial inclusion objectives of the range of banking systems encountered globally – and to eliminate the inconsistencies between quoted language from the background to the General Guide regarding the intention not "to strengthen, weaken or otherwise modify the FATF standards" and the guidance actually presented in the document.

We submit that appropriate guidance should explicitly address account processes in relation to low and lower risk customers, products and services, in a framework of guidelines on graduated

[5] We read the statement "when account opening is the start of a customer relationship" (par 14) as not requiring the collection of profiling data when an existing customer opens an additional account.
[6] Gender, for example, appears in the list of "potential additional information (on the basis of risk)" (par 13). The General Guide provides no guidance regarding the role of gender as an additional, risk-based identifier or how it should be factored into a risk profile of a customer.

risk mitigation practices. To be fully consistent with the FATF standards, such guidance should be sufficiently generic to also be relevant to customers in EMDEs. It should furthermore identify principles that can be applied globally and should limit any enumeration of specific identifiers and key attributes to those that are relevant globally.

We appreciate the challenges faced in drafting such guidance and offer to share CGAP's experience on inclusionary practices in EMDEs with the drafters, should that be of assistance.