INTERNATIONAL CHAMBER OF COMMERCE

The world business organization

Department of Policy and Business Practices

Bank for International Settements (BIS)
Centralbahnplatz 2
4051 Basel
Switzerland

20 February 2017

Subject: Basel Committee on Banking Supervision Consultative Document Guidelines: Revised annex on correspondent banking

Dear Members of the Basel Committee on Banking Supervision:

The Banking Commission of the International Chamber of Commerce (ICC) welcomes this latest Consultation by the BCBS on the *Revised annex for correspondent banking* to the BCBS guidelines on the *Sound management of risks related to money laundering and financing terrorism*[1] *(*"the consultative document*"* or the *"*draft guidance*")*, and appreciates the opportunity to supplement our prior submissions on several related topics.

We would be delighted to meet with the BCBS, bilaterally or together with other industry stakeholders, to elaborate on the following and/or on other elements of the Consultation which the BCBS might wish to explore further. The ICC Banking Commission takes this opportunity to support and endorse the joint submission of BAFT and the IIF in response to this latest BCBS Consultation.

At the highest level, the ICC Banking Commission supports the intentions and objectives that underpin various forms of prudential financial sector regulation and oversight, particularly in cross-border banking and trade financing, where our activities and advocacy efforts are concentrated. We have reviewed this latest Consultation Document and addressed selected elements for specific consideration.

Additionally, we appreciate the sensitive balance and nuances involved in achieving effective regulation while allowing the ongoing conduct of value-creating financial services business. In this respect, recent pronouncements from various regulatory and international authorities acknowledging commercial realities such as the cost of compliance expectations on banks, and the need to set clear expectations around enforcement focus are most welcome.

We refer to the thoughtful and balanced remarks of IMF Managing Director Christine Lagarde to the US Fed in July 2016 (https://www.imf.org/en/News/Articles/2016/07/15/13/45/SP071816-Relations-in-Banking-Making-It-Work-For-Everyone) as an illustration of these positive developments, along with the thoughtfully crafted Consultative documents published by the Basel Committee on Banking Supervision.

[1] Basel Committee on Banking Supervision Consultative Document Guidelines: Revised annex on correspondent banking, November 2016

Access to trade finance and cross-border remittances are commonly cited to illustrate the scope and fundamental importance of ensuring a healthy and robust network of correspondent relationships. At the same time, those and other activities are understood to be in need of adequate levels of regulation and oversight, including anti-money laundering (AML) and countering the financing of terrorism (CFT), with care required not to drive activities into the unregulated shadow banking sector.

A range of related issues have been addressed (and continue to be the subject of engagement and advocacy) through high-level international fora, including the annual B20/G20 processes in which the ICC is heavily engaged, the work of the Financial Stability Board and the FATF, along with the advocacy initiatives of BAFT and the Institute of International Finance (IIF), all important partners of the ICC and the ICC Banking Commission.

The Banking Commission submission of December 2015 on bank de-risking[2] is illustrative of our deliberations on topics relevant to the mandate of the BCBS and particularly relevant to this specific consultation.

We note the observations related to the need to set regulatory and compliance standards in line with the risk profile of individual correspondents, as well as the notion of certifying certain types of registries as part of KYC and regulatory practice. Broadly speaking, the Banking Commission has previously proposed – and offered – to assist in the development of a compliance certification program. Accordingly, we concur that the certification of relevant registries such as the SWIFT KYC Registry, represents a positive step forward in the evolution of regulatory and compliance infrastructure.

To the extent feasible, and to the degree this is consistent with the primacy of regulatory mandates, it will be helpful for regulatory authorities to continue to acknowledge legitimate commercial realities and to acknowledge the impact of regulatory requirements on value-adding economic activity.

The “Regulator Performance Framework” of the Australian Prudential Regulation Authority (APRA) is illustrative of the positive regulator/industry dynamics we observe and welcome, and which the ICC and the ICC Banking Commission are committed to supporting[3].

The ICC Banking Commission supports the objective of this consultation, which relates to the updating of standards and practices around AML/CFT in line with the recent work of the Financial Stability Board, as reflected in the Consultation Document:

[2] ICC Response to CPMI Report on Correspondent Banking, 7 December 2015
[3] APRA, Regulator Performance Framework Metrics, July 2015: http://www.apra.gov.au/AboutAPRA/Publications/Pages/Regulator-Performance-Framework.aspx

The proposed revisions to the Committee's existing guidance follows the publication by the Financial Action Task Force (FATF) of its guidance on Correspondent banking services, issued in October 2016. The Committee seeks to clarify concrete regulatory expectations from banking supervisors' point of view consistent with the FATF standards and guidance. In preparing their publications on correspondent banking, the FATF and the Committee worked closely with the FSB, which is coordinating work to assess the extent and address the causes of banks' withdrawal from correspondent banking, through the implementation of a four-point action plan (data collection and analysis, clarifications of regulatory expectations, domestic capacity-building and strengthening the tools for due diligence).

BCBS, 2016

The explicit objective of developing a risk-based approach to regulatory oversight is consistent with emerging practice in other areas of regulation, from capital adequacy to general compliance requirements, and a specific recognition of the variance in risk across correspondent relationships is both correct and appropriated.

The Risk Indicators identified in the Consultation Document are comprehensive and appropriate, reflecting evolutions in industry views around compliance "Red Flags", and appropriately including a combination of macro/contextual factors, as well as factors specific to a particular correspondent relationship as well as the nature of a particular service or transaction.

The Banking Commission understands and agrees with the need for the collection of data, and the positioning for robust, objective deliberations around the nature of various risks in correspondent banking and related activities. The widely-acknowledged value of the ICC Trade Register[4] in objectively presenting credit-related default and loss data in trade finance has set a constructive precedent, and offers useful "lessons learnt" across all aspects of such a process, from data definition to collection and analysis, through to the resultant advocacy efforts – not all of which have been fully successful and therefore remain an area of focus today.

We concur with the importance of establishing common and comprehensive understanding of the areas of activity to be regulated (or advocated for). Clarity of definition is important.

The importance of correspondent networks in enabling access to finance – including trade finance – and certain types of risk mitigation, such as Confirmations of Documentary Letters of Credit, or the provision of back-to-back Standby credits or Counter-guarantees must be reflected in such definitional efforts, and must inform related refinements to regulatory approaches. Relatedly, the fundamental role of correspondent relationships in enabling local, developing market bank engagement in trade finance through the various programs of multilateral institutions is of great importance, and it will be critical to achieve appropriate, risk-aligned and data-supported regulatory treatment, to ensure that these facilitation programs are not unintentionally constrained.

Once again, the work of the ICC Banking Commission in facilitating a global, multi-association effort to develop standard definitions for Supply Chain Finance can be instructive.

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[4] ICC Trade Register, December 2016: http://www.iccwbo.org/products-and-services/trade-facilitation/icc-trade-register/

Just as it is appropriate to recognize that not all correspondent banking is equally or even inherently risky, it is a positive development to note the acknowledgment in the Consultation document that not all Nested Correspondent relationships are by definition fundamentally risky.

In this regard, we refer to ICC's work on compliance "Red Flags" for SMEs, the ICC Anti-corruption Third Party Due Diligence guide[5], and the Wolfsberg Group, ICC and BAFT Trade Finance Principles[6], published jointly by the three organisations, both of which could be of assistance in refining elements of the approach ultimately adopted.

Specific delineation of the limits of regulatory expectation are very helpful to industry stakeholders. The Banking Commission welcomes, for example, the clear direction by the BCBS related to the application of Counterparty Due Diligence (CDD) standards in the context of correspondent banking:

There is no requirement or expectation for a correspondent bank to apply CDD measures to customers of the respondent bank or to duplicate the data on its customers obtained and stored by the respondent bank.

BCBS, 2016

The importance of adequately robust CDD (specifically defined to be more than a tick-box exercise or a document-gathering process) is clearly and rightly stated in the Consultation Document. At the same time, the ability to delineate regulatory scope through clear statements as quoted earlier, is vitally important. Under current geopolitical conditions, it may be particularly urgent to demonstrate both the continuing importance – and perhaps more importantly – the efficacy and fairness – of international regulatory programs and frameworks. In this context, the importance of clarifying the limits of regulatory scope (for example, clear indication for banks that KYC is an expectation, but KYCC is not), and concrete steps aimed at mitigating the distorting effects of cross-border regulatory arbitrage would be welcome.

Such delineation assists banks in mitigating the risk of unintentional non-compliance, and allows financial institutions which are, in the end, commercial ventures, to better assess and prepare for compliance related costs, which in recent years have reportedly resulted in an important increase in the cost of maintaining even the most basic of correspondent relationships.

Over all, the increasing dialogue, alignment and consistency between various regulatory authorities, and the reference to documents and guidance published by these various bodies, is a positive and constructive evolution of the overall environment in which regulatory dialogue takes place, and will facilitate higher levels of regulatory consistency across jurisdictions, to the benefit of the markets and clients that benefit from a robust global network of correspondent relationships. Developing specific targets around jurisdictional harmonization could help move this important effort forward.

[5] ICC Anti-Corruption Third Party Due Diligence: A Guide for Small and Medium Size Enterprises, July 2015: http://www.iccwbo.org/News/Articles/2015/ICC-releases-new-anti-corruption-guide-for-SMEs/

[6] The Wolfsberg Group, ICC and BAFT Trade Finance Principles, January 2017: http://www.wolfsberg-principles.com/pdf/home/Trade-Finance-Principles-Wolfsberg-Group-ICC-and-the-BAFT-2017.pdf

Before addressing elements of the specific queries raised in the Consultation Document, we wish to observe that there may be value in initiating, relatively soon, a discussion around the impact of technology and FinTech on correspondent banking – including on its contributions to trade and trade financing, as these developments will inevitably impact the nature of regulatory frameworks likely to be needed in the next 3-5 years if not sooner.

The ICC Banking Commission offers the following observations related to the specific queries raised by the BCBS in this latest Consultation exercise:

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1. Information from KYC utilities on respondent banks' overall customer base or types of customers

Q. Would it be useful for this guidance to further detail the sort of information a correspondent bank could acquire from a KYC utility on the respondent's customer base? Do you agree that the information set out below could be useful and realistically obtained?

Rather than take a prescriptive approach, which in itself is likely to be useful, the Banking Commission proposes that the BCBS mandate the development of a Requirements/Specifications type document, articulating the capabilities of two leading KYC Registries as industry exemplars, and map these against "indicative" data elements defined by the BCBS. Such a process will enable to consideration of core and desired data elements against current Registry functionality (and data accessibility), positioning for an iterative roadmap to the matching of data requirements and systems/process capabilities.

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2. Assessment of a respondent bank's AML/CFT programme

Q. Would it be useful for the Committee to elaborate further on how a correspondent bank should conduct the assessment of a respondent bank's AML/CFT policies and procedures, eg via the use of internal audit reports, or are paragraphs 21–2 sufficient in that respect?

To the extent that the Basel Committee deems that the banking sector has been effective in its assessment of correspondent bank AML/CFT programs to date, current guidance may be adequate. What may be helpful in the short term, is to speak to the scope of expected AML/CFT program reviews if any changes are envisioned relative to current practice, and if a forward-looking view of the practices of leading regulatory bodies suggests an evolving direction that is not yet captured by current guidance.

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3. Quality of payment messages

The paragraphs above are mainly based on the Committee publication *Due diligence and transparency regarding cover payment messages related to cross-border wire transfers*. This publication also sets out the role of supervisors in checking the banks' implementation of due diligence regarding payment messages (see paragraphs 37–40 of that publication, www.bis.org/publ/bcbs154.pdf). The Committee guidelines *Sound management of risks related to money laundering and financing of terrorism* to which the present Annex is appended also develop the role of supervisors (see paragraphs 84–95). Both documents are relevant in the context of this Annex on correspondent banking.

Q. Considering the existing Committee publication, would it be useful to: (i) insert the content already included in paragraphs 37–40 of the 2009 publication in this Annex, or (ii) detail further the expectations with respect to quality of payment messages, and, if yes, do you have suggestions?

While the Banking Commission is conscious of the risks involved in unintentionally excessive regulatory direction, we recognize that there is equally, significant risk in relying on generalities or in statements that are not aligned with the evolution of industry practice.

We would welcome indicative text from the BCBS on the quality of payment messages, ideally with the opportunity to provide comments and offer suggested refinements as appropriate. It is possible to imagine that traditional payment technologies and networks, such as SWIFT, may face competition from, or may evolve to encompass, new models such as Digital Ledger Technology, and in this respect, it may be both an opportunity and a requirement to elaborate further on the quality of payment messages as they relate to correspondent banking, including the development of technical solutions, logical edits or other features, that could assist in enhancing the quality of payment messages.

The ICC Banking Commission extends our appreciation to the Basel Committee on Banking Supervision, for undertaking this latest Consultation. The advocacy work of the ICC and of the Banking Commission are at the core of our mission, and this topic area is directly related to our core purpose around facilitating peace, prosperity and inclusion through trade. The health and ongoing effectiveness of global correspondent relationships is an important enabler of these objectives, and the fight against both terrorism and organized crime, through effective global AML/CFT programs, has the full support of the International Chamber of Commerce.

We would be delighted to meet with members of the BCBS to elaborate or expand upon the foregoing.

Sincerely,

Olivier Paul
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