



Secretariat of the Basel Committee on Banking Supervision
Bank for International Settlements
CH-4002 Basel
Switzerland

31 March 2016

Dear Sirs

Guidance on the application of the Core Principles for effective banking supervision to the regulation and supervision of institutions relevant to financial inclusion (December 2015)

Thank you for the opportunity to comment on the draft of the Basel Committee's *Guidance on the application of the Core Principles for effective banking supervision to the regulation and supervision of institutions relevant to financial inclusion*.

I limit my brief comments to four statements relating to anti-money laundering and counter-terrorist financing standards of the Financial Action Task Force (FATF).

1 Low risk

"Where risks are proven to be low, the regulator should have the option of permitting the application of simplified CDD measures, and should do so where appropriate." (page 28-29)

In some cases where risk are proven to be low, the FATF standards allow countries to consider exemptions from the anti-money laundering and counter-terrorist financing framework:

"Exemptions - Countries may decide not to apply some of the FATF Recommendations requiring financial institutions or DNFBPs to take certain actions, provided:

- a. *there is a proven low risk of money laundering and terrorist financing; this occurs in strictly limited and justified circumstances; and it relates to a particular type of financial institution or activity, or DNFBP; or*
- b. *financial activity (other than the transferring of money or value) is carried out by a natural or legal person on an occasional or very limited basis (having regard to*

quantitative and absolute criteria), such that there is low risk of money laundering and terrorist financing.” (FATF Recommendations, INR 1(6))

I suggest that the drafters should consider an appropriate amendment to the current text to reflect possible exemptions that countries and regulators may consider, thereby aligning the guidance closer with the FATF standards.

2 Documentary identity verification

“Regulation that requires documentation to verify identity creates potential barriers to access to financial services and products. It is therefore important to consider the purpose and design of the verification measures. Acceptance of non-standard identification documentation is particularly important in jurisdictions that lack a national identity document or other widespread means of identity verification.” (page 29)

I agree that acceptance of non-standard identification documentation is important to prevent documentary access barriers in jurisdictions that lack a national identity document. FATF, however, also allows identity verification “using reliable, independent source documents, data or information.” (FATF Recommendation 10)

I suggest the addition of a reference to reliable, independent data or information to the observation regarding the acceptance of non-standard identification documentation.

3 Over-compliance

“Appropriate employment by banks and nonbank financial institutions of simplified CDD is especially important as overly-strict CDD rules can prevent unserved and underserved customers from accessing formal financial services and products and potentially increase the risk of money laundering and terrorist financing by shifting transactions to the informal economy.” (page 29)

The FATF recently issued guidance regarding the relevance of supervisory understanding of the drivers of compliance decisions, especially those that result in overly-strict rules. This guidance was issued in respect of de-risking decisions of banks in relation to the accounts of money service businesses:

“While the decision to accept or maintain a business relationship is ultimately a commercial one for the bank, supervisors need to ensure that they understand the drivers of and reasons for those commercial decisions and they communicate the importance of banks following the based risk- approach to managing the risks of individual accountholders. It is possible that financial institutions go beyond the requirements of relevant laws and regulations (also called conservative or over-compliance) for example, by deciding not to implement simplified due diligence measures, where allowed, in relation

to lower risk products or by refusing or closing accounts due to lack of understanding of the law, lack of compliance expertise or on account of business factors that are not compliance related (De Koker, Louis and Symington, John (2014)). Where a decision to restrict or terminate a relationship with MVTS is due to a lack of understanding of the flexibility of the risk-based approach, supervisors will be able to provide appropriate guidance as to what the RBA entails.” FATF Guidance for a Risk-Based Approach for Money or Value Transfer Services (February 2016) par 136

I suggest that similar guidance regarding supervisory understanding of compliance drivers and reasons should be added to the current comment regarding overly-strict CDD rules.

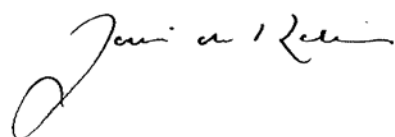
FATF cited De Koker and Symington “Conservative corporate compliance: Reflections on a study of compliance responses by South African banks” 2014 *Law in Context* 228-256 in the guidance quoted above. I will be happy to provide the drafters with a copy of that paper if it will be of assistance.

4 Additional FATF guidance

“In addition, reflecting its understanding that financial exclusion can compromise a country’s ability to track financial crimes by increasing the numbers of people using informal providers, the FATF issued updated guidance on financial inclusion (FATF (2013a)) and guidance on prepaid cards, mobile payments and internet-based payment services (FATF (2013b)).” (page 41)

In view of the relevance of FATF’s February 2016 *Guidance for a Risk-Based Approach for Money or Value Transfer Services* I suggest that it should be added to the FATF guidance mentioned on page 41.

Yours sincerely



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