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Dear Sir/Madam

Comments on the Consultative Document: General Guide to Account Opening (July 2015)

We appreciate the opportunity to comment on the Basel Committee on Banking Supervision (BCBS) consultative document: General Guide to Account Opening (July 2015). We hereby submit the following general and detailed comments for your consideration in finalising the document.

1. General Comments

1.1 Harmonisation amongst international standard setters

As noted in paragraphs 1 and 2, the BASEL Committee originally published its guidelines to AML/CFT, on account opening, in 2001-2004. At that stage the guidance was undoubtedly timely and of value – albeit for banking sectors only.

However, since then the worldwide focus on AML/CFT has expanded significantly across the wider financial sector under the "FATF Recommendations," and as most recently updated in 2012. Paragraph 2 notes this development, as well as the supplementary guidance notes issued by the FATF.

Paragraph 4 notes specifically 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."

It should be noted, however, that the BASEL Committee on Banking Supervision enjoys a very specific, and intensive, position amongst national banking sector supervisors, and with banks themselves. BASEL "guidelines" are *de facto* minimum standards for compliance. The risk, therefore, is for banks specifically to face two potentially competing compliance standards – FATF and BASEL, whereas other financial sectors would only have FATF. And if the argument were to be raised that these two standards are "the same", or "complementary," then the counter-argument would be "then why also have the BASEL guidelines, which clearly note the overarching predominance of FATF."

We therefore argue that these proposed BASEL guidelines will, inevitably, result in banks having to comply with dual standards, and question whether, given the internationally accepted predominance of the FATF Recommendations in the AML/CFT space, it would not be more appropriate for the BASEL Committee to repeal its overlapping guidelines on AML/CFT at this stage? This potential regulatory overlap is particularly significant in terms of the BASEL "at a minimum" specifications.

2. Specific Comments

2.1 Paragraph 7 – Occasional (or single) transactions

Both FATF and this draft provide for a distinction between a business relationship and an occasional (single) transaction. However, in South Africa (and presumably many other countries) the legal framework does not provide for this distinction, so the mandatory (or minimum) business relationship account opening requirements are applicable for every occasional (or single) transaction. This clearly drives up compliance costs and burdens for financial institution/bank and customer alike, and leads to frustration with relevant AML/CFT compliance procedures. The FATF and BASEL Committee should, in our view, more clearly stress the application of the occasional (single) transaction exemption and associated reduced compliance more strongly, in order to focus AML/CFT resources more clearly on enduring business relations.

2.2 Paragraph 9 – Country variations

While differing AML/CFT compliance requirements between countries are inevitable, it is also an established banking sector supervisory norm that multi-national banks should implement a group policy with national (in-country) compliance set to "the higher of home or host supervision". There is therefore repeated demand from multi-national banks for consistent regulatory frameworks to AML/CFT in the different national jurisdictions, and given the dictates for consistent group policies in this regard, increased support from the FATF and the BASEL Committee for consistent national legislative frameworks, in line with FATF, would be welcomed.

2.3 Paragraph 10 – Lower-risk financial inclusion products

This paragraph notes a risk-based approach including actions "to encourage financial inclusion by promoting lower-risk financial products…". Reduced due diligence in such lower-risk (from an AML/CFT perspective) products is welcomed. However the paragraph then introduces "where there is a higher-risk…, or **that are vulnerable to fraud**, banks should apply enhanced due diligence" (emphasis added).

Any bank deposit, savings or transaction account may be abused by fraudsters. It is the nature of banking to be the target of fraudsters.

Some such accounts may have been opened specifically to perpetrate the fraud, but in many cases existing, long-standing accounts may be abused by the fraudsters (e.g. by the fraudsters "borrowing" or "buying" the accounts from the legitimate account holders). This means de facto that any lower-risk account which could qualify for reduced AML/CFT due diligence must inevitable revert to enhanced due diligence on the basis of potential fraud risk. Bringing "vulnerable to fraud," especially in the context of financial inclusion, lower-risk and lower-cost products, essentially negates any possibilities of reduced AML/CFT compliance burden. We therefore recommend that the words "or that are vulnerable to fraud" be deleted from the AML/CFT account opening guidelindes.

2.4 Paragraph 13 – "at a minimum" for natural persons

In this paragraph the BASEL Committee, as the international standard setter for the banking sector, is prescribing ("at a minimum") certain personal information that must be collected by banks. This *de minimis* standard raises several challenges, especially for developing economies:

- it ignores a true risk based approach, by prescribing how banks must identify and verify personal customers ("at a minimum", irrespective of other parameters);
- it perpetuates the focus on "complete permanent (residential) address", which most persons in the 3rd world countries are unable to provide or verify with documentary evidence, given the realities of housing in such countries;
- requires "place of birth," i.e. town or village of birth, which most financial institutions have never captured and which in many dynamic 3rd world countries would be difficult to determine (think of rural areas; changed town names).

With all due respect, "residential address" and "place of birth" data in 3rd world countries are extremely difficult, if not impossible, to determine and verify via independent, credible sources. In essence, this represents a massive compliance cost for banks, and hassle factor for customers, to produce what in most cases is "garbage in, garbage out" data simply to comply with these *de minimis*, 1st world standards. We recommend that provision be made for "contact details" as a *de minimis* data parameter, in place of "residential address." Such contact details could include place of work, church, mobile/cell phone, etc.

To illustrate this point further – how will the banks (and others) across the EU comply with these requirements for the millions of refugees currently streaming into the EU, mostly living in informal environments (streets, camps, tents) and with no official source documentation to verify residence, or place of birth?

The imposition of residential address, place of birth, etc. is especially onerous (and irrelevant) where a country has a national/official population register and unique identification system. Such national identification systems should, for all intents and purposes, be sufficient for identification and verification of that person.

The Consultative Document further requires ("on the basis of risks") additional data, specifically

- resident status;
- gender.

In many countries these data fields may be prohibited by local or international human rights legislation. Clarification is therefore required on the consistent, multi-national application of these parameters, in the context of possible human rights violations relating to their collection and verification.

An interesting debate should possibly be held on the repetition or duplication of prescribed, *de minimis* data fields, especially where individual (personal) data is embedded into the unique personal identification number (if any). As an example, the South African ID number consists of a unique 13 digit code, which includes the following personal intelligence:

- date of birth [year, month, day];
- gender [M/F];
- resident status.

Any *de minimis* standard requiring these three data items therefore repeats the information already captured in the unique ID number.

Finally the *de minimis* standards proposed in the document are silent on the use of biometric parameters for identification or verification. Provision should be included for this identification and/or verification parameter.

2.5 Paragraph 14 – Key attributes

This paragraph, relating to the customer's risk profile, requires data on the "public position held". It may be questioned why only "public position held" should be captured in the context of a risk profile, as presumably other, non–public, positions could also be relevant to the customer's risk profile? The word "public" should therefore be deleted.

2.6 Paragraph 15 – Verification of identity of natural persons

We fully support the view that "verification should be proportionate to the risk posed…using reliable, independently sourced documents, data or information." However, the "use of reliable, independently sourced documents, data or information" in most cases requires the national state to provide such sources, which is often not the case. Banks, therefore, are often required to still comply with the verification requirements by either using "garbage in, garbage out" documents, or by building alternative, expensive data sources to compensate for missing state resources.

Sub-paragraph (a) refers to:

- an official document "that bears a photograph of the customer". - this should be expanded to also provide for biometric verification;
- confirming "place of birth" (as in town etc.) - as noted previously in most instances this may be impossible to record or verify effectively;
- as noted above verification of "permanent (residential) address" is also impossible in most 3rd world countries.

2.7 Paragraph 24 – Verification of Identify of legal persons

This requires, inter alia, a copy of the "partnership agreement". In many partnerships, especially professional partnerships, these agreements are highly confidential (and competitive). Such partnerships are therefore not prepared to present these, or copies, to the bank. Greater provision must, therefore, be made for alternative confirmation of the partnership status (e.g. affidavit).

2.8 Paragraph 28 – Beneficial owners

The verification of beneficial owners requires greater state efforts to ensure such disclosure (e.g. in company registers, stock exchange disclosures, annual financial statements). Absent these state–enforced measures, banks (and other financial institutions) are required to become forensic auditors to attempt to identify and verify beneficial owners without appropriate support from state resources imposing the requirement.

2.9 Paragraphs 32 and 34 – Verification of beneficial owners

Paragraphs 32 and 34 appear to repeat the same requirement.

2.10 Paragraph 37 – Professional intermediaries

The content of paragraph 37 is supported in principle. The challenge, however, rests in the detail, specifically where in the case of co-mingled funds held from professional intermediaries, "the bank should look through to the beneficial owner. However, there may be circumstances – which should be permitted by law and set out in supervisory guidance - where the bank may not need to look beyond the intermediary (e.g. when the intermediary is subject to the equivalent due diligence standards in respect of its customer base as the bank…)".

This particular "look through" requirement is challenging:

- the BASEL "minimum" requirements on banks may exceed those of a risk-based, FATF standard applicable to non-bank professional intermediaries, thereby negating any possible reliance on the professional intermediaries' AML/CFT compliance procedures (i.e. fails the "equivalent due diligence standard" test);
- the requirement to identify beneficial owners is a relatively new compliance imposition; many countries may not have the necessary commensurate regulatory requirement "permitted by law and set out in supervisory guidance" for a bank to rely on the professional intermediaries' AML/CFT procedures; and
- in most cases such co-mingled funds comprise many thousands of "beneficial owners;" it is virtually impossible, and hugely expensive, for the bank to have to look through to the customers of the professional intermediary.

In reality, therefore, the possibility exists that such co-mingled funds may all have to be invested at non-bank competitive institutions. The wider impact of this on bank funding and liquidity management is not clear.

3. Conclusion

We support the efforts of the international standard setting authorities' work on this important area of regulation. However we are concerned that implementation may prove challenging, particularly in less developed countries, and should this Guide be retained urge that the recommendations above, in particular relating to "permanent residential address", be considered urgently.

We hope that our comments will assist the Basel Committee on Banking Supervision in their deliberations and remain available to the BCBS should further information or clarity be required.

Yours faithfully

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