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Via email fatf.consultation@fatf-gafi.org
FATF Secretariat
2, rue André Pascal
75775 Paris Cedex 16
FRANCE

Re: Consultation Paper: Review of the Standards – Preparation for the 4th Round of Mutual Evaluations

Ladies and Gentlemen:

The Investment Company Institute ("ICI")[1] appreciates the opportunity to comment on *Consultation Paper: Review of the Standards – Preparation for the 4th Round of Mutual Evaluations* (October 2010) (the "Paper") by the Financial Action Task Force ("FATF"). The ICI and its members are committed to assisting the government of the United States and FATF in deterring and preventing money laundering and terrorist financing. We strongly support FATF's efforts to develop international anti-money laundering ("AML") standards that promote uniformity and efficacy among member jurisdictions while respecting the differences among the sectors within the financial industry. We appreciate FATF's efforts to ensure that the review of the standards is focused, open and transparent and emphasizes the effectiveness of the implementation of the standards.

We provide comments below with respect to the following proposals in the Paper:

- consolidation and clarification of FATF statements regarding the risk based-approach and a new interpretative note, including the incorporation of non-face-to-face contact as a risk factor;
- measures and information for customers that are legal persons arrangements, *i.e.*, beneficial ownership information;
- enhanced measures and domestic politically exposed persons; and
- sectoral coverage and third-party reliance.

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[1] The Investment Company Institute is the national association of U.S. registered investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of $12.31 trillion and serve over 90 million shareholders.

Risk-Based Approach ("RBA")

In the United States, mutual funds are required to develop and implement an AML program reasonably designed to prevent them from being used to launder money or finance terrorist activities.[2] The legislative history of the US law requiring financial institutions to develop such programs acknowledges that the law is not a "one-size fits all" requirement, and that financial institutions must have the flexibility to tailor their programs to fit their business, size, location, activities and risks or vulnerabilities to money laundering. When formulating the AML program rule for mutual funds, US regulators explicitly recognized that mutual funds operate through a variety of business models, and that one generic AML program for mutual funds was not possible.[3] Similarly, the US customer identification program rule for mutual funds also specifies that mutual funds utilize risk-based procedures for verifying the identity of each customer that opens a new account. Mutual funds therefore very much understand the requirements and demands of the RBA to implementing effective AML programs.

FATF is proposing to consolidate and clarify its statements regarding the RBA through a single comprehensive statement which would be incorporated into the standards as a new interpretative note on the risk-based approach ("INRBA"). The Paper only generally describes the INRBA - no specific text is set forth. However, the Paper sets forth certain concepts to be included in the INRRBA, including an obligation to develop national risk assessments and a proposal to incorporate the issue of non-face-to-face business into the INRBA.

Clarifications

FATF states that its current text on the RBA may lack sufficient clarity and is referenced in different parts of the standards. FATF also believes that many of the components are brought together more clearly in RBA Guidance developed in 2007 with participation by certain members of the financial industry.[4] The RBA Guidance is not part of the FATF standards. It is not clear whether FATF intends to incorporate the full text of the RBA Guidance or only portions into the INRBA. While we appreciate FATF's goal to clarify and consolidate statements regarding the RBA, we urge FATF to proceed cautiously.

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[2] 31 CFR 103.130 (2010)

[3] *See* Department of Treasury, Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Mutual Funds, 67 FR 21117, 2119 (April 29, 2002).

[4] FATF Guidance on the Risk-Based Approach To Combating Money Maundering and Terrorist Financing – High Level Principles and Procedures (June 2007) ("RBA Guidance"). Annex 5 of the RBA Guidance includes a list of the members involved in the development of the RBA Guidance. No representative of the mutual fund industry is specifically identified as a member.

The RBA Guidance is quite detailed and is more than 40 pages. It was intended to: (1) support the development of a common understanding of what the RBA involves; (2) outline high level principles involved in applying the RBA; and (3) indicate "good public and private sector practice" in the design and implementation of an effective RBA.[5] The FATF standards set forth minimum standards for jurisdictions to implement with detail according to their particular circumstances and constitutional frameworks.[6] We believe the RBA Guidance and the FATF standards serve complementary but different purposes. Accordingly, we believe that any clarifications of the RBA in the FATF standards must remain sufficiently high-level to continue to afford a broad range of financial institutions around the world with sufficient flexibility to tailor their programs to their business and circumstances.

Any clarifications should not narrow or otherwise circumscribe the ability of firms to design, change and implement an effective AML program that takes account of the varying and changing risks associated with the different types of businesses, clients, accounts and transactions it handles. It is very important that regulators continue to appreciate that an RBA necessarily means firms in the same financial services sector face varying risks and may legitimately have different risk-based AML programs. As acknowledged by many experts in both government and industry, the RBA is a cornerstone of efficient and effective AML programs and makes it more likely that financial institutions can deploy their AML resources to focus on those customers and transactions that are most susceptible to money laundering and terrorist financing.

National Risk Assessments

In the Paper, FATF proposes that countries be obligated to develop a risk assessment that assesses the money laundering/terrorist financing (ML/TF) risks of their country. Depending on whether specific risks are identified as high or low by a country, financial institutions would be expected to apply enhanced or simplified measures, as appropriate. Since these assessments will have a fundamental impact on the AML programs of financial institutions, we agree with FATF that these assessments should be developed with industry input.[7]

Non-Face-to-Face Contact

Under section 1.2.2 of the Paper, FATF states that it has reviewed Recommendation 8 and considers that "non-face-to-face" relationships and transactions should be a ML/TF risk factor to be

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[5] RBA Guidance, paragraph 1.3.

[6] FATF Standards, FATF 40 Recommendations (June 20, 2003, incorporating amendments of October 22, 2004), Introduction.

[7] *See* RBA Guidance at 11 (recognizing the important role of the private sector in the development of these national assessments).

considered by financial institutions when assessing the specific risks associated with a relationship or transaction. FATF states "[t]he issue of non-face-to-face business will be incorporated into the INRBA."

We support the approach currently set forth in Recommendation 8. Recommendation 8 states that "financial institutions should have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions." We agree that measures to address the risks that may arise in non-face-to-face contexts should be premised on an RBA, allowing firms to assess the risks of such arrangements in light of their business and customer circumstances rather than establishing any presumption regarding the risk of such a form of business.

We see no reason why anything different from the standard currently set forth in Recommendation 8 should be included in the INRBA. There should be no suggestion that non-face-to-face contact results in a higher risk of money laundering or terrorist financing. Non-face-to-face account openings, such as accounts established by or introduced through financial intermediaries, are well-accepted and common throughout the mutual fund industry, and many mutual funds have reasonably determined that relationships with customers introduced through regulated intermediaries may pose lower risks than certain direct customer relationships.

Legal Persons and Arrangements – Customers and Beneficial Owners

FATF states that a number of changes are being considered for the interpretive note to Recommendation 5 (INR5), including to make clearer that details of the beneficial ownership, including the "mind and management" of a legal person or arrangement, must be obtained by financial institutions. FATF states that greater emphasis will be placed on the obligations of institutions to understand the ownership and control structure of legal persons and arrangements. For example, FATF discusses revising INR5 to mandate that firms identify and verify natural persons who ultimately control a legal person. Where ownership is widely dispersed, the Paper proposes revising INR5 to require financial institutions to identify and verify those other persons that have effective control over a legal person through other means (*e.g.*, by exerting influence over the directors of a company).

With regard to customer identification, we do not believe that it is necessary for FATF to propose changes for INR5 regarding additional beneficial ownership information to be collected by financial institutions for the identification of customers that are legal arrangements. FATF states that it is seeking to clarify that the information needed varies according to the ownership and control structure. Consistent with an RBA, financial institutions already recognize that the "information needed varies" and that additional or different customer information may need to be obtained, including beneficial ownership information.

One of the hallmark characteristics of the RBA is the ability of firms to design, change and implement an effective AML program, including a customer identification program, that takes account

of the varying and changing risks associated with the different types of businesses, clients, accounts and transactions it may handle now and in the future. We therefore urge FATF to not specify any additional information to be collected in this context.[8]

With respect to "verification" of beneficial ownership, we believe it is imperative that FATF further evaluate this proposal in light of the inability of many financial institutions to reliably verify beneficial ownership information with relevant authorities. For example, while there have been recent proposals in the United States to require states to obtain a list of beneficial owners of most corporations and limited liability companies formed under their laws, there are no such official listings to date. These US proposals also do not address the issue of beneficial ownership in the context of other entities such as partnerships or trusts. Accordingly, it is essentially impossible for financial institutions (wherever located) to reliably verify beneficial ownership information for most US entities.[9]

Without a means for reliably verifying beneficial ownership information, we question whether such information is truly helpful to financial intelligence units or law enforcement. In addition, given these substantial verification problems, we do not believe that this proposal can be viewed as meeting FATF's own objective to ensure an effective implementation of the AML/CFT standards. We therefore recommend that FATF not make the proposed changes and that firms be allowed to continue to utilize risk-based procedures for identifying and verifying the identity of their customers.

Politically Exposed Persons (PEPs) – Domestic PEPs and Proposal for Enhanced Scrutiny

FATF is considering requiring enhanced measures for domestic PEPs "if there is a higher risk." We believe that such a requirement would be duplicative of existing policies and procedures under the RBA and therefore that no change is needed. For example, in specified circumstances, US law requires enhanced due diligence of accounts with senior foreign political figures; however it is also clear that an RBA would contemplate different procedures for customers identified as higher risk, which could include a domestic PEP in some circumstances.

Given the existing RBA, as well as the wide range and variety of persons that could be categorized as domestic PEPs, we think the RBA approach is the appropriate mechanism for the consideration of a customer's status as a domestic PEP.

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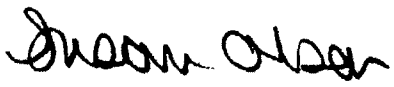
[8] We also have concerns with FATF's more specific proposals regarding the information needed, including obtaining information on the "mind and management" of a legal arrangement or persons that have "effective control through other means." The breadth and ambiguity of such proposals are highly problematic. It is important that any information requirements regarding the "customer" of the financial institution be sufficiently straightforward to enable a wide range of financial institutions around the world to understand and effectively implement them.

[9] We understand that similar challenges exist in other jurisdictions. In addition, there also can be challenges accessing such information, if it exists, as there may be limits on its availability to the public.

Third-Party Reliance

We support FATF's consideration of extending a jurisdiction's discretion regarding the types of entities that can be relied upon (*e.g.,* to allow reliance on businesses other than in the banking, securities or insurance sector as long as they are subject to AML rules and effective supervision). However, consistent with FATF's objectives to promote global standards for combating money laundering and terrorist financing, we believe that FATF should strongly encourage jurisdictions to permit reliance with respect to firms that are subject to supervision and AML requirements in other FATF jurisdictions. We believe such an approach would recognize the global nature of financial markets while also supporting FATF efforts to promote global AML standards.

Very truly yours,



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