FATF Implementation & US Lawyers


New York Law School Symposium
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Overview of Remarks

• Introduction & Caveats
• US Implementation and the Legal Profession
  – The global context
  – Policy initiatives
  – Education efforts:
    • FATF & other institutions
    • lawyer organizations & communities
    • individual lawyers
    • law students
• Conclusion & Recommendations
Introduction and Caveats

• This presentation is limited to lawyers
  ➢ But I won’t always note that on the slides
• This presentation focuses on *inputs* not *outputs*
• My comments should *not* be interpreted as satisfaction with the current “output” situation
• Implementation should be viewed as a work in progress – and progress is being made

US Implementation in a Global Context

• Legal profession implementation differs
  – The UK approach has yielded thousands of consent requests annually, almost all of which were granted
  – Canada has Model KYC Rules (& lots of litigation)
  – The US approach is primarily educational
  – The US focus has been teaching lawyers to recognize AML/CFT situations in order to apply the existing rules (Rules 1.2, 1.16, 8.4, *see also* 1.7)
• The IBA Anti-Money Laundering Forum website is a useful global aggregator
US Implementation: Panel #3 Preview

- Lawyer-gatekeepers *are* different because of their roles regarding the *administration of justice* & the *rule of law*

- The US legal profession supports efforts to combat money laundering & terrorist financing

- US lawyers are ethically (& legally) prohibited from assisting a client who commits a crime (e.g., 1.2(d) & 1.16)

- In my view, if there are implementation issues, it is primarily because of a lack of education
  - US lawyers do not always recognize when they are being used to facilitate money-laundering or terrorist financing
The Key Website re FATF & US Lawyers

http://www.americanbar.org/groups/criminal_justice/gatekeeper.html

Policy Initiatives: The Groundwork

ABA Policies and Positions

ABA Resolution 104 Supporting Reasonable and Balanced Anti-Money Laundering Initiatives Consistent with the Confidential Lawyer-Client Relationship (February 2003)

ABA Resolution 300 Opposing Federal Beneficial Ownership Reporting Mandates and Regulation of Lawyers in Formation of Business Entities (August 2008)


Text of Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing

ABA Formal Ethics Opinion 463--Client Due Diligence, Money Laundering, and Terrorist Financing (May 23, 2013)
A Joint Initiative Formally Approved by

- the American Bar Association (ABA); its Task Force on Gatekeeper Regulation and the Profession; and the ABA Sections of: 1) Real Property, Trust and Estate Law; 2) International Law; 3) Business Law; 4) Taxation; and 5) Criminal Justice
- American College of Trust and Estate Counsel
- American College of Real Estate Lawyers
- American College of Mortgage Attorneys
- American College of Commercial Finance Lawyers

VOLUNTARY GOOD PRACTICES GUIDANCE FOR LAWYERS TO DETECT AND COMBAT MONEY LAUNDERING AND TERRORIST FINANCING (2010)

Educating the Ethics Community

FATF SYMPOSIUM

2010 JOURNAL OF

the PROFESSIONAL LAWYER

AN INTRODUCTION TO THE FINANCIAL ACTION TASK FORCE AND ITS 2008 LAWYER GUIDANCE

Laurel S. Terry

ANTI-MONEY LAUNDERING LEGISLATION: IMPLEMENTATION OF THE FATF FORTY RECOMMENDATIONS IN THE EUROPEAN UNION

Colin Tyre

THE GATEKEEPER INITIATIVE AND THE RISK-BASED APPROACH TO CLIENT DUE DILIGENCE: THE IMPERATIVE FOR VOLUNTARY GOOD PRACTICES GUIDANCE FOR U.S. LAWYERS

Kevin L. Shepherd

MONEY LAUNDERING REGULATION — WHAT CAN BE LEARNED FROM THE CANADIAN EXPERIENCE

Ronald J. MacDonald

NATIONAL CONFERENCE ON PROFESSIONAL RESPONSIBILITY - bringing together legal scholars, jurists and specialists in the professional responsibility field for two days of intensive seminars covering a wide range of issues. Conference topics address recent trends and developments in legal ethics, professional discipline for lawyers, professionalism and practice

40th National Conference on Professional Responsibility - May 29-30, 2014

AMERICAN BAR ASSOCIATION

37TH ABA NATIONAL CONFERENCE ON PROFESSIONAL RESPONSIBILITY MEMPHIS, TENNESSEE JUNE 2-4, 2011

Wednesday, May 7, 2008

International Money Laundering and The Corrupt Practices Act

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Educating the Regulatory Community

at both the national level and state level:

National Organization of Bar Counsel
Mid-Year Meeting – New Orleans, LA
February 1-4, 2012

Money Laundering / Counter Terrorist Financing
Panelist: Mike Rosen (Dept. Of Treasury), Laurel S.
Terry (PA), and Kevin Shepherd (MD)

Note: The NOBC is very cooperative.
Before this Symposium, the NOBC
circulated a survey to its listserv members.

States bars & regulators have begun adding pages & links:

Educating Real Estate Lawyers

43 REAL PROPERTY, TRUST AND ESTATE LAW JOURNAL

GUARDIANS AT THE GATE: THE GATEKEEPER INITIATIVE AND THE RISK-BASED APPROACH FOR TRANSACTIONAL LAWYERS

Kevin L. Shepherd

“The Gatekeeper Initiative: Are You Unwittingly Helping Your Clients Launder Money?”
Pennsylvania Bar Institute, 17th Annual Real Estate Conference, Philadelphia, Pennsylvania

Ethically Speaking... Just What Are My Obligations Under the Gatekeeper Initiative?
Kevin L. Shepherd
Probate & Property

Risky Business: Are You Unwittingly Helping Your Clients Launder Money?”
American College of Trust and Estate Counsel, Jackson Hole, Wyoming

Ethically Speaking... Just What Are My Obligations Under the Gatekeeper Initiative?
Kevin L. Shepherd
Probate & Property

The Gatekeeper Initiative and the Risk Based Approach to Client Due Diligence

and many more...
Educating Trusts & Estates Lawyers

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
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<tbody>
<tr>
<td>Wealth Planning for High Net-Worth Individuals and Owners of Closely-Held Companies, Lawyers as Gatekeeper, New York University, School of Continuing and Professional Studies, Summer Institute in Taxation</td>
<td>July 2012</td>
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<tr>
<td>Guidance on Good Practices to Combat Money Laundering, Society of Trust and Estate Practitioners (STEP), New York, New York</td>
<td>Sept. 2011</td>
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Educating Corporate Lawyers

MCLE Self-Study

Beware of helping finance terrorists

Transactional lawyers, especially those who create entities and handle funds, should perform a risk analysis to detect and combat money laundering and terrorist financing

By ANDREW TUFT & RACHEL CHAPMAN

Winter 2009

Joint Newsletter of the ABA Section of Business Law Committees on Commercial Finance and Uniform Commercial Code

Commercial Law Newsletter

An Update on the FATF Guidance for Legal Professionals and Development of Good Practice Guidelines

Kathleen J. Hopkins, Real Property Law Group, PLLC

eSOURCE

April 2007 - Volume 5 - Number 10

The monthly electronic newsletter of the ABA Section of Business Law
Efforts to Educate Other Lawyers

Because Local Can Be More Effective:

- **Presentations to state or local organizations:**
  - Ohio State Bar Webinar (Aug. 2013)
  - Arkansas Bar (June 2013)
  - Iowa Inns of Court (April 2013)
  - Florida State Bar E-CLE (Jan. 2013)
  - California Bar Assoc. (Jan. 2013)

- **Presentations to other groups:**
  - American Bar Foundation (ABF) Aug. 2013
  - Practicing Law Institution Webcast (PLI) (July 2013)
  - ALI CLE (Nov. 2012) & Lawline.com courses
  - International Bar Association meetings

And many more, including CT, CO, IN, MN, NM, NY, & PA among others
Educating Law Students


AALS PROFESSIONAL RESPONSIBILITY SECTION NEWSLETTER

- Ethics academics have agreed to work with US Treasury officials to develop class hypos & help publicize them
- other initiatives (e.g. casebooks)

US Lawyers & Internat’l Initiatives

Dissatisfaction with this:

June 2013

Has led to collaborative efforts to develop an alternative “red flags” typologies report
US Lawyers Survey Int’l Efforts For Ideas

Switching from inputs to outputs:
How should we view the performance of US Law firms?

Conclusion

- Progress has been made in getting the “word out” to US lawyers
- There is additional work to be done
- Implementation is a matter of making lawyers understand “application” (not “rule”) issues
- The ABA/CCBE/IBA substitute “typologies report” is the next step & will be useful
- Thanks to NYLS for this Symposium and helping spread the word!

To Read More About It…

- ABA Task Force on Gatekeeper Regulation and the Profession, [http://www.americanbar.org/groups/criminal_justice/gatekeeper.html](http://www.americanbar.org/groups/criminal_justice/gatekeeper.html)
To Read More About It...

My Presentations Webpage:

SELECTED PRESENTATIONS - BY TOPIC:

- Global Developments in General (19.06, 23.08, 23.10, 23.14)
  - See also 2009 Winter School lecture entitled "The Legal World in Flux: 2011 Trends in Global Economic Regulation" available on my presentations webpage.

- For more information on the topics listed below, please visit my "Publications by Topic" section of the webpage.

- Alternative Business Structures (ABS) developments including the UK’s Legal Services Act 2007, Australia’s publicly traded law firms, EU, and OECD developments (19.06, 23.08, 23.10, 23.14)

- Australian model directed towards the legal professions, including the EU’s Professional Services Competence Initiative (19.06, 23.08, 23.10, 23.14)

- the ABA Task Force on Legal Services (19.06, 23.08, 23.10, 23.14)

- Australian Legal Profession Development (19.06, 23.08, 23.10, 23.14)

- the Regulator Process (19.06, 23.08, 23.10, 23.14)

- Canadian Law Society Regulation (19.06, 23.08, 23.10, 23.14)

- Classification of the Australian Legal Services Act (19.06, 23.08, 23.10, 23.14)

- Draft Legislation (Draft ABA Model Rule 6:1-1 of the Model Rule) (19.06, 23.08, 23.10, 23.14) In October 2010, Professor Terry and Rogers released the proposed model in this rule. Their recent proposal is available at ABA Model Rules (www.americallaw.org)

- EU Bar regulations (19.06, 23.08, 23.10, 23.14)

- Financial Services Task Force of the EU and Central and Eastern Europe (19.06, 23.08, 23.10, 23.14)

- Foreign lawyer "compliance" issues (including new rules in the United States) (19.06, 23.08, 23.10, 23.14)

http://www.personal.psu.edu/faculty/l/s/lst3/presentations.htm