The Financial Action Task Force and Lawyer Regulation

or

Why NOBC Members Should Help Educate their Lawyers about the ABA’s Voluntary Good Practices Guidance

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Penn State Dickinson School of Law
NOBC Midyear Meeting
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My 10 Minute Introduction: Pictures are Worth 1000 Words

- What is the FATF?
  - What are the FATF 40+9 Recommendations?
  - What is the Oct. 2008 FATF Lawyer Guidance?
- Government & bar association responses
- U.S. implementation of the FATF recommendations
- Why NOBC Members Should Encourage their Lawyers to follow the ABA Guidance
  - Compare the Canadian & UK implementation
What is the Financial Action Task Force (FATF)?

- The FATF is a 36 member intergovernmental organization.
- The U.S. is a founding member.
- The FATF was established in 1989 to combat money laundering and the financing of terrorism [aka AML/CFT].
- FATF activities increased after 9-11.
- It has no direct powers, but can expel members who do not comply.
- There are a number of similar groups.
What are the FATF’s 40+9 Recommendations?

○ The 40 recommendations were adopted in 1990 (revised in 2003)

○ The 9 Special Recommendations were adopted Oct. 2001, rev’d 2004

○ The **40+9** address “gatekeepers” (including lawyers, casinos, & others)

○ Some are controversial - e.g., they require disclosure w/o tipping off
What is the Oct. 2008 FATF Risk Based Assessment (RBA) Lawyer Guidance?

- This is one of many different “RBAs”
- Applies to lawyers who help clients:
  - buy or sell real estate
  - create, operate, or manage legal persons [corps]
  - establish or manage trusts
- Guidelines for doing the required client due diligence (“know your client” or KYC rules)
- Recordkeeping guidelines
- For now, it agrees to disagree re suspicious transaction reporting (STR) obligations
- It was negotiated by government and private sector representatives
Legal Profession Representatives Helped Negotiate this Document
How Have Bar Associations and Governments Responded?

- Many Governments have responded with new laws governing lawyers
- Global bar associations responded with some protests, negotiations, and guidance to their lawyers (see links at end)
- The ABA response includes the 2003, 2008 & 2010 “Gatekeeper” resolutions & the Voluntary Good Practices Guidance
- The ABA negotiated this Guidance in conjunction with the Dept. of Treasury

Read First Hand Reports Here...

- Money Laundering Regulation—What Can be Learned from the Canadian Experience, by Ronald J. MacDonald QC.
- Cooperation, Co-option or Coercion? The FATF Lawyer Guidance and Regulation of the Legal Profession, by Paul D. Paton.
- Regulating Lawyers: Same Theme, New Context, by Ellen S. Podgor.

Why NOBC Members Should Help Educate their Lawyers about AML-CFT

My impression:

- US attorneys [still] know less about the FATF than attorneys in other parts of the world
Anti-money laundering

Last updated: 12 January 2011

Compliance with money laundering obligations is one of the greatest challenges for solicitors in the UK today. The Law Society is committed to assisting solicitors meet those obligations and provide a robust defence against money launderers attempting to abuse our professional services.

Read the latest newsletter - 12 January 2012

Latest news
AML developments in 2012

CCBE committees & working groups

Committees - Money Laundering - Documents attached

Documents
- Letter to FATF regarding review of the Standards [2011-06-20]
- FATF Consultation paper - The review of the Standards - Preparation for the 4th Round of Mutual Evaluations - October 2010 [2010-10-29]
- Commission report on the impact of the second EU money laundering Directive on the legal profession [2006-12-19]

Judgement
- Judgments of the Court of Justice of the European Communities, judgments and orders of the Court of First Instance concerning the legal profession [2011-04-12]
Model Rules to Fight Money Laundering and Terrorist Financing

As is the case for any person in Canada, it is illegal for members of the legal profession to knowingly participate in crimes involving money laundering or terrorist financing. To ensure that legal professionals are not unwittingly used by their clients to help with these activities, all of Canada’s law societies enforce rules of conduct based on model rules developed by the Federation.

No-Cash Rule

Members of the legal profession are prohibited from accepting more than $7,500 in cash to ensure that individuals involved in money laundering or terrorist financing cannot use their legal advisors’ trust accounts for illegal activities. The Federation’s Model No-Cash Rule is available here.

Client Identification and Verification Rules

Members of the legal profession are bound by strict “know-your-client” rules to ensure that they are providing advice only to bona fide clients whose identity can be reliably ascertained. The Federation’s Model Rule on Client Identification and Verification is available here.

Anti-Money Laundering: Information for the Profession

The Law Council has been actively engaged with the Government in representing the interests of the legal profession in relation to Tranches One and Two of the AML legislation and will continue to do so vigorously.

The Law Council will also continue working with its Constituent Bodies to provide information to legal practitioners in relation to AML/CTF obligations and issues.

Below are the materials prepared for the profession to date.

Materials

Why NOBC Members Should Help Educate their Lawyers about AML-CFT

- **My assumption**: NOBC members would prefer a FATF implementation that is similar to Canada not the UK

- **My Prediction**: In order to keep Congress & the Executive at bay, we must educate lawyers to follow the ABA “Good Practices” approach

- **NOBC Members can help**
The Law Society of England & Wales

In Dec. 2009, in response to a gov’t report, it suggested 20 changes & said the statute’s current benefits did not justify the burdens.

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This chart was based on UK government reports about the number of SARs filed. Terry fn. 117.
The “Good Practices” are Consistent with Existing Rules

- I suggest no new rules-laws are needed:
  - See Rules 1.1, 1.2(d), 1.16, 4.1, & 8.4(b&c)
- But education about their application in AML-CFT contexts is warranted
- This document can help:

**VOLUNTARY GOOD PRACTICES GUIDANCE FOR LAWYERS TO DETECT AND COMBAT MONEY LaunderING AND TERRORIST FINANCING**

To Read More About It:

- Financial Action Task Force (FATF)
  [http://www.fatf-gafi.org](http://www.fatf-gafi.org)
- FATF Risk-Based Approach Guidance for Legal Professionals (Oct. 2008),
- U.S. Treasury Webpages about the FATF and AML-CFT,
To Read More About It: ABA Actions

- ABA Resolution #104 (2003),
  [http://www.americanbar.org/content/dam/aba/migrated/leadership/recommendations03/104.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/leadership/recommendations03/104.authcheckdam.pdf)
- ABA Resolution #300 (2008),
  [http://www.americanbar.org/content/dam/aba/migrated/poadv/priorities/gatekeeper/ABAresolution300.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/poadv/priorities/gatekeeper/ABAresolution300.authcheckdam.pdf)
- ABA Resolution 116 (2010) [Voluntary Good Practices Guidance]:
- ABA FAQ re Voluntary Good Practices Guidance,
  [http://www.americanbar.org/content/dam/aba/publications/criminaljustice/gatekeeper_faq.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/criminaljustice/gatekeeper_faq.authcheckdam.pdf)

To Read More About It – Part 3:

Bar Association Resolutions and Guidance:

- Joint statement by the international legal profession to the FATF (April 2003),
- Fed. L. Soc. Canada, Model “Know Your Client” Rule,
- UK Money Laundering and "Know Your Client” Rules,
- CCBE webpage regarding EU Money Laundering Directives & other EU initiatives,
- Law Council of Australia, Anti-Money Laundering Reforms,