

September 12, 2008

Comments regarding the Consultative Document for “Due diligence and transparency regarding cover payment messages related to cross-border wire transfers” by the Basel Committee on Banking Supervision

Japanese Bankers Association

The Japanese Bankers Association (JBA) greatly appreciates this opportunity to comment on the Consultative Document for “Due diligence and transparency regarding cover payment messages related to cross-border wire transfers” issued by the Basel Committee on Banking Supervision in July 2008.

We hereby present our basic ideas regarding the Consultative Document, followed by our comments on specific items.

1. Basic Idea

- (1) JBA thinks that including information regarding the originator and beneficiary in cover payment messages would prevent the omission or lack of information in the cross-border wire transfer chain and would therefore be a measure to increase the transparency of cross-border wire transfers (i.e., it is beneficial from the perspective of meeting the needs for performing investigations, etc.). However, the intermediary bank (the cover intermediary bank) faces difficulty in confirming information regarding originator or beneficiary because it is an institution responsible for interbank settlement in the cross-border wire transfer mechanism and does not have direct contact with the originator or beneficiary. Therefore, it can be said that it is neither reasonable nor effective to obligate the intermediary bank to verify such information.
- (2) Within the cover payment chain, it should be the obligation of the originator bank to obtain information regarding the originator, to perform verification and screening of the originator, and include such information in payment messages; to obtain information regarding the beneficiary from the originator and include such information in payment messages.

Furthermore, it should be the obligation of the beneficiary bank to perform verification for information obtained from the originator regarding the beneficiary. In fact, JBA thinks that intermediary banks are not greatly obliged because their role is limited as indicated in the AML/CFT measures, which have the same purpose as the FATF Special Recommendation VII on Wire Transfers and the FATF Interpretative Note to Special Recommendation VII on Wire Transfers.

- (3) In order to ensure that the originator bank that sends MT103 and MT202COV fulfills the abovementioned obligations, JBA thinks that an effective measure would be to call for respective nations to legislate the abovementioned obligations of originator banks and to have the FATF inspect countries and territories that do not establish such legislation, make public a list similar to the former list of Non Co-operative Countries and Territories (NCCT) and to warn against transfers from those jurisdictions. This would also be an effective method for when the beneficiary bank is taking a risk-based approach.

2. Comments regarding specific items

- (1) In Paragraph 20 of the Consultative Document, it states that “Such procedures should facilitate the detection of cases where required fields are completed but the information is unclear or incomplete,” but as commented under “1. Basic Idea,” the intermediary bank does not have direct contact with the originator or beneficiary. As such, in reality, it is often the case in practice that it is extremely difficult to actually determine whether such information is inaccurate or incomplete. Therefore, in terms of the future direction of countermeasures, while it is important to aim for higher accuracy as much as is possible at the individual banks, JBA thinks that discussions ought to take place for a standard framework such as a primary, systematic check performed on the SWIFT system, including checks for the absence of said information.
- (2) In Paragraph 27 of the Consultative Document, it states that “the bank of the beneficiary could be in a position to detect through its risk-base monitoring that ... there is a discrepancy between the two messages [one directly from the originator bank and another which is the cover message from the cover payment chain].” However, the field for originator or beneficiary information is found in messages received from the originator bank (e.g.

SWIFT MT103), but is not found in the Confirmation of Credit (e.g. SWIFT MT 910) received from the beneficiary bank's correspondent bank under the cover payment chain. Thus, it is practically impossible to detect such discrepancies.

- (3) In Paragraph 32 of the Consultative Document, it states that "customers should be clearly informed that the execution of a transfer in a foreign currency or across borders entails transmission of the appropriate personal information to all cover intermediary banks in another jurisdiction," but in actual practice, it is difficult for originator banks to give clear explanations to customers, especially beneficiaries of foreign residencies, regarding the fact that information concerning the originator and beneficiary is to be contained in payment orders of cover payments.

Furthermore, with regard to the protection of personal information, it would be unnecessary to obtain the consent of each participant for provision of information on the originator and beneficiary when cover payments are utilized in cross-border transfers as long as there is a consensus among all participants, including the originator and beneficiary. Therefore, there is a need to foster such a consensus.