

September 26, 2013

To the Basel Committee on Banking Supervision

Japanese Bankers Association

**Comments on the Consultative Document “Sound management of risks related to money laundering and financing of terrorism”**

We, the Japanese Bankers Association, would like to express our gratitude for this opportunity to comment on the Consultative Document “Sound management of risks related to money laundering and financing of terrorism” published by the Basel Committee on Banking Supervision (“BCBS”) on June 27, 2013.

We respectfully expect that the following comments will contribute in any way to your future discussions on this issue.

**General Comment**

The Consultative Document provides very useful guidelines as to how banks should take account of risks related to money laundering and financing of terrorism (“ML/FT”) within their overall risk management.

Nevertheless, it should be noted that there are some issues which banks may require some time to address, depending on the necessity of amendments to applicable laws and regulations, the size of banks and other factors.

**Specific Comments**

**1. Comments in relation to chapter “II. Essential elements of sound ML/FT risk management”**

**(1) Paragraphs 21 and 22**

The chief AML/CFT officer may be entrusted with responsibilities, as chief compliance officer, for data protection or compliance with laws and regulations concerning personal information.

The Consultative Document should clearly specify that in such cases appropriate management of AML/CFT practices can be ensured by other measures such as assessing, through internal audit functioning as the third line of defense, whether the chief AML/CFT

officer has taken measures to avoid potential conflicts of interest and effectively fulfills his/her responsibilities.

**(2) Paragraph 26**

It is proposed that this paragraph should be changed to further clarify that it requires a financial institution to introduce and use IT systems which are adequate for its size and business nature.

**(3) Paragraph 34**

The FATF Recommendation 10 stipulates that the CDD measure to be taken for the customer is to “identify the customer and verify that customer’s identity using reliable, independent source documents, data or information” and for the beneficial owner is to “identify the beneficial owner, and take reasonable measures to verify the identity of the beneficial owner, such that the financial institution is satisfied that it knows who the beneficial owner is.”

The Consultative Document also stipulates the requirements which are in line with the above recommendation.

With regard to the statement, “the bank should not rely solely on such declarations,” it should be clarified that this means that such a written declaration can be relied on as long as the proposed CDD measures are taken (or when it is difficult to implement such measures). (In other words, it should be specified that the bank is not allowed to rely solely on such declarations without implementing or attempting to implement the CDD procedures.)

**(4) Paragraph 51**

The FATF’s Interpretive Note to Recommendation 10 refers to ongoing due diligence and describes that “Financial institutions should be required to ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher-risk categories of customers.”

In order to ensure consistency with this FATF Recommendation, the BCBS should specify that a risk-based approach should be applied as implementing the CDD information updating.

## **2. Comments in relation to chapter “III. AML/CFT in a group-wide and cross-border context”**

### **(1) Paragraph 60**

The extent of substantial control by the parent bank, operational conditions of the subsidiary, level of risks the subsidiary faces and other aspects widely vary across subsidiaries. Given this, the BCBS should explicitly allow that the proposed group-wide AML/CFT risk management measures can be adjusted to reflect each subsidiary’s actual conditions and risks.

(Similarly, the above comment is applied to chapter “VI. Group-wide and cross-border consideration” of Annex 2.)

### **(2) Paragraph 70**

Aggregating the customer management information such as the beneficial ownership of high-risk accounts is considered to be very effective from group-wide AML/CFT management perspectives. Please however note that delivering this requirement will call for the modification of IT systems, which may take time for some banks to implement due to their size or other factors.

### **(3) Paragraph 74**

The extent of substantial control by the parent bank, operational conditions of the subsidiary, level of risks the subsidiary faces and other aspects widely vary across subsidiaries. Given this and similar to our comment on paragraph 60, the BCBS should explicitly allow that the proposed group-wide information sharing can be adjusted to reflect each subsidiary’s actual conditions and risks.

## **3. Comment in relation to Annex 2**

### **(1) Paragraph 20**

It should be clarified that business relationships are required to be formalised in written agreements not in the case of correspondent banking relationships which only involve exchange of SWIFT messages but in the case of the depository correspondent banking relationships; maintaining nostro and/or vostro accounts to facilitate transactions.