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September 15, 2008

By electronic delivery to:
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Basel Committee on Banking Supervision
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel
Switzerland

Re: Consultative Document: Due Diligence and Transparency Regarding
Cover Payment Messages Related to Cross-border Wire Transfers, July
2008

Ladies and Gentlemen:

The American Bankers Association (ABA)¹ respectfully submits its comments to the Basel Committee on Banking Supervision's (the Committee) consultative document Due Diligence and Transparency Regarding Cover Payment Messages Related to Cross-border Wire Transfers (the Paper).² The Paper describes and invites comments on the Committee's preliminary views on supervisory expectations related to enhancing transparency in payment messages in anticipation of changes to technical standards for cross-border wire transfers.

ABA commends the Committee's efforts to enhance transparency in payment messages related to the processing of cross-border wire transfers and to address the supervisory issues presented. ABA agrees that the lack of originator and beneficiary information on cover payment messages limits transparency and hinders a cover intermediary bank's³ ability to access accurately the risks

¹ ABA brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the United States' banking industry and to strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$13.3 trillion in assets and employ over 2 million men and women.

² Basel Committee on Banking Supervision, *Due Diligence and Transparency Regarding Cover Payment Messages Related to Cross-border Wire Transfers*, July 2008.

³The term "cover intermediary bank" is used to refer to role of an intermediary bank in the cover payment chain in a cross-border wire transfer. The processing of cross-border wire transfers frequently involves several financial institutions: the originator bank, the beneficiary bank, and one or more intermediary banks. When the originator and beneficiary banks do not have a correspondent banking relationship with one another and a cross-border funds transfer requires settlement in a currency other than that of the originator bank, settlement is often accomplished through a "cover payment." In these instances, the originator bank instructs the beneficiary bank to effect the payment and advises the beneficiary bank that transmission of funds to cover the obligation will be made via a separate wire transfer from an intermediary bank that has a relationship with the beneficiary bank.

associated with correspondent and clearing operations. We support the Committee's efforts to further the work initiated by the Wolfsberg Group (Wolfsberg) and the Clearing House Association L.L.C. (the Clearing House) to adopt "certain basic payment message standards within the banking industry (the Message Standards); and the creation of an enhanced SWIFT payment message format for third-party cover payments that will accommodate information about the originator and the beneficiary of the payment."⁴ ABA also commends the Committee's efforts to clarify the responsibilities of each of the players—the originator, cover intermediary, and beneficiary banks—in the cross-border wire transfer process and to address the supervisory role in monitoring compliance with the proposed Message Standards.

However, ABA concurs with positions articulated by Wolfsberg and the Clearing House in their comment letter filed on August 12, 2008.⁵ ABA agrees that the focus of the Paper should be simple and straightforward—the promotion of transparency by requiring that cover intermediary banks receive identical information in the payment messages they receive as that provided to beneficiary banks.⁶ ABA shares the concern of Wolfsberg and the Clearing House that certain statements in the Paper go far beyond this purpose and could result in new and unwarranted expectations for the anti-money laundering compliance responsibilities of cover intermediary and beneficiary banks in the international funds transfer process.

In particular, ABA agrees that statements in the Paper may be interpreted as placing responsibility for ensuring the transparency of cross-border cover payments on cover intermediary and beneficiary banks rather than on originator banks. Expectations for real-time and *ex post* monitoring of originator and beneficiary fields on payment messages by cover intermediary banks are misplaced. Such monitoring is not technically feasible and would seriously interfere with the efficient processing of international payments. As Wolfsberg and the Clearing House state, neither cover intermediary nor beneficiary banks can or should be required to monitor the "completeness" and "meaningfulness" of message statements. Rather, originator banks are the only participants in the payment process that can ensure compliance with the enhanced transparency requirements, and expectations for a supervisory role in ensuring transparency should focus on originator bank compliance.

In addition, ABA urges the Committee to clarify its guidance on cover intermediary responsibilities for "monitoring against lists of names." One goal of the ongoing effort to revise cross-border wire transfer message formats has been to enable cover intermediary banks to screen transactor information against locally applicable lists of individuals or entities whose assets must be blocked, rejected, or frozen under local law. As the Committee recognizes, because current SWIFT cover payment messages (MT202COVs) lack identifying information about the originator or beneficiary of the wire transfer, cover intermediary banks cannot screen names or accurately assess the risks associated with their correspondent and clearing operations. ABA supports efforts to ensure that the identifying information contained in the SWIFT MT103 payment message sent from the originator bank to the beneficiary bank is included in MT202COV so that cover intermediary banks may screen this

⁴ *Id.* at 2-3.

⁵ The Swiss Bankers Association also raises many of these concerns in its comment letter filed on August 15, 2008.

⁶ ABA also agrees with Wolfsberg and the Clearing House that the technical content of the cover payment message should be addressed as part of the separate and broader debate on Special Recommendation (SR) VII of the Financial Action Task Force.

information. However, ABA is concerned that as written paragraph 22 asserts that sanction controls are not risk based. Paragraph 22 provides—

The cover intermediary bank in a cross-border cover payment would be required by its national law to screen the originator and beneficiary names against the lists of individuals and entities whose assets must be blocked, rejected or frozen, as applicable in its jurisdiction. *Such controls cannot be risk-based.* (emphasis added)⁷

In fact, the requirement to freeze or block assets owned by individuals or entities identified on government sanction lists is absolute, but controls used to manage the internal bank monitoring process are risk-based. For example, although the United States' Office of Foreign Assets Control (OFAC) mandates the blocking or freezing of funds transfers from OFAC-specified countries, entities, or individuals, OFAC and the regulatory agencies charged with monitoring OFAC compliance expressly recognize that OFAC compliance programs are risk-based.⁸ Decisions relating to the frequency of scans of existing customer databases against OFAC lists or the settings of sensitivity detection software for spelling variations are risk-based judgments. Therefore, ABA respectfully requests that the Committee delete the last sentence of paragraph 22.

ABA also requests that the Committee clarify that its discussion in the section titled "monitoring against lists of names" applies only to so-called "sanction" lists such as OFAC's Specially Designated Nationals list of individuals and entities with whom commercial activity is prohibited and pursuant to which sanctions are imposed for violations. Many nations, including the United States, have multiple government lists that generate only a reporting obligation.⁹ ABA respectfully requests that the Committee clarify that its discussion in paragraphs 22 – 24 relates only to review of "sanction" lists.

ABA appreciates the opportunity to comment on the consultative document. If you have any questions about these comments, please contact Richard Riese at 202-663-5051 or via email at riese@aba.com.

Respectfully submitted,



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⁷ *Id.* at 8.

⁸ See *Federal Financial Institutions Examination Council, Bank Secrecy Act/Anti-Money Laundering Act Examination Manual*, 137 (2007)(directing examiners to "Assess the bank's risk-based OFAC compliance program to evaluate whether it is appropriate for the bank's OFAC risk, taking into consideration its products, services, customers, entities, transactions, and geographic locations.").

⁹ See the USA PATRIOT Act's bi-monthly section 314(a) information sharing lists.