

March 31, 2001

Secretariat
Basel Committee On Banking Supervision
Bank for International Settlements
CH-4002
Basel, Switzerland
Fax: 41 61 2809100

Re: Customer Due Diligence for Banks

To the Secretariat:

This letter is in response to the January 2001 Consultative Document on "Customer Due Diligence for Banks" that has been issued to provide guidance to national supervisors in determining whether a country has in place standards for "effective management of banking risks." The Basel Committee is seeking comments on this draft guidance and the American Bankers Association is offering the following brief comments on the document.

ABA brings together all elements of the banking community to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks – makes ABA the largest bank trade association in the United States.

Overview

The Basel Committee on Banking Supervision (hereinafter "the Committee") prepared this guidance document so that the "KYC (Know Your Customer) framework presented here will become the benchmark for [national] supervisors to establish national practices and for banks to design their own programs." The Committee decided that guidance was necessary because of "its concerns for market integrity and [because of] direct and indirect losses incurred by banks due to their lack of diligence in applying appropriate procedures."

The ABA believes that, while the goal of the Committee to encourage standards in some countries is laudable, the U.S. banking industry has a comprehensive set of regulations and policies that have proven effective in deterring fraud and stemming financial losses. The ABA, therefore, does not support any implementation of the guidance in the United States.

For example, the Suspicious Activity Reporting (SAR) requirements and their predecessor, the criminal referral reporting regulations, have been in effect since 1984. These requirements mandate that institutions report possible violations of federal law to the Treasury Department (which shares this information with federal and state law enforcement agencies) after the discovery of:

- insider abuse
- violations of any federal law, or

- potential money laundering activities

To stay abreast of new forms of illegal activities, banks are given, when conditions warrant, advisories or guidance documents that explain what to look for and what to report. The filing of SARs is designed to both assist the government in its anti-money laundering goals and to protect the institution from losses that may affect safety and soundness. In addition to these requirements, U.S. banks are covered by a plethora of additional regulatory directives or advisories that cover every category mentioned in the Committee's draft guidance.

Each banking supervisory agency in the United States has Bank Secrecy Act examination procedures that are also made available to the regulated institutions. In addition, there have been related BSA directives covering the area of private banking, transactions with foreign officials and how to address common BSA deficiencies.

All of the above, more than adequately prepare U.S. banks for handling customer due diligence.

Concerns with the Guidance

While the U.S. banking industry already addresses the issues mentioned in the Committee's draft guidance, ABA believes that it is still important to discuss several concerns we have with the potential direction of the document.

First, the drafters frequently refer to the risks faced by banks that fail to have in place, some type of "Know Your Customer" standards. We would remind the Committee that the filing of suspicious transactions with government agencies in any jurisdiction should not be solely to assist the law enforcement or government goals. In fact, the U.S. system of reporting includes, as stated above, reports of many types of frauds and financial crime beyond money laundering.

In addition, those reports are intended to lead to investigations of the underlying offense, so that the bank, frequently the victim of the crime, can be made whole. Clearly, the government has a responsibility to do something with the data from the reports filed, other than simply compiling the information. Specifically, banks want prosecutions of the crimes and restitution for the institution and their customers or shareholders. Any recommended due diligence policies should also address the government's use of the information. References to government obligations to aggressively prosecute financial crime are sorely lacking from this draft.

Harmful Generalizations

There have been a series of advisories and public comments from government officials on the importance of increased due diligence regarding customers or businesses from jurisdictions that have inadequate or flawed anti-money laundering laws or regulations. While there have been high profile instances of system problems regarding non-resident bank customers, we urge the Committee to be cautious in responding to this issue with broad generalizations that may cause unintentional discrimination towards residents of certain countries.

While ABA is hopeful that the intent of the drafters was not to infer that the mere location of one's residence is suspicious, several portions of the draft could lead to that conclusion. Section 5 © of the Executive Summary encourages banks to:

Develop clear customer acceptance policies and procedures, including a description of customers that should not be permitted to open accounts.

We are very troubled with the wording of this section and recommend that it be amended.

Another section that is equally disturbing is Section III (1) (17) that covers a recommended "Customer Acceptance Policy." Specifically the Committee advocates that banks create such a policy by "including a description of the types of customer that are unacceptable to bank management. In preparing such policies, factors such as customers' background, country of origin, public or high profile position, business activities or other risk indicators should be considered."

Under the next section (2. Customer Identification) the Committee adds to the above concern by advising banks to pay "special attention to non-resident customers" and that the bank should "always ask itself why the customer has chosen to open an account in a foreign jurisdiction."

We urge the Committee to act quickly and correct any impression that the mere handling of accounts for non-residents is a risky endeavor. It is important to remind bankers that one's country of origin, taken alone, is not acceptable rationale for filing a report with the government. In this new electronic world, banks around the world will be vying for international customers. While one must never lose sight of appropriate due diligence to protect the bank, broad statements by government officials such as those listed above will only hinder the worldwide economy.

Privacy and Customer Due Diligence

It has been well documented that the U.S. banking industry rejected, and the regulators agreed, to a proposed "Know Your Customer" regulations in 1998. One of the major points of contention was the concern that customers had about potential violations of their personal privacy. Our association stated at the time "the banking industry protects customer privacy better than any other industry in the United States. We have long protected customer information from unauthorized access, while fulfilling our mandate to report possible violations of law."

Privacy is an even larger issue today. The U.S. Congress passed a law in 1999, which is being implemented this year, that requires additional notices to bank customers concerning their privacy rights. It is inconceivable that a document of the scope of the Committee's draft would contain no references to the continued importance of protecting customer data while reporting potential crimes to a government. ABA urges the Committee to reconsider the privacy challenge and recommend that jurisdictions that decide to utilize all or part of any of the recommendations address the issue of privacy.

Conclusion

The American Bankers Association appreciates the opportunity to express our views. We would be happy to offer any additional assistance to the Committee in the future.

Sincerely,

John J. Byrne

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