



February 22, 2017

Mr. William Coen  
Secretary General  
Basel Committee on Banking Supervision  
Bank for International Settlements  
CH-4002 Basel  
Switzerland

**Re: Revised annex for correspondent banking to the BCBS guidelines on the sound management of risks related to money laundering and financing terrorism**

Dear Mr. Coen:

The Institute of International Finance (the “IIF” or the “Institute”)<sup>1</sup> and BAFT (“Bankers Association for Finance and Trade”)<sup>2</sup> (and collectively, the “associations”) are pleased to be able to respond to the Basel Committee on Banking Supervision (“BCBS” or the “Committee”) consultation on the *Revised annex for correspondent banking to the BCBS guidelines on the Sound management of risks related to money laundering and financing terrorism*<sup>3</sup> (the “consultative document” or the “draft guidance”). The associations have long supported the goals of the international community in promoting effective implementation of measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

We are grateful that the Basel Committee, by developing this guidance, has recognized some of the difficulties and ambiguities that banks face in conducting the correspondent banking business, particularly rising risk-management costs, reputational risk and uncertainty about what is required. We believe the broader discussion on finding workable solutions in this area encompassing the Financial Stability Board (“FSB”), the Financial Action Taskforce (“FATF”), the Committee on Payments and Market Infrastructures (“CPMI”), the International Monetary Fund (“IMF”) and the World Bank is an important global effort and one in which the private sector values taking a constructive role.

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<sup>1</sup> The Institute of International Finance is a global association of the financial industry, with close to 500 members from 70 countries. Its mission is to support the financial industry in the prudent management of risks; to develop sound industry practices; and to advocate for regulatory, financial and economic policies that are in the broad interests of its members and foster global financial stability and sustainable economic growth. IIF members include commercial and investment banks, asset managers, insurance companies, sovereign wealth funds, hedge funds, central banks and development banks.

<sup>2</sup> BAFT is the association for organizations actively engaged in international transaction banking. It serves as the leading forum for bringing the financial community and its suppliers together to collaborate on shaping market practices, influencing regulation and legislation through global advocacy, developing and adapting new and existing instruments that facilitate the settlements of products and service offerings for clients, providing education and training and contributing to the safety and soundness of the global financial system.

<sup>3</sup> Basel Committee on Banking Supervision, Consultative Document, Guidelines: *Revised annex on correspondent banking*, November 2016 (hereafter referenced as the “Draft Guidance”)

In August 2016, the IIF provided comments on a consultation published by the FATF on correspondent banking<sup>4</sup> in order to assist the FATF in its clarification of regulatory expectations in this area. We support the work of the Basel Committee to build upon the final FATF guidance on correspondent banking published in October 2016<sup>5</sup> by seeking to clarify regulatory expectations. The associations are particularly pleased with the Committee's recognition that not all correspondent banking relationships bear the same level of risk and the acknowledgement of the difference between inherent and residual risk.

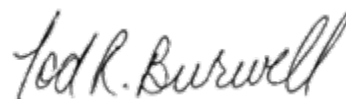
In our comments, however, we note a number of areas where further enhancements to the proposed revisions in Annex 2 would greatly benefit the general usefulness of the Committee's final guidance and its interrelation with the FATF guidance. We also respond herein to the Committee's questions in Boxes 1-3 of proposed Annex 2, under the relevant section heading. Please note that our responses to the questions in Box 1 and comments on the proposed revisions to Annex 4 appear under the heading "Know your Customer ("KYC") utilities" at the end of the letter.

Should you have questions on our letter, please do not hesitate to contact us or Matthew L. Ekberg at [mekberg@iif.com](mailto:mekberg@iif.com) and Samantha Pelosi at [spelosi@baft.org](mailto:spelosi@baft.org).

Very truly yours,



**David Schraa**  
Regulatory Counsel  
The Institute of International Finance



**Tod Burwell**  
President and CEO  
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<sup>4</sup> IIF, *FATF Consultation of the Private Sector on Correspondent Banking*, August 5, 2016: <https://www.iif.com/publication/regulatory-comment-letter/iif-comments-fatf-consultation-correspondent-banking-and-de>

<sup>5</sup> FATF, *Guidance on Correspondent Banking*, October 2016

## Key Issues:

### 1. General considerations on correspondent banking

- a. *Ensure alignment on changes to the definition of correspondent banking.* It is important to be very clear when discussing what constitutes correspondent banking and, specifically, what constitutes risk in correspondent banking relationships. The draft guidance references back to the FATF glossary definition of correspondent banking,<sup>6</sup> though we believe this definition is too general and has contributed to the uncertainty about regulatory expectations in this area.

The definition should be reevaluated to reflect a more accurate description of correspondent banking services. The associations recommend the FATF adopt the Wolfsberg Group definition<sup>7</sup> as a more targeted approach that helps narrow the definition away from the broad spectrum of banking services provided by one bank to another bank and allows for a better understanding of a correspondent relationship based on specific business lines.

While we understand the definition is under consideration for further review by the FATF,<sup>8</sup> we emphasize how important it is for the global community to refocus the definition on correspondent banking *per se* and not sweep in other types of business relationships. We encourage the BCBS to contribute to the discussions with the FATF on the definition to ensure proper alignment on risk management, and the avoidance of undue negative incentives, in the final BCBS guidance.

- b. *Appropriately classify risk in correspondent banking:* In several instances, the Committee notes in the consultative document that correspondent banking generally, and cross-border correspondent banking more specifically, is “of higher-risk.”<sup>9</sup> The associations respectfully disagree with this characterization. First, not all correspondent banking services are high risk. In its guidance, the FATF notes “Correspondent banking services encompass a wide range of services which do not all carry the same level of ML/TF risks.”<sup>10</sup> In particular, we note that

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<sup>6</sup> Draft Guidance, Annex 2, Paragraph 1

<sup>7</sup> “Correspondent Banking is the provision of a current or other liability account, and related services, to another financial institution, including affiliates, used for the execution of third party payments and trade finance, as well as its own cash clearing, liquidity management and short-term borrowing or investment needs in a particular currency”; The Wolfsberg Group, *Wolfsberg Anti-Money Laundering Principles for Correspondent Banking*, 2014.

<sup>8</sup> FSB, *FSB action plan to assess and address the decline in correspondent banking*: December 2016; p. 5

<sup>9</sup> Paragraph 1, last sentence “Like the FATF guidance, this Annex focuses on higher-risk correspondent banking relationships, especially cross-border correspondent banking.”; Paragraph 5, first sentence “The FATF guidance clarifies that, while correspondent banking in general is considered high-risk, not all correspondent banking services carry the same level of ML/TF risks.”; Paragraph 7(1)(a) “the purpose of the services provided to the respondent bank (e.g. foreign exchange services for the respondents’ proprietary trading, securities trading on a recognized exchanges or payments between a respondent’s group within the same jurisdiction may constitute indicators of a lower risk) [implies that cross-border relationships are “of higher risk”].

<sup>10</sup> FATF, *Guidance on Correspondent Banking*, October 2016, p. 8

transactions between banks as principals, such as the settlement of swaps, derivatives, and foreign exchange positions, documentary trade, and financial market trading, should generally be considered low risk. As such, we recommend that language in the proposed guidance implying that all correspondent banking activities are high risk be removed.

Second, not all *cross-border* correspondent banking relationships are high risk. In fact, many jurisdictions have well-developed and enforced anti-money laundering / counter-terrorism financing (“AML/CFT”) regimes, which make these jurisdictions low risk. Accordingly, we recommend that language in the proposed guidance implying that all cross-border relationships are high risk be removed. In addition, we request that the Committee clarify the term “cross-border” to elucidate expectations regarding such correspondent relationships.

## 2. Risk -based approach in the context of providing correspondent banking services

In previous comments on this subject, the associations have emphasized that not enough importance has been placed on improving understanding of the risk based approach in ways that would contain, rather than enhance, incentives to de-risk. In particular, there should be greater focus on how regulatory authorities and the industry can identify and implement ways to simplify AML/CFT requirements and reduce the costs associated with AML/CFT and sanctions compliance in correspondent banking services to lessen regulatory risks and increase efficiencies.

The associations encourage the Committee to acknowledge that if a correspondent bank carries out all requirements pursuant to its good-faith analysis in light of available official statements and reasonable interpretations under the given facts and circumstances of specific transactions and relationships and adopts a risk-based approach, applied in a proportionate manner, that it will be found to be in conformity with requirements. This is essential to ensure that the perception of a zero-tolerance regulatory environment will be allayed across all jurisdictions.

What is vital for best results is clearly defined and interpreted regulatory expectations that support effective risk management in order to operate an appropriate risk-based system. This will assist in leveling the playing field and reducing incentives for precautionary measures or strategies which are excessively risk averse.

In this regard, the associations consider the examples of money laundering / terrorist financing (“ML/TF”) risk indicators in correspondent banking listed in Section II.A of the consultative document helpful in allowing a correspondent to understand a respondent’s inherent risk, provided banks can actually rely upon them. We emphasize, however, (a) that this list should be understood as a non-prescriptive statement of risk subject to necessary interpretation under the facts and circumstances, and (b) certain aspects of the risk indicators need to be reassessed in key areas:

- a. Paragraph 7(1)(a) states that a correspondent should consider the purpose of the services to the respondent bank and notes that cross-border exchange of services for a respondent’s proprietary trading, securities trading on recognized exchanges or payments between a respondent’s group within the same jurisdiction may constitute indicators of lower risk. This statement would

appear to imply that all cross-border activity would constitute higher risk, which is not the case. We believe strongly that this generalization would not be appropriate for all international activity and further clarification to ensure proper gradation of risk in this regard is required.

- b. Paragraph 7(1)(c) may imply that when considering “nested” relationships and their access to a correspondent account, the presence of a “nested” relationship suggests increased risk. This is not necessarily the case, as the respondent bank may legitimately determine that the nested account poses lower AML risk after assessing the relevant risk indicators. We request that the Basel Committee reconsider this paragraph within the context of section B and our commentary below on that section. It would also be helpful, for clarity sake, for the Basel Committee to elucidate the difference between a payable through account and nested account, both referenced in paragraph 7(1)(c) and whether the term “have access to” in paragraph 7(1)(b) includes group access through nested or payable through accounts. Nested and payable through accounts present different risks, with nested being of less risk to the correspondent bank than a payable through situation, provided that the respondent bank is adequately monitoring the intra-group accounts.
- c. The provisions of paragraph 7(2)(d) requiring a risk assessment to be based on the respondent bank’s major business activities, including target markets and overall types of customers, should be adjusted so as not to be read as implying standards for knowing your customers’ customer (“KYCC”). International standard setters, including the FATF<sup>11</sup> and the Committee<sup>12</sup>, as well as national authorities, have clarified that KYCC is not a requirement or expectation. Ambiguity in this regard has hitherto been one of the factors leading to derisking, so this statement should be clarified.
- d. We believe that under paragraph 7(3)(i), the jurisdictions in which subsidiaries or branches are located is less important than whether those subsidiaries or branches will have access to, or make use of, the correspondent relationship that is established. As such, the final guidance should clarify this point to avoid leveling an undue higher risk assessment in certain circumstances.
- e. In paragraph 7(3)(j), we agree the discrepancy between the regulatory standards applied in the jurisdiction of the parent and respondent is a factor in assessing risk. However this is particularly the case when the parent jurisdiction’s regulatory standard is lower than that of the respondent, rather than the other way round. We believe the final guidance should be explicit on this particular point and provide possible benchmarks to avoid ambiguity and align due diligence expectations.
- f. Under paragraph 8, it is not clear what is required of banks when the guidance asks them to take a “holistic” view of the risk indicators in paragraph 7 and “other available information” to determine the inherent risk of each respondent bank relationship. Further clarity is needed, as the implication could be that equal consideration should be given to each of these factors when

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<sup>11</sup> FATF, *Guidance on Correspondent Banking*, October 2016, p. 4

<sup>12</sup> Draft Guidance, Paragraph 16.

in practice the areas in this list could be given different priority or weight depending on the jurisdiction applying the rules, and a correspondent may - and often does - place different weight on different risk indicators, depending on its jurisdiction and risk appetite. This could lead to an ambiguous interpretation of the guidance. A better way of addressing this would be to confirm this is a comprehensive review of material issues. The Committee should recognize that having done such a review, a favorable conclusion may be drawn without having to review all possible issues in addition to those that appear material in a good-faith appraisal and that a correspondent's ultimate judgment regarding the respondent's risk will be respected.

### 3. Nested (downstream) correspondent banking relationships

In the first instance, the use of the term “nested”, which has taken on negative connotations, may distort the discussion. A better term (which the Committee uses in the header to Subsection B and in paragraph 11) would be “downstream clearing,” which reflects the fact that this is a very significant feature of traditional correspondent banking. We note that “nested” accounts are an important strategy (especially for USD payments) for emerging-market banks that do not have, or have lost, direct correspondent relationships for any reason (related to compliance issues or other factors).

We are pleased that the Basel Committee recognizes in paragraph 11 that these types of relationships are an integral part of correspondent banking and may facilitate access by smaller banks to the broader financial system. We believe, however, that the level of due diligence outlined in the consultative document that would be expected of a correspondent bank when assessing the probity of a “nested” relationship will often be onerous and border, again, on requiring KYCC.

There is an expectation inherent in the draft guidance of responsibilities being placed on the correspondent bank for the respondent bank's level of due diligence on its downstream clients. This is underlined in paragraph 15, where the Committee instructs the correspondent bank to *ensure* the respondent bank complies with requests for information.<sup>13</sup> Once a correspondent bank has done its due diligence on its respondents, there needs to be greater faith and accountability placed on the respondent bank in undertaking its responsibilities on due diligence for its client relationships. A better balance should be struck to make clear where accountability lies, in order to mitigate ambiguity regarding the level of review required in a correspondent banking relationship.

In addition, the factors outlined in paragraph 14 should be carefully reviewed, as data protection and privacy laws in certain jurisdictions may prohibit the respondent bank from collecting and/or providing the requested information, in whole or in part, and can impact the timing of their response.<sup>14</sup> The final guidance should recognize local legal limitations that correspondent and respondent banks may have in responding to requests for information, and the impact on correspondent banks as a result of such restrictions to

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<sup>13</sup> The wording of Paragraph 15 suggests correspondents should have a duty, and a corresponding capacity, to compel respondents to respond promptly to requests for information. In practice correspondents do not have this capacity, nor is it right that such a duty should be imposed. Ultimately, only respondents can be responsible for the information they provide, and the speed with which they provide it.

<sup>14</sup> For further information on issues concerning information sharing, please see: IIF, *Financial Crime Information Sharing Survey Report*, February 2017 and IIF, *Facilitating effective sharing of AML/CFT information*, May 25, 2016. Available at [www.iif.com/publication/regulatory-comment-letter/iif-submits-letter-effective-information-sharing-amlcft](http://www.iif.com/publication/regulatory-comment-letter/iif-submits-letter-effective-information-sharing-amlcft)

"ensure" prompt responses by their respondents. This will help avoid the creation of contradictory obligations and hence additional incentives for correspondent banks to de-risk.

#### 4. Information gathering

Taking into account the ambiguities noted through this comment letter on the issue of KYCC, we are pleased the Committee explicitly echoes the work undertaken by the FATF to correct any perception that KYCC is a requirement by clearly stating in paragraph 16 of the consultative document that there is no expectation or requirement for a correspondent bank to apply customer due diligence ("CDD") measures to the customers of a respondent bank. However, other aspects of information gathering in this section of the consultative document raise some concern.

In particular, in paragraph 16, the use of the phrase 'to fully understand'<sup>15</sup> is open to different interpretations by national regulators, possibly implying a requirement for KYCC. We believe the guidance would be more effective in mitigating perceptions of a KYCC requirement if the word 'fully' was removed.

In addition, paragraph 20 states that "correspondent banks should also take into account the corrective measures underway to strengthen the jurisdiction's AML/CFT controls, as well as efforts by domestic authorities to instruct respondent banks on how to strengthen their controls...". We believe this statement could be interpreted as requiring banks to carry risk on the basis of the promise of future improvements, but without any guarantee that the banks' judgment regarding the effort and effectiveness of capacity building is shared by the applicable regulatory authorities. The lack of detail provided and the low probability of consistent interpretation by public sector authorities will make this recommendation difficult to apply. Moreover, the language could be read as a requirement that correspondents take on risk that they feel is otherwise inadequately mitigated. The Committee should consider adjusting this paragraph to reflect greater clarity and to encourage consistent interpretation in this regard.

#### 5. Assessment of the respondent bank's AML/CFT controls

We agree with the statement in paragraph 21 of the consultative document that the level of due diligence in a correspondent banking relationship should be proportionate to the risk profile of the respondent bank and we welcome additional information from the Basel Committee on acceptable methods to be applied in assessing that risk. However, we emphasize that the methods developed by the Committee should, while obviating excessively conservative interpretations that create incentives to de-risking, not be prescriptive in nature. The risk based approach should be paramount in how banks assess risk in correspondent relationships. Directional guidance from regulators on which banks can rely (as suggested in Box 2), or sound practices in assessing a respondent's controls from the industry, could be useful if not mandatory in nature.

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<sup>15</sup> Paragraph 16: "Before entering into a business relationship with a respondent bank, correspondent banks should gather sufficient information to fully understand the nature of the respondent's business and assess ML/FT risks both at the outset and on an ongoing basis."

In addition, Paragraph 21 discusses liaising directly with, or on-site visits to, a respondent bank. We would suggest replacing the words ‘where appropriate’<sup>16</sup>, with a phrase along the lines of ‘according to the correspondent’s own risk assessment, ....’. This would remove any ambiguity over who is to judge what ‘appropriate’ constitutes in practice.

#### 6. Customer acceptance and retention

We believe, as outlined in the FATF Recommendations<sup>17</sup>, that customer relationships should be terminated where identified risks cannot be managed on a reasonable basis in line with the risk-based approach. Any delay in termination of a relationship, even when the probity of that relationship has become uncertain, could lead to reputational damage and inhibit the opening of certain accounts in the first place. We believe it is important for the Committee to evaluate the provisions outlined in paragraph 23 of the consultative document where a prescriptive requirement on the seniority level of review (which is also ambiguous relative to interpretation of the term “senior level” used in the consultative document) within a financial institution may impede processes for proper risk management.

In addition, paragraph 24 correctly states that banks should not enter into a correspondent banking relationship if they are not satisfied the respondent bank is not a shell bank. We believe, however, that correspondent institutions should be given clear guidance as to what is sufficient to establish such satisfaction. We suggest that initial and periodic assessments of the controls that the respondent institution has implemented to ensure that its accounts will not be used by shell banks, while avoiding any suggestion of an obligation to conduct KYCC, would be useful.

#### 7. Ongoing monitoring

We strongly agree that the level of ongoing monitoring in a correspondent banking relationship should be commensurate with the respondent bank’s risk profile, as stated in paragraph 25 of the consultative document. We believe, however, that the requirement in paragraph 27 for a correspondent bank to verify that a respondent bank has conducted adequate CDD on its customers with direct access implies that the correspondent must conduct KYCC. We encourage the Committee to clarify the use of the term “verify” to remove unnecessary ambiguity. In addition, the reference in the last sentence of paragraph 27 to the respondent bank’s providing the correspondent bank with "relevant CDD information upon request" may directly imply an obligation on the correspondent to undertake KYCC, which, as acknowledged, is inconsistent with the proper allocation of responsibilities between correspondent and respondent banks.

As with our commentary on paragraph 23, any suggestion present in paragraph 29 that a bank should delay termination of a correspondent account that has been called into question by adding additional layers of due diligence could, again, lead to reputational damage and inhibit the opening of certain accounts. The Committee should emphasize the non-prescriptive nature of the additional elements of pre-termination review outlined in this paragraph. Moreover, not all correspondent banking terminations are driven by

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<sup>16</sup> Paragraph 21: “Where appropriate, the information-gathering should be complemented by liaising directly (e.g. by phone or videoconference) with the respondent bank’s local management and compliance officer, or potentially by an on-site visit.”

<sup>17</sup> FATF: *The FATF Recommendations*, February 2012 (Updated June 2016), Recommendation 10, Paragraph 7.



financial crime concerns. Commercial factors often feature, and, in these cases, the additional measures proposed in this paragraph would be inappropriate.

#### 8. Role of banks processing cross-border wire transfers

We believe the first sentence of paragraph 35<sup>18</sup> might be read as suggesting correspondents should have the technical capability to monitor for incomplete payment message fields in real-time. We understand the approach more often taken is to identify incomplete/inaccurate payment messages retrospectively, through post transaction reviews, as a trigger for follow-up discussions with and, where necessary, remedial action by, the respondent. The Committee should examine amending this paragraph accordingly.

Box 3 of the consultative document asks if paragraphs 37-40 of the Basel guidance “Due Diligence and transparency regarding cover payments messages”<sup>19</sup> be transposed into the consultative document or if detail on further expectations with respect to the quality of payment messages would be helpful. We have no concern with the transposition of the earlier Basel guidance, though we note that as this is a 2009 document, the Committee may consider reviewing and updating its content as appropriate. A list of specific information to be included in the payment message and meta-data requirements that needs to be taken into account would, however, be helpful. In connection with FATF Recommendation 16<sup>20</sup>, an example of information to be included in payment messages could be the originator and beneficiary full legal name, complete physical address with country name. An example of meta-data considerations could be country name, full name, short name, and the two or three character International Organization for Standardization (“ISO”) code.

We also believe the reference to straight through processing in paragraph 32 should be removed and replaced with “the requirements of FATF Recommendation 16” and that a definition or description of “manifestly meaningless . . . fields” in paragraph 35 should be considered by the Committee. We believe these suggestions will provide additional clarity in interpretation of the guidance.

#### 9. Group-wide and cross-border considerations

We believe the language in paragraph 35<sup>21</sup> is unclear and open to differing interpretations of what is meant by the final element of the first sentence that reads, “are consistent with the group-wide risk assessment policy”. It would be helpful for the Basel Committee to clarify that where a correspondent has separate relationships with different respondents who are members of the same group, the risk assessments applied

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<sup>18</sup> Please note that the numbering of Paragraph 35 is repeated consecutively in the consultative document. For the purposes of this comment, we refer to Paragraph 35 on page 8.

<sup>19</sup> Basel Committee on Banking Supervision, *Due diligence and transparency regarding cover payment messages related to cross-border wire transfers - final paper*, May 2009.

<sup>20</sup> FATF: *The FATF Recommendations*, February 2012 (Updated June 2016), Recommendation 16.

<sup>21</sup> Please note that the numbering of Paragraph 35 is repeated consecutively in the consultative document. For the purposes of this comment, we refer to Paragraph 35 on page 9.

by the correspondent to each of those relationships should be carried out in a manner consistent with the correspondent's broader risk assessment policy.

Furthermore, it is important to address the broader implications for information sharing inherent in Section VII of the consultative document generally. Information sharing is impeded by inconsistent legal frameworks for data protection, management of SAR-type information, privacy and bank secrecy - including confidentiality - across different jurisdictions.<sup>22</sup> Given that current reality, and in addition to the clarification noted above, we would suggest a rewording of paragraph 35 as follows to allow for difficulties in information sharing (which we hope to see mitigated in the near to long-term through further work undertaken by, *inter alia*, the FATF and the FSB):

*Paragraph 35: If a respondent bank has correspondent banking relationships with several entities belonging to the same group (case 1), the head office of the group should check that the assessments of the risks by the different entities of the group are consistent with the group-wide risk assessment policy as far as possible. The group's head office should monitor the relationship with the respondent bank, particularly in the case of a high-risk relationship.*

## 10. Risk management

Deployment of formal contracts with respondents is standard practice in most correspondent banking relationships. However, we note the future impact paragraph 37 will depend heavily upon the how correspondent banking comes to be defined by the FATF<sup>23</sup>. It would be helpful for the Committee to note its willingness to amend the wording in this paragraph as needed following the introduction of a new definition of correspondent banking. Also, the current language suggests that any "business relationship" or regular interaction between two banks (such as the exchange of SWIFT Relationship Management Application ("RMA") keys) must be memorialized in a formal written contract between two banks with clear delineation of roles and responsibilities. The associations consider this requirement to be overly broad and, in some cases, unnecessary.

We also note that under paragraph 38<sup>24</sup>, the consultative document suggests that as part of contingency planning, respondents may consider having more than one correspondent banking account for their payment services where necessary for continued operation. We note that respondents that have been de-risked or are located in jurisdictions subject to a greater degree of de-risking may find it extremely difficult to secure and maintain one correspondent banking relationship, let alone two. Furthermore, a respondent with limited business may actually increase the probability of being de-risked by its primary correspondent by obtaining a second correspondent to which it diverts business. The draft guidance should be clarified to take this issue into account. We also note that in the context of continuity planning, local regulators (and potentially a

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<sup>22</sup> For further information on issues concerning information sharing, please see: IIF, *Financial Crime Information Sharing Survey Report*, February 2017 and IIF, *Facilitating effective sharing of AML/CFT information*, May 25, 2016. Available at [www.iif.com/publication/regulatory-comment-letter/iif-submits-letter-effective-information-sharing-amlcft](http://www.iif.com/publication/regulatory-comment-letter/iif-submits-letter-effective-information-sharing-amlcft)

<sup>23</sup> Please see our commentary on this issue in section 1 of this letter.

<sup>24</sup> Please note that the numbering of Paragraph 38 is repeated consecutively in the consultative document. For the purposes of this comment, we refer to Paragraph 38 immediately following Paragraph 37 on page 10.

broader, multilateral authority) should be informed and engaged to avoid possible systemic issues in a particular country or region owing to possible de-risking.

#### 11. Know Your Customer (“KYC”) utilities

The associations are pleased that the Basel Committee, alongside other organizations including the CPMI, has recognized the growing use of third-party databases (or “KYC utilities”) in obtaining customer information. As we have noted in the past, KYC utilities have considerable promise. Banks are highly interested in the potential of such utilities to increase efficiency for both correspondent and respondent banks as they gather and provide information, not only at account opening but also during the course of the relationship. However, banks also have to be realistic about confronting the hurdles to effective reliance upon them. Cross-border restrictions on data transfer, storage, and usage are often hard to interpret but clearly make some vital information unavailable to certain entities under many circumstances, even to entities within the same group.<sup>25</sup> We have also noted that banks will need some assurances that the regulatory, supervisory, and law-enforcement authorities approve of, and will recognize, the appropriateness of reliance upon any such utility. Without such approval and ability to rely, which is clearly absent in the draft guidance, the incentive to invest in and to use them would be diminished.

As we recommended to the CPMI<sup>26</sup>, serious consideration should be given to establishing international standards or sound practices for such utilities to create greater assurances of achieving official AML/CFT goals. The addition of paragraphs 6bis and 6ter to Annex 4 of the consultative document are a welcome starting point in this regard; however, we question whether the intent of these paragraphs is to put greater onus on the correspondent bank to assess whether the information in a KYC utility is of the standard required. If this is indeed the case, it calls into question the actual usefulness of a utility, as a bank would then need to not only do due diligence on the customer but also on the utility’s policies, procedures and official authorization, and even on the information provided by the utility. This would add an unnecessary, complicated and costly burden, essentially nullifying the efficiency gains a utility should create. We suggest that the Committee design guidance that explicitly permits a correspondent bank to rely upon appropriate utilities for the vast majority of cases rather than simply permitting a correspondent bank to use a utility as another source of information supporting the due diligence process.

Taking that into account, we agree that reliance on points a through c of paragraph 6ter will add to the robustness of any utility. Identifying the source of the information, specifying regular updates of the data and ensuring adequate data quality are all essential. We believe, however, that in addition to this the adoption of regulatory practices should include standards for “verification” that national authorities could administer or supervise. Alternatively, some kind of officially recognized certification for the compliance of utilities or other vendors with recognized international standards for data quality, the type and amount of information required, database maintenance and upkeep, audit and governance, would help a great deal.

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<sup>25</sup> For further information on issues concerning information sharing, please see: IIF, *Financial Crime Information Sharing Survey Report*, February 2017 and IIF, *Facilitating effective sharing of AML/CFT information*, May 25, 2016. Available at [www.iif.com/publication/regulatory-comment-letter/iif-submits-letter-effective-information-sharing-amlcft](http://www.iif.com/publication/regulatory-comment-letter/iif-submits-letter-effective-information-sharing-amlcft)

<sup>26</sup> IIF/BAFT Letter to the CPMI. December 7, 2015: <https://www.iif.com/publication/regulatory-comment-letter/iifbaft-joint-response-cpmi-correspondent-banking>

Banks should be able to rely in good faith on such certifications, absent clearly contradictory information that is available to them in the ordinary course.

Standardization of information requirements (or templates) for utilities could also be extended to include international standardization of basic due diligence information and “enhanced due diligence” information for higher-risk relationships. A correspondent bank could have the option to request the “enhanced” information when deemed necessary in accordance with its own risk-based approach. Standardizing such information would assist correspondent banks that need the information to maintain or establish relationships with respondents. Respondents would know better what to expect and could prepare responses much more efficiently and uniformly.<sup>27</sup>

No template or standardized questionnaire could cover all possible situations, nor would it preclude a correspondent from asking additional questions that it deems necessary, but at least the basic standardization would give both parties a ground of expectations to build upon in making judgments about how to do business. It could eliminate a degree of unnecessary duplication of effort and costs. Standardized information requirements or templates could also be supplemented by periodic frequently asked questions (“FAQs”) as issues develop or points needing clarification emerge. Development of such standards will require correspondent, respondent, and official-sector input, but official sector sponsorship will be necessary to make the effort worthwhile.

Lastly, Box 1 of the consultative document asks if it would be useful for the guidance to detail the type of information a correspondent bank could acquire from a KYC utility on a respondent bank’s customer base. Though the Committee again notes that there is no requirement to perform CDD on a respondent bank’s customers, by adding such guidance into parameters for information gathering by a third party provider, ambiguity may be created as to whether such information should necessarily be referenced and sourced as part of ongoing due diligence. Though such information may have merit in particular circumstances, it should not form part of general regulatory guidance for standards on industry utility input.

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<sup>27</sup> Though we don’t consider the following a definitive or exhaustive list and we welcome the opportunity for further dialogue with the appropriate stakeholders on this issue, a utility may, for example, include the following information for a respondent: legal entity and ownership, as well as ultimate beneficial owner data (privately owned / state owned); board of directors; controlling management; jurisdiction of licensing authority and regulator (including of ultimate parent); management structure and key financial figures including audited annual reports; products and services offered by the respondent bank; and the respondent bank’s business model (retail bank, investment bank, central bank, private bank etc.). In order to understand the risk profile of a respondent bank, any database should contain information on the respondent bank’s AML program, information on its (management approved) Sanctions, Politically Exposed Persons (PEP) and Anti-Bribery & Corruption (ABC) policies. Additional information could include: whether it adheres to FATF Recommendation 16 / 4th EU AML Directive; which sanctions lists (UN, OFAC, OFSI, EU, local lists) are being used; whether it operates under an offshore banking license; whether it accepts payable through accounts and/or anonymous accounts; whether there is mandatory training and education for its employees; whether an internal audit function is established; whether dealing with unlicensed banks or shell banks is prohibited; whether a transaction monitoring system is in place; whether downstream relationships are allowed; whether Money Service Business (MSB) / Money or Value Transfers Service (MVTs) are offered; whether payments for internet gambling (e.g. platforms offering online poker) are allowed. Information from the utility could also include a clear statement from the correspondent as to its adherence to the Wolfsberg Transparency Principles, and which Swift formats are used for commercial payments.