FATF/GAFI
2, rue André Pascal
75775 Paris Cedex
France

By e-mail: fatf.consultation@fatf-gafi.org

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PBA, JSC

Comments on consultation paper entitled "Review of the FATF Standards – Preparation for the 4th Round of Mutual Evaluations"

Dear Sir or Madam,

Thank you for giving us the opportunity to comment on the consultation paper entitled "Review of the FATF Standards - Preparation for the 4th Round of Mutual Evaluations". It is our pleasure to comment on the above document on behalf of Switzerland's leading economic associations, and thus its business and financial centre.

The comments below have been prepared on behalf of the following umbrella organisations:

- **economiesuisse**, the main umbrella organisation of the Swiss economy. As an association of Swiss companies, economiesuisse is supported by more than 30,000 companies of all sizes, with a total of 1.5 million employees in Switzerland.
- **Swiss Bankers Association (SBA)**, the leading professional association of the Swiss financial centre. Its main objectives are to preserve and promote ideal conditions for Switzerland's financial centre at home and abroad. It was established as a professional association in Basel in 1912, and currently has a total of 355 institutional members (plus 350 Raiffeisen banks) and approximately 16,800 individual members.
- **Swiss Insurance Association (SIA)**, the umbrella organisation representing the private insurance industry. Its members are small and large national and international primary insurers and reinsurers – in all, 74 insurance companies.
- **SwissHoldings**, a cross-sector association that represents the interests of major industrial and services companies (excluding the financial sector) that are based in Switzerland and focus on international activities. It is committed to securing favourable business conditions and a liberal economic environment at both the national and the international level. Its corporate members are among the most important direct

investors abroad, and are leading international suppliers of goods and services, as well as major employers worldwide.

- **Forum SRO MLA, which is an association of Switzerland's eleven recognised self-regulatory organisations, and thus of the non-banking sector. It comprises more than 5,800 affiliated financial intermediaries, and its main objective is to promote the introduction and implementation of the self-regulation system in Switzerland (primarily in the area of combating money laundering and the financing of terrorism).**

1. General remarks

In our view, the proposals put forward in the consultation paper are clearly and comprehensibly drafted. We also welcome the fact that the proposed changes are limited in number and do not amount to a general amendment of the FATF standard. Nevertheless, we wish to state that this review appears to us to be somewhat premature. If we consider that many member states have still not fully implemented the currently applicable standards, the proposed review has to be regarded as rather hasty.

While some specific proposals are worth to be examined more closely and in some cases are to be welcomed (e.g. incorporation of the risk-based approach as a general standard), other proposed adjustments result in immense and largely unjustifiable additional costs for financial institutions. As a general rule, increased expenses caused by such adjustments should always be founded on increased efficiency; unfortunately this is not the case with regard to the proposed adjustments. In addition, it has to be considered that such additional costs not only affect financial institutions but also their customers, who have to provide the additional information.

The proposed requirements extend well beyond the framework of combating money laundering and the financing of terrorism, and therefore have to be regarded as inappropriate. Furthermore it also appears that certain adjustments of the FATF standards lead to an undesired combination of the fight against money laundering and the financing of terrorism with other issues such as tax offences. The chosen path should not lead solely to formalities and clarifications of international disputes, but reinforce the fight against money laundering and financing of terrorism.

It should also be noted that the very open formulation of some terms is more likely to lead to problems relating to delimitation and interpretation than to effective improvements.

2. Comments on the individual provisions / proposed amendments

Below we offer our comments on specific proposed amendments (the sequence numbering corresponds to that of the consultation paper):

2.1. No. 5 to 14: Risk-based approach

We welcome the consistent implementation and the adjustments in line with the risk-based approach, and above all the reduction in competition distortion that results from the adjustment of Rec. 20.

In Switzerland, a risk-based procedure has already been implemented in the area of general risk assessment (higher or lower risk) and the associated definitions (above all with respect to exceptions and screening). Similarly, a risk-based approach is also consistently applied in connection with contractual relations between absent parties, and new products or distribution channels.

However, two key shortcomings in the proposed amendments need to be noted:

A. Firstly, as a result of the transfer to an interpretative note, the risk-based approach has little association with the individual recommendations, and this could give rise to false interpretations. All financial intermediaries have to carry out their own individual risk assessments that are tailored to their company and are based on objective criteria for each activity. It is therefore not appropriate to use an interpretative note on the risk-based approach to describe or define too many details or even possible examples that would quickly become obligatory as a minimum implementation standard.

B. And secondly, the term "non-face-to-face business" cited in this connection appears to be inadequately defined and can be, or will be, wrongly interpreted as an increased risk per se. A positive implementation in practice would therefore be desirable.

2.2. No. 15 to 26: Rec. 5 and its interpretative note

2.2.1. The impact of the risk-based approach on Rec. 5 and INR. 5

The explicit listing of examples as an implementation aid for the risk-based approach in INR. 5 is rejected, since a list of this nature could be misused as a catalogue of requirements, and thus autonomous implementation in the individual jurisdictions would be restricted.

2.2.2. Legal persons and arrangements – customers and beneficial owners

The proposals to increase transparency with respect to the ownership and beneficial owner structure lead to very complex and disproportionate clarification processes among financial institutions, and can therefore hardly be regarded as targeted proposals. Tasks of this nature require special clarifications. And generally speaking there are no specific principles calling for legal entities to issue the required details concerning natural persons who, for example, exercise effective control over the company, or to enter these details in a publicly accessible register. Those financial intermediaries who are not granted access to the corresponding data would therefore have to "threaten" to reject the transaction concerned, and this would not be acceptable.

In case the provision of information should be expanded for legal entities and asset units, the determination of the owner of such structures and the person having effective control respectively should in any case follow an individual approach for the different structures. Applying a risk-based approach, it should be limited to domiciliary companies.

In addition, the use of a number of very vague terms ("mind and management", for example, or "effective control"), the insufficiently risk-based scope of application of the measures and the incorporation of several legal systems into clarification procedures give rise to implementation problems for financial intermediaries.

2.2.3. Life insurance policies

The modification of the section on life insurance policies by adding the autonomous term "beneficiary" to the glossary is a welcome move since this represents a departure from the general term, "beneficial owner". This brings clarity to the question of who has to be actually identified. But in this connection it should be noted that, in keeping with the concept of a global standard that is in line with the risk-based approach, each financial intermediary has to meet corresponding due diligence requirements.

Furthermore, in connection with insurance policies the proposal calling for the implementation of CDD measures upon pay-out is also welcomed, since this appears to fit the previously mostly unclear beneficiary structure.

Additionally it has to be noted, that under this paragraph, also the premium payers should be considered.

2.3. No. 27 to 31: Rec. 6, politically exposed persons (PEPs)

The currently valid regulation is applied to foreign PEPs, so no comments are necessary in this connection.

Extending the regulation to include domestic PEPs would not be welcomed, however, since although the proposals are risk-based in theory, in practice they would effectively be rule-based. Furthermore, this modification would require the designation of PEP categories, which would give rise to considerable additional cost both for implementation and for constant monitoring. The rules have to be viewed in a differentiated manner from country to country, but with respect to Switzerland it can be stated that the money-laundering risk is very low. Thus a pragmatic approach should be envisaged here, i.e. the focus should be on a normal risk-based approach without PEP categories.

Should the decision nonetheless be taken to extend the regulations to domestic PEPs, any rules that are incorporated into the FATF standards stipulating who is to be classified as a domestic PEP are to be rejected. Each jurisdiction should be able to decide for itself who is to be regarded as a PEP.

2.4. No. 32 to 38: Rec. 9, third party reliance

We welcome a broadening of the third party reliance concept, especially the increased flexibility within a corporate group. However, the delimitation between the various concepts has to take account of existing national regulations.

2.5. No. 39 to 40: Tax crime as a predicate offence for money laundering

Here it is important to warn in advance that if the list of predicate offences is enlarged again, this will result in higher costs and additional obligations for financial intermediaries. It should not be the duty of the financial intermediaries to ensure that national taxes are paid in the proper manner in accordance with the respective legislation. This especially applies to small and middle-sized financial intermediaries, whose resources are rather scarce. It has to be noted that such a predicate offence ultimately will lead to an undesired combination of money laundering and tax offences. Regarding the former, an extension of the scope of application has to be avoided and the original goal of the FATF – the fight against organised crime and terrorist financing – has to be reclaimed. It should not be the purpose of the member states' anti-money laundering regulation to guarantee the tax compliance of their citizens.

In case tax crimes would be adopted as predicate offences for money laundering, any adoption of such crimes must have as a precondition, that the term "tax crimes" is defined at the national level, in order to take account of the member states' different legal systems.

Furthermore it has to be noted and considered, that there are various bilateral negotiations in progress that have as a goal to govern the exchange of information between the respective member states in tax-related issues.

2.6. No. 41 to 50: Special Recommendation VII and its interpretative note

2.6.1. Beneficiary information

The proposal that the financial intermediary has to provide additional information about the recipient in the case of cross-border electronic transitions is to be rejected. On the one hand this is not necessary for carrying out the transaction, since recipients of payments have to hold a bank account and are therefore known, and on the other hand the resulting costs are in no way proportional to the benefits in terms of combating money laundering and the financing of terrorism. Attention should also be drawn to the introduced MT202Cov, which – as the Wolfsberg Group has also pointed out – clearly shows how enormous implementation costs can arise that are entirely out of proportion to the effective benefits.

The fact should also be noted that especially with the new payments systems (e.g. SEPA), only an ID number is provided that is also relevant for the credit booking, which would generally contradict the proposed amendment.

2.6.2. Obligations to screen wire transfers against financial sanctions list

The proposal to carry out comprehensive screening against the financial sanctions list for all transactions is also to be rejected. This would slow down the transaction process enormously and disproportionately increase the costs for financial institutions, while in return it would not generate any significant benefits (multiple hits can be mentioned as an example here).

2.7. No. 51 to 53: Other issues included in the preparation for the 4th round of mutual evaluations

The proposals for simplifying legal and administrative assistance, which appear to only be in a preliminary stage, should be regarded in a critical light, especially the called-for waiver of double incrimination. The sovereignty of each country must not be violated. The extraterritorial scope of application of national legal systems would be extended unnecessarily, and fishing expeditions would be encouraged. We are of the opinion that the applicable legislation governing legal and administrative assistance takes sufficient account of the requirements, without disproportionately restricting the rights of accused parties.

The specification in the standards of an expansion of the authorities' competencies and investigative measures is also to be rejected, since on the

one hand this would greatly interfere with the sovereignty of the individual jurisdictions, and on the other hand it would affect the fundamental rights of the involved persons.

Thank you for your kind attention to our comments. Please do not hesitate to contact us should you have any questions.

Yours faithfully,

economiesuisse

Thomas Pletscher
Member of the Executive Board

Meinrad Vetter
Deputy Head Regulatory Affairs

Swiss Bankers Association (SBA)

Pascal Baumgartner
Member of Senior Management

Fiona Hawkins
Member of the Management

Swiss Insurance Association (SIA)

Thomas Jost
Head of the Organisation for Self-regulation SIA

SwissHoldings

Dr. Peter Baumgartner
Chair Executive Committee

Christian Stiefel
Member Executive Committee

Forum SRO MLA

Dr. Markus Hess
Chairman of the Forum SRO MLA

Dr. Josef Bollag
Vice-Chairman of the Forum SRO MLA