

# National Association of REALTORS® Issue Brief

## FinCEN Renews Geographic Targeting Order

May 13, 2020

The [Financial Crimes Enforcement Network \(FinCEN\)](#), one of the U.S. Treasury's leading agencies in the fight against money laundering and financing of terrorism, has renewed the [Geographic Targeting Order \(GTO\)](#) that imposes data collection and reporting requirements on title companies involved in certain high-end real estate transactions.

FinCEN issued an updated GTO effective beginning on May 10, 2020 through November 5, 2020, requiring title companies to continue to collect and report information involving persons engaged in residential real estate transactions of \$300,000 or more made without a bank loan or other similar financing. The most updated GTO significantly lowers the threshold amount, which triggers reporting, and expands the geographical areas that must report these types of transactions.

Residential real estate transactions for the purchase of real property for \$300,000 or more and that are purchased without a mortgage or any similar form of financing must be reported in the following areas:

- **Texas: Bexar, Tarrant, or Dallas Counties**
- **Florida: Miami-Dade, Broward, or Palm Beach Counties**
- **New York: Boroughs—Brooklyn, Queens, Bronx, Staten Island or Manhattan**
- **California: San Diego, Los Angeles, San Francisco, San Mateo, or Santa Clara Counties**
- **Hawaii: City and County of Honolulu**
- **Nevada: Clark County**
- **Washington: King County**
- **Massachusetts: Suffolk or Middlesex Counties**
- **Illinois: Cook County**

In accordance with the GTOs, title companies, and their agents, must file a report with FinCEN regarding covered purchases of residential real property meeting the requirements above when such purchases are made without a bank loan or similar external financing and is paid at least in part by using currency or a cashier's check, a certified check, a traveler's check, a personal check, a business check, money order, or virtual currency. Pursuant to federal legislation that directed Treasury to allow



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investigators to obtain additional records to better target illicit Russian activity, the GTOs also now include wire funds transfers.

**The GTOs do not impose any new obligations on real estate professionals.** However, it is important for members to be aware of these and the potential impact on real estate sales transactions. In the event a transaction is covered by a GTO, the title company may consult with the real estate professional to obtain information necessary to report in compliance with the order. Such communications should not affect the real estate sales transaction or timeline for closing as title companies are required to report GTO covered transactions to FinCEN within 30 days of the closing.

### Additional Resources:

[Frequently Asked Questions \(FAQs\) Regarding Certain Real Estate Transactions](#)

[National Strategy for Combating Terrorist and Other Illicit Financing](#)

[FinCEN's Efforts To Combat Money Laundering and Terrorist Financing](#)

[FinCEN's new Advisory to Financial Institutions and Real Estate Firms and Professionals: Information on Money Laundering Risks for Real Estate Transactions and How to Detect and Report These Transactions](#)

[Background on Real estate Professionals' Responsibilities Under the Law: NAR's Voluntary Guidelines Developed in Collaboration with FinCEN](#)

[NAR's Window to the Law: New Effort to Combat Money Laundering](#)

[Recognizing Suspicious Money Laundering Activities: Video Created by NAR in Partnership with the U.S. Treasury Department](#)





## Fact Sheet for FINCEN Geographic Targeting Orders

The Financial Crimes Enforcement Network (FinCEN), a bureau of the U. S. Department of Treasury, issued Geographic Targeting Orders to all title companies. The orders impose temporary new data collection and reporting requirements for all cash purchases of residential real estate by corporate entities in certain counties. Under the Order, title companies, including any subsidiaries and agents of (“Covered Business”), must report the names of all natural persons with 25% or greater ownership interest in a legal entity.

This reporting requirement starts September 22, 2017 and ends March 20, 2018.

- Sample [Order](#)
- Read FinCEN’s [press release](#)
- Read ALTA’s [background article](#)

### Covered Jurisdictions

California	Florida	Texas	Hawaii	New York
Los Angeles - \$2 million	Broward - \$1 million	Bexar - \$500,000	Honolulu - \$3 million	Bronx - \$1.5 million
San Diego - \$2 million	Miami-Dade - \$1 million			Brooklyn - \$1.5 million
San Francisco - \$2 million	Palm Beach - \$1 million			Manhattan - \$3 million
San Mateo - \$2 million				Queens – \$1.5 million
Santa Clara - \$2 million				Staten Island - \$1.5 million

### I. The Basics

#### WHAT IS FINCEN?

Established in 1990, FinCEN is a bureau of the U.S. Department of the Treasury. Its mission is “to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.” FinCEN fulfills its mission by receiving and maintaining financial transactions data, analyzing and disseminating that data for law enforcement purposes, and building global cooperation with counterpart organizations in other countries and with international bodies. FinCEN’s authority comes from the Currency and Financial Transactions Reporting Act of 1970, as amended by Title III of the USA PATRIOT Act of 2001 and other legislation. This legislative framework is commonly referred to as the Bank Secrecy Act (BSA).



#### WHAT IS THE BANK SECRECY ACT?

The Bank Secrecy Act (BSA) is the primary U.S. anti-money laundering (AML) law and tool for detecting, deterring and disrupting terrorist financing networks. The BSA authorizes the Secretary of the Treasury to issue regulations requiring banks and other financial institutions to take a number of precautions against financial crime, including the establishment of anti-money laundering programs and the filing of reports that have been determined to have

a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings, and certain intelligence and counter-terrorism matters. See [31 U.S.C. 310](#).

#### **WHAT IS MONEY LAUNDERING?**

Money laundering is the process of disguising financial assets produced through illegal activity. Through money laundering, the monetary proceeds derived from criminal activity are transformed into funds with an apparently legal source.

#### *II. Geographic Targeting Orders*

#### **WHAT IS A GEOGRAPHIC TARGETING ORDER (GTO)?**

Under the BSA, the director of FinCEN can issue orders imposing additional recordkeeping and reporting requirements on domestic financial institutions or non-financial trades or businesses in a specific geographic area for transactions involving certain amounts of United States currency or monetary instruments. These orders can be in effect for up to 180 days. See 31 U.S.C. § 5326(a); 31 C.F.R. § 1010.370.

#### **HOW IS A GTO DIFFERENT FROM CASH TRANSACTION REPORTING?**

Under the internal revenue code, a business does not need to report a cash transaction or multiple related transactions unless more than \$10,000 in currency is received. Under a GTO, FinCEN can lower this threshold for certain Covered Business and certain Covered Transactions. Both cash transaction reporting and GTO reporting are made to the government using versions of the [IRS form 8300](#).

#### **CAN A GTO BE RENEWED AFTER THE INITIAL 180 DAY PERIOD?**

Yes. GTOs can be renewed by the director of FinCEN following a finding that the circumstances justifying the original GTO continue to exist.

#### *III. Details of the GTO's*

#### **WHAT ARE THE EFFECTIVE DATES OF THE GTO?**

The GTO goes into effect on September 22, 2017 and ending on March 20, 2018.

#### **WHO IS SUBJECT TO THE GTO'S?**

All title insurance companies received the Geographic Targeting Order. The order applies to title insurers, their subsidiaries and agents ("Covered Business").

#### **WHAT TYPES OF TRANSACTIONS MUST THE COVERED BUSINESS REPORT?**

A Covered Business must report any transaction that involves each of the following elements:

1. The buyer must be a **Legal Entity**, defined under the GTO as a corporation, limited liability company, partnership or other similar business entity, whether formed under the laws of a state or of the United States or a foreign jurisdiction;
2. **Residential** real property located in the [subject counties](#);
3. For a **purchase price** of above a specific [threshold](#) in each county;
4. **Without a loan** or similar form of external financing from a financial institution; and

5. Any portion of the purchase price is paid using currency, cashier's check, certified check, traveler's check, money order, personal check and bank check.

**HOW LONG DOES A COVERED BUSINESS HAVE TO REPORT A COVERED TRANSACTION TO FINCEN?**

A Covered Business must report a Covered Transaction to FinCEN within thirty (30) days of the closing of the Covered Transaction.

**HOW LONG IS A COVERED BUSINESS REQUIRED TO RETAIN COVERED TRANSACTION RECORDS?**

All records related to compliance with the GTO must be retained for a period of five (5) years from the last day the GTO is effective. Under the terms of the existing GTO, a Covered Business would be required to retain such records until March 20, 2023. However, should the GTO be renewed, all records related to compliance with the GTO must be retained for five (5) years from the last day the GTO is effective pursuant to all renewals of the GTO.

**WILL THE GTO STOP REAL ESTATE TRANSACTIONS FROM CLOSING?**

The GTO is not intended to prevent real estate closings from taking place. The GTO is meant to allow the Treasury to collect information about these transactions after the closing.

*VI. Reporting Requirements*

**WHAT INFORMATION MUST A COVERED BUSINESS REPORT ABOUT A COVERED TRANSACTION?**

A Covered Business must report a Covered Transaction to FinCEN using [Form 8300](#), and include the following information:

- Identity of the individual primarily responsible for representing the Legal Entity;
- A description of the identification (driver's license, passport or other similar identifying document) obtained from the individual primarily responsible for representing the Purchaser with a copy retained in the file;
- identity of the Purchaser and any Beneficial Owner(s) of the Purchaser's;
- A description of the type of identification, driver's license, passport or other similar identifying document, obtained from the Beneficial Owner with a copy retained in the file;
- Date of closing of the Covered Transaction;
- Total amount transferred in the form of a Monetary Instrument;
- Total purchase price of the Covered Transaction; and
- Address of the real property involved in the Covered Transaction;
- Also include the term "REGTO" as a unique identifier for this GTO in the Comments section.

**DOES THE GTO DEFINE WHO IS A BENEFICIAL OWNER?**

A Beneficial Owner is an individual who directly or indirectly owns 25% or more of the equity interest in the Legal Entity.

**WHAT IF THE LEGAL ENTITY PURCHASING THE REAL PROPERTY IS OWNED BY ANOTHER LEGAL ENTITY?**

If the purchasing Legal Entity is owned by another Legal Entity, the GTO requires the reporting of information about the Beneficial Owners of any and all of the parent Legal Entities.

## WHAT ARE THE PENALTIES FOR VIOLATING THE GTO?

Violation of the GTO may subject a Covered Business to the following criminal and civil penalties:

### Criminal Penalties

Type of Violation	Penalty
Willful violation	Up to \$250,000 fine and 5 years in prison
Willful violation while violating another law of the United States	Up to \$500,000 fine and 10 years in prison
Structuring or assisting in structuring a transaction to avoid the currency transaction reporting	Fine and up to five years in prison

### Civil Penalties

Type of Violation	Penalty
Willful violation (a separate violation occurs for each day the violation continues and each location a violation occurs)	Greater of the amount involved (up to \$100,000) or \$25,000
Failure to file a report, material misstatement or omission	Not to exceed the amount involved in the transaction
Structuring or assisting in structuring a transaction to avoid the currency transaction reporting	Not to exceed the amount involved in the transaction
Negligence	Not to exceed \$500 or \$50,000 if a pattern of negligence is found

**CAN PENALTIES BE ASSESSED AGAINST A COVERED BUSINESS' INDIVIDUAL EMPLOYEES OR AGENTS?** Yes. Both civil and criminal penalties may be levied against a partner, director, officer, agent or employee of the Covered Business.

### **HOW LONG AFTER A VIOLATION CAN THE GOVERNMENT ASSESS A PENALTY?**

Penalties can be assessed any time within six years from the date of the Covered Transaction. Civil actions may be commenced within two years of the date of the penalty or criminal conviction.

## VII. Covered Transactions

### **DOES PRIVATE OR SELLER FINANCING QUALIFY AS "WITHOUT A BANK LOAN" UNDER THE GTO REPORTING REQUIREMENTS?**

Yes, the reporting exclusion is only triggered by loans financed by a financial institution that is required to have an anti-money laundering policy. If financing is provided by a private lender, seller or other business that does not have a federal requirement to maintain an anti-money laundering policy, then the transaction is reportable.

### **ARE THE REPORTING REQUIREMENTS TRIGGERED WHEN THE PURCHASE PRICE IS PAID ENTIRELY THROUGH A WIRE TRANSFER?**

Yes. The Countering America's Adversaries Through Sanctions Act of 2017 changed the law and makes transactions where the entire purchase price is paid via fund transfer reportable under the GTO.

**WHAT IF ONLY A DE MINIMIS AMOUNT OF CURRENCY IS USED IN THE PURCHASE PAYMENT?**

If any amount of the purchase, including a de minimis amount, is funded by using currency, check, wire transfer or any one of the types of payment listed in the order, then it would be considered a Covered Transaction subject to the reporting requirements of the GTO.

*VIII. Who must file a Form 8300?*

**IS A TITLE INSURANCE AGENT, SETTLEMENT ATTORNEY OR REAL ESTATE AGENT REQUIRED TO REPORT COVERED TRANSACTIONS TO FINCEN?**

It depends. The GTO applies to title insurance companies, their subsidiaries and agents. It does not apply to business involved in the Covered Transactions that are not agents of the title insurer, such as attorneys or real estate agents. While the definition of a Covered Business includes the insurer's agents, only one report is required for each Covered Transaction. Depending on the policy and procedures of the covered insurer, the report can be filed by either the insurer or their agent.

**IF THE COVERED BUSINESS JUST INSURED THE TRANSACTION BUT WAS NOT INVOLVED IN THE CLOSING, DOES IT NEED TO REPORT THE TRANSACTION?**

Yes. A Covered Business must report the transaction whenever it, or its subsidiaries or agents, are involved in the Covered Transaction. This includes when they only provide title insurance and not settlement services in the transactions.

*IX. Collecting information.*

**CAN A COVERED BUSINESS RELY ON INFORMATION PROVIDED BY REAL ESTATE ATTORNEYS OR AGENTS WHEN REPORTING?**

Yes. For purposes of completing the FinCEN Form 8300, in addition to collecting information directly from the Purchaser or the Beneficial Owner(s), a Covered Business may collect information regarding the Purchaser or Beneficial Owner(s), when made available by from the real estate agent or attorney involved in the Covered Transaction.

**CAN AN ATTORNEY WITHHOLD CLIENT INFORMATION FROM THE TITLE INSURANCE COMPANY UNDER A CLAIM OF PRIVILEGE?**

No. Information necessary for completing a form 8300, Suspicious Activity Report or other Bank Secrecy Act reporting requirement cannot be withheld from the government due to attorney-client privilege. See *United States v. Goldberger & Dublin, P.C.*, 935 F.2d 501 (2nd Cir. 1991), holding that absent special circumstances, attorneys were required to disclose client information on Forms 8300. See also *United States v. Leventhal*, 961 F.2d 936 (11th Cir. 1992), holding that state bar ethical rules do not constitute a "special circumstance" that would protect clients' names and fee arrangements from disclosure.

Geographic Targeting Order Covering TITLE INSURANCE COMPANY  
May 8, 2020



Financial Crimes Enforcement Network  
U.S. Department of the Treasury

*Washington, D.C. 20220*

## **GEOGRAPHIC TARGETING ORDER**

The Director of the Financial Crimes Enforcement Network (“FinCEN”) hereby issues a Geographic Targeting Order (“Order”) requiring TITLE INSURANCE COMPANY to collect and report information about the persons involved in certain residential real estate transactions, as further described in this Order.

### **I. AUTHORITY**

The Director of FinCEN may issue an order that imposes certain additional recordkeeping and reporting requirements on one or more domestic financial institutions or nonfinancial trades or businesses in a geographic area. *See* 31 U.S.C. § 5326(a); 31 C.F.R. § 1010.370; and Treasury Order 180-01. Pursuant to this authority, the Director of FinCEN hereby finds that reasonable grounds exist for concluding that the additional recordkeeping and reporting requirements described below are necessary to carry out the purposes of the Bank Secrecy Act (“BSA”) or prevent evasions thereof.<sup>1</sup>

### **II. ADDITIONAL RECORDKEEPING AND REPORTING REQUIREMENTS**

#### **A. Business and Transactions Covered by This Order**

1. For purposes of this Order, the “Covered Business” means TITLE INSURANCE COMPANY and any of its subsidiaries and agents.
2. For purposes of this Order, a “Covered Transaction” means a transaction in which:
  - i. Residential real property is purchased by a Legal Entity (as this term is defined in Section III.A of this Order);
  - ii. The purchase price of the residential real property is in the amount of \$300,000 or more in any of the following areas:
    1. The Texas counties of Bexar, Tarrant, or Dallas;
    2. The Florida counties of Miami-Dade, Broward, or Palm Beach;

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1. The Bank Secrecy Act is codified at 12 U.S.C. §§ 1829b, 1951-1959 and 31 U.S.C. §§ 5311-5314, 5316-5332. Regulations implementing the Bank Secrecy Act appear at 31 C.F.R. Chapter X.



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3. The Boroughs of Brooklyn, Queens, Bronx, Staten Island, or Manhattan in New York City, New York;
  4. The California counties of San Diego, Los Angeles, San Francisco, San Mateo, or Santa Clara;
  5. The City and County of Honolulu in Hawaii;
  6. The Nevada county of Clark;
  7. The Washington county of King;
  8. The Massachusetts counties of Suffolk, or Middlesex; or
  9. The Illinois county of Cook;
- iii. Such purchase is made without a bank loan or other similar form of external financing; and
- iv. Such purchase is made, at least in part, using currency or a cashier's check, a certified check, a traveler's check, a personal check, a business check, a money order in any form, a funds transfer, or virtual currency.

**B. Reports Required to be Filed by the Covered Business**

1. If the Covered Business is involved in a Covered Transaction, then the Covered Business shall report the Covered Transaction to FinCEN by filing a FinCEN Currency Transaction Report, within 30 days of the closing of the Covered Transaction. Each Currency Transaction Report filed pursuant to this Order must be:  
(i) completed in accordance with the terms of this Order and the Currency Transaction Report instructions (when such terms conflict, the terms of this Order apply), and  
(ii) e-filed through the BSA E-Filing system.<sup>2</sup> To report a Covered Transaction, the Covered Business shall use the Currency Transaction Report template located at this link: [https://bsaefiling.fincen.treas.gov/docs/GTO/RealEstate\\_GTO\\_Template.pdf](https://bsaefiling.fincen.treas.gov/docs/GTO/RealEstate_GTO_Template.pdf).
2. A Currency Transaction Report filed pursuant to this Order shall contain the information specified in this section II.B about the Covered Transaction (when completing Part I, a Covered Business should select the + field as necessary to allow for the reporting of multiple parties).

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2. In order to electronically file a Currency Transaction Report, a Covered Business will need a BSA E-Filing User account. To create a BSA E-Filing User account, please visit <https://bsaefiling.fincen.treas.gov/Enroll.html>. For more information on E-Filing, please visit <https://bsaefiling.fincen.treas.gov/>, and review the "Getting Started with BSA E-Filing" link.

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**Part I**

3. A Covered Business must include in Part I information about the identity of the individual primarily responsible for representing the Legal Entity by selecting Field 2, box b (“Person conducting transaction for another”). The Covered Business also must obtain and record a copy of this individual’s driver’s license, passport, or other similar identifying documentation. A description of such documentation must be provided in Field 20.
4. A Covered Business also must include in Part I information about the identity of the Legal Entity by selecting Field 2, box c (“Person on whose behalf transaction was conducted”), and also selecting the “If entity” check box.
5. A Covered Business also must include in Part I information about the identity of the Beneficial Owner(s) (as defined in Section III.A of this Order) of the Legal Entity by selecting Field 2, box c. The Covered Business must obtain and record a copy of the Beneficial Owner’s driver’s license, passport, or other similar identifying documentation. A description of such documentation must be provided in Field 20 of the form.

**Part II**

6. Part II shall contain information about the Covered Transaction as follows:
  - i. Field 23: Date of closing of the Covered Transaction.
  - ii. Field 25.z: Total purchase price of the Covered Transaction and the method of payment (leave Fields 25 a – i blank).

**Part III**

7. Part III shall contain information about the Covered Transaction as follows (when completing Part III, if the Covered Transaction involves the purchase of multiple properties, a Covered Business should select the + field as necessary to allow for the reporting of multiple property addresses):
  - i. Fields 33-37: Address of real property involved in the Covered Transaction.
  - ii. Field 41: Total purchase price of the real property listed in Fields 33-37. This should reflect the same purchase price as Field 25.z, except where multiple properties are purchased in the same Covered Transaction. When reporting a purchase of multiple properties in the same Covered Transaction, report total purchase price in Part II, Field 25.z, and price per property in Field 41 for each property.

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**Part IV**

8. Part IV shall contain information about the Covered Business. The Covered Business shall ensure the term “REGTO0520” remains in Field 45 of Part IV.

**III. GENERAL PROVISIONS**

**A. Additional Definitions**

1. For purposes of this Order:
  - i. “Beneficial Owner” means each individual who, directly or indirectly, owns 25% or more of the equity interests of the Legal Entity purchasing real property in the Covered Transaction.
  - ii. “Legal Entity” means a corporation, limited liability company, partnership or other similar business entity, whether formed under the laws of a state, or of the United States, or a foreign jurisdiction, other than a business whose common stock or analogous equity interests are listed on a securities exchange regulated by the Securities Exchange Commission (“SEC”) or a self-regulatory organization registered with the SEC, or an entity solely owned by such a business.
2. All terms used but not otherwise defined herein have the meaning set forth in 31 C.F.R. Chapter X.

**B. Order Period**

The terms of this Order are effective beginning May 10, 2020 and ending on November 5, 2020 (except as otherwise provided in Section III.C of this Order).

**C. Retention of Records**

The Covered Business must: (1) retain all records relating to compliance with this Order for a period of five years from the last day that this Order is effective (including any renewals of this Order); (2) store such records in a manner accessible within a reasonable period of time; and (3) make such records available to FinCEN, or any other appropriate law enforcement or regulatory agency, upon request.

**D. No Effect on Other Provisions of the Bank Secrecy Act**

Nothing in this Order otherwise modifies or affects any provision of the regulations implementing the BSA to the extent not expressly stated herein.

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**E. Confidentiality**

This Order and its terms are not confidential.

**F. Compliance**

The Covered Business must supervise, and is responsible for, compliance by each of its officers, directors, employees, and agents with the terms of this Order. The Covered Business must transmit this Order to each of its agents. The Covered Business must also transmit this Order to its Chief Executive Officer or other similarly acting manager.

**G. Penalties for Noncompliance**

The Covered Business, and any of its officers, directors, employees, and agents, may be liable, without limitation, for civil or criminal penalties for violating any of the terms of this Order.

**H. Validity of Order**

Any judicial determination that any provision of this Order is invalid does not affect the validity of any other provision of this Order, and each other provision must thereafter remain in full force and effect. A copy of this Order carries the full force and effect of an original signed Order.

**I. Paperwork Reduction Act**

The collection of information subject to the Paperwork Reduction Act contained in this Order has been approved by the Office of Management and Budget (“OMB”) and assigned OMB Control Number 1506-0056.

**J. Questions**

All questions about the Order should be directed to the FinCEN Resource Center at [FRC@FinCEN.gov](mailto:FRC@FinCEN.gov).

Dated: May 8, 2020

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Kenneth A. Blanco  
Director  
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## Beneficial Ownership Legislation and Geographic Targeting Orders

By Herrick K. Lidstone, Jr., Burns, Figa & Will, P.C.

November 18, 2019<sup>1</sup>

Over the last twenty years or so, state and Federal legislators have proposed a variety of beneficial ownership laws, to target money laundering and other illegal activities. In January 2016 that effort expanded into the real estate transaction market. “Geographic Targeting Orders” sounds ominous and, depending on your political views, may be especially so when coupled with the federal Department of Treasury agency – the Financial Crimes Enforcement Network (“FinCEN”). What is the government doing now, and who is it targeting?

### Beneficial Ownership Legislation

**Who Are The Owners?** Business entities, such as corporations and limited liability companies, can be formed easily in a large number of states, usually at nominal cost. Neither Colorado, nor Delaware, nor Nevada, nor even Wyoming have any requirements that the organizers of the entity disclose, or even keep a record of who the beneficial owners of the entity may be. As a result, many believe that these entities are easy tools for laundering money and to conduct other illegal activities. These issues have been raised nationally and internationally since at least the early 2000’s, and were the subject of my December 2007 Business Law Section (Colo. Bar. Assn.) newsletter, “*Entity Ownership Disclosure – New Requirements Coming?*”<sup>2</sup>

On November 13, 2007, Denver’s Channel 7 television reporter John Ferrugia covered a story that prompted my inquiry and the newsletter article. In his report, Mr. Ferrugia complained about the employment of undocumented immigrants and other illegal activities conducted through opaque entities, and stated this about the Colorado Secretary of State’s open entity recording system:

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<sup>1</sup> This paper may be updated from time-to-time and updated versions will be available at <http://ssrn.com/abstract=29293842>. An earlier version of this paper was published in *The Colorado Lawyer (CBA)* v. 46, no. 5 at p. 29 (May 2017).

<sup>2</sup> The Financial Action Task Force (“FATF”) had been raising issues about U.S. compliance with anti-money laundering issues for more than a dozen years, to which the U.S. defense is “privacy.” As recently as Dec. 1, 2016, the FATF said “the United States has a robust regime to combat money laundering and terrorist financing, however, serious gaps impede timely access to beneficial ownership information.” [http://www.fatf-gafi.org/publications/?hf=10&b=0&q=united%2520states&s=desc\(fatf\\_releasedate\)](http://www.fatf-gafi.org/publications/?hf=10&b=0&q=united%2520states&s=desc(fatf_releasedate))

“any person could form a corporation or limited liability company in Colorado and remain anonymous.”

This remains the case in 2019-2020. While the incorporator needs to disclose himself/herself, the incorporator does not need to be an individual. The form and the law in Colorado does require disclosure of the “individual causing the document to be filed.”<sup>3</sup> There is no requirement that the individual be an owner, officer, partner, or manager of the entity s/he caused to be formed or that the individual (who may be the only individual appearing in the public record associated with the entity) have any continuing involvement or maintain any records about the entity.

***Federal Beneficial Ownership Disclosure Legislation.*** This has for some time been a significant issue federally. Senator Carl Levin (D-MI, 1979-2015) introduced several bills requiring disclosure of the beneficial ownership of entities, starting with S. 569 (introduced on March 11, 2009) following hearings that he and Senator Norm Coleman (R-MN, 2003-2009) chaired in 2006-2007 on the subject. The hearings focused on the laundering of drug money through shell companies and the complete lack of disclosure on who the owners of these private entities were. The National Association of Secretaries of State<sup>4</sup> (“NASS,”) was the target of Senator Levin’s ire in 2007 and remained so until Senator Levin’s 2015 retirement.

Beneficial ownership legislation continues to percolate in 2019 and remains an issue to be addressed. In February 2016, Representatives Carolyn Maloney (D-NY) and Peter King (R-NY) and Senators Sheldon Whitehouse (D-RI) and Diane Feinstein (D-CA) introduced H.R. 4450 and S. 2489, known collectively as the “Incorporation Transparency and Law Enforcement Assistance Act” (“ITLEAA”).<sup>5</sup> On May 5, 2016 Treasury Secretary Lew sent a letter to Speaker of the House Paul Ryan proposing beneficial ownership legislation to Congress and supporting the pending ITLEAA legislation “to increase financial transparency in the United States and protect the integrity of the U.S. and global financial systems.”<sup>6</sup> ITLEAA did not emerge from the 114th Congress. A similar bill<sup>7</sup> was introduced in June 2017, but failed to emerge from the 115th Congress.

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<sup>3</sup> C.R.S. § 7-90-301.5. The term “individual” is defined in C.R.S. § 7-90-102(31.5) to be a “natural person.”

<sup>4</sup> [www.nass.org](http://www.nass.org).

<sup>5</sup> Neither bill emerged from the legislative committee to which it was assigned in the 114<sup>th</sup> Congress (2015-2016). H.R. 4450 was assigned to the House Committee on Financial Services and S. 2489 was assigned to the Senate’s Judiciary Committee.

<sup>6</sup> Letter from Jacob J. Lew, Secretary of the Treasury, to Paul Ryan, Speaker of the House (May 5, 2016), <https://www.treasury.gov/press-center/press-releases/Documents/Lew%20to%20Ryan%20on%20CDD.PDF>.

<sup>7</sup> S. 1454 - True Incorporation Transparency for Law Enforcement Act, available at <https://www.gpo.gov/fdsys/pkg/BILLS-115s1454is/content-detail.html>.

In 2019, Representative Carolyn Maloney (D-NY) introduced H.R. 2513 (The Corporate Transparency Act<sup>8</sup>) which would require certain new and existing small corporations and limited liability companies to disclose information about their beneficial owners to the Financial Crimes Enforcement Network (FinCEN). As defined in the bill, a beneficial owner is an individual who (1) exercises substantial control over a corporation or limited liability company, (2) owns 25% or more of the interest in a corporation or limited liability company, or (3) receives substantial economic benefits from the assets of a corporation or limited liability company. Furthermore, certain existing corporations and limited liability companies must file this information with FinCEN two years after the implementation of final regulations required under this bill. The bill, if enacted, imposes a civil penalty and authorizes criminal penalties—a fine, a prison term for up to three years, or both—for providing false or fraudulent beneficial ownership information or for willfully failing to provide complete or updated beneficial ownership information.<sup>9</sup>

***State and Bar Association Response.*** An August 2016 article in Reuters (*How Delaware Kept America Safe for Corporate Secrecy* by Suzanne Barlyn) makes it clear that beneficial ownership secrecy is big business for states seeking incorporation or organization of entities, especially in Delaware.<sup>10</sup> The article notes that in “2009, the Department of Justice, U.S. Immigration and Customs Enforcement and the Manhattan District Attorney’s office each testified to a Senate committee that corporate secrecy was a growing problem and impeding law enforcement.” By May 2009, however, Delaware Secretary of State Jeffrey Bullock “had hired Washington lobbying firm Peck Madigan Jones to sway lawmakers and administration officials against Levin’s bill.” The article then points out the importance of entity incorporation/organization in Delaware:

“Delaware, meanwhile, is doing much better. Since Bullock started his job, the number of companies registered in Delaware has jumped 34 percent, to 1,181,000 as of last year. Revenue from the state’s corporations unit surpassed the \$1 billion mark for the first time in 2015. In 2010, the state budget deficit was \$800 million; as of this July [2016], it was zero. Rising fee income from registrations, which surged during Bullock’s tenure, helped plug the gap.”

In June 2019, the American Bar Association objected to H.R. 2513, stating its objection as follows:<sup>11</sup>

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<sup>8</sup> <https://www.govtrack.us/congress/bills/116/hr2513/summary>.

<sup>9</sup> The bill passed the House of Representatives on October 22, 2019. The White House expressed qualified support for H.R. 2513. [https://www.whitehouse.gov/wp-content/uploads/2019/10/SAP\\_HR-2513.pdf](https://www.whitehouse.gov/wp-content/uploads/2019/10/SAP_HR-2513.pdf). The American Bar Association opposed H.R. 2513 in a June 25, 2019 letter to the House Committee. [https://www.americanbar.org/content/dam/aba/administrative/government\\_affairs\\_office/oppositionpost.pdf?logActivity=true](https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/oppositionpost.pdf?logActivity=true).

<sup>10</sup> Suzanne Barlyn, *Special Report: How Delaware kept America safe for corporate secrecy*, REUTERS US (August 24, 2016) <http://www.reuters.com/article/us-usa-delaware-bullock-specialreport-idUSKCN10Z10H>.

<sup>11</sup> [https://www.americanbar.org/content/dam/aba/administrative/government\\_affairs\\_office/oppositionpost.pdf?logActivity=true](https://www.americanbar.org/content/dam/aba/administrative/government_affairs_office/oppositionpost.pdf?logActivity=true)



On behalf of the American Bar Association (ABA), I write to express our concerns regarding the Amendment in the Nature of a Substitute to H.R. 2513, the “Corporate Transparency Act of 2019,” which would impose burdensome and intrusive regulations on millions of small businesses and their lawyers. The ABA opposes key provisions in the substitute bill that would require small corporations and limited liability companies (LLCs) and many of their lawyers to submit information about the businesses’ “beneficial owners” to the Treasury Department’s Financial Crimes Enforcement Network (FinCEN) and require FinCEN to disclose that information to governmental agencies and financial institutions upon request.

***International Financial Action Task Force.*** While ITLEAA never emerged from the House Committee on Financial Services, the Financial Action Task Force (“FATF”) has declared the United States non-compliant in beneficial ownership disclosure obligations – obligations that the FATC believes are essential “to prevent the misuse of corporate vehicles for the purpose of money laundering, terrorist financing and other illicit purposes.”<sup>12</sup> Currently, the FATF consists of about 35 member countries and an international, inter-governmental body established in 1989 “to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats.”

The August 2016 *Reuters* article referenced above states that Delaware Secretary of State Bullock co-wrote a September 16, 2011, letter to FATF on behalf of NASS in which he called the group’s recommendations “impractical,” warning FATF not to meddle with “the core principle of Constitutional state sovereignty.”

***Other Actions.*** On May 11, 2016, FinCEN published final rules which strengthens CDD requirements for financial institutions, expands the Treasury’s anti-money laundering program, and requires banks, securities brokers and dealers, mutual funds, futures commission merchants and introducing brokers in commodities,<sup>13</sup> to verify the identity of any person or company who owns more than 25 percent of the potential client.<sup>14</sup> The rules also require banks to identify one individual who controls the prospective client even if that person owns less than 25 percent. These rules (found in 31 C.F.R. parts 1010, 1020, 1023, 1024, and 1026) were effective July 11, 2016, but covered financial institutions must comply with the rules by May 11, 2018.

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<sup>12</sup> FATF *Guidance on Transparency and Beneficial Ownership* (issued October 27, 2014), <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/transparency-and-beneficial-ownership.html>.

<sup>13</sup> An introducing broker is a person (other than a person registered as an associated person of a futures commission merchant) who is engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on an exchange who does not accept any money, securities, or property to margin, guarantee, or secure any trades or contracts that result therefrom. See 7 USC 1a(31).

<sup>14</sup> 81 Fed. Reg. 29398 (May 11, 2016).



Secretary Lew's May 5, 2016, letter also Treasury also announced proposed regulations (which became final in December 2016<sup>15</sup>) to require foreign-owned "disregarded entities," including foreign-owned single-member limited liability companies (LLCs), to obtain an employer identification number (EIN) with the IRS. Normally entities that are disregarded for tax purposes have no reporting obligation to the IRS – it is generally non-existent from a substantive federal tax perspective.<sup>16</sup> As a result of these regulations, a domestic disregarded entity has reporting obligations to the IRS under even where the foreign owner may not have any reporting obligations under 26 USC § 6038A on IRS Form 5472.<sup>17</sup> These entities are also required to maintain books and records that are sufficient to establish the accuracy of the information,<sup>18</sup> subject to civil and criminal penalties.<sup>19</sup>

Finally, the regulations expanded the category of reportable transactions for disregarded entities to include "any sale, assignment, lease, license, loan, advance, contribution, or other transfer of any interest in or a right to use any property (whether tangible or intangible, real or personal) or money" between the entity and its owner, "as well as the performance of any services for the benefit of, or on behalf of" another taxpayer.<sup>20</sup> Thus a reportable transaction would include a foreign owner's contribution of capital or loans to and distributions or repayment of loans from the disregarded entity even though, under other law, these would never be reported to the IRS.<sup>21</sup>

Secretary Lew advised Congress of his belief that these measures will strengthen the IRS's ability to prevent the use of these entities for tax avoidance purposes, and will build on the success of other efforts to curb the use of foreign entities and accounts to evade U.S. tax. These regulations, which as noted above are now final, will also address some of the beneficial ownership issues that the Congress has not been able to accomplish by statute.

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<sup>15</sup> T.D. 9796 (Nov. 15, 2016), published in the Federal Register on December 13, 2016, 81 F.Reg. 89849. <https://s3.amazonaws.com/public-inspection.federalregister.gov/2016-29641.pdf>.

<sup>16</sup> Even a disregarded entity is treated as an entity for employment tax purposes. Treas. Reg. § 301.7701-2(c)(iv).

<sup>17</sup> As amended, Treas. Regs. § 301.7701-2(c)(vi) provides that "[a]n entity that is disregarded as an entity separate from its owner for any purpose under this section is treated as an entity separate from its owner and classified as a corporation for purposes of section 6038A if (1) The entity is a domestic entity; and (2) One foreign person has direct or indirect sole ownership of the entity." As a result, for taxable years of entities beginning after December 31, 2016, the U.S. entity fitting within the definition of § 301.7701-2(c)(vi) must file foreign ownership reports under 26 USC § 6038A.

<sup>18</sup> Treas. Regs. § 1.6038A-3.

<sup>19</sup> Treas. Regs. § 1.6038A-4(a) and -4(e).

<sup>20</sup> Treas. Reg. 1.6038A-2(b)(3)(xi) expanded the definition of a reportable transaction to include "any other transaction as defined by [Treas. Reg.] 1.482-1(i)(7). The quoted language comes from 1.482-1(i)(7).

<sup>21</sup> Treas. Regs. § 1.6038A-2(b)(9), and -2(b)(3)(vii).

## A Different Approach to Entity Secrecy -- Geographic Targeting Orders

Given the lack of any movement on the beneficial ownership front over number of years and in the federal government's continuing effort to address money-laundering issues, the U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") has drawn title companies into the search for money laundering in real estate transactions.

*Who Is Buying Real Estate?* Although beneficial ownership legislation has been in front of Congress, these issues took a new turn in 2016. On January 6, 2016, the Department of Treasury, through FinCEN, issued two "geographic targeting orders" ("GTOs") which would temporarily require all title insurance companies to identify and report the individuals behind legal entities that pay 'all cash' for high-end residential real estate. These two GTOs were issued as "additional record keeping and reporting requirements under the Bank Secrecy Act" (specifically 31 U.S.C. § 5326(a) and 31 CFR § 1010.370, as well as Treasury Order 180-01). The GTOs<sup>22</sup> have not been nationwide orders; rather, they have been specifically targeted to real estate sales specific locations. As of the most recent, November 8, 2019 GTO,<sup>23</sup> the covered metropolitan areas are:<sup>24</sup>

1. The Texas counties of Bexar, Tarrant, or Dallas;
2. The Florida counties of Miami-Dade, Broward, or Palm Beach;
3. The Boroughs of Brooklyn, Queens, Bronx, Staten Island, or Manhattan in New York City, New York;
4. The California counties of San Diego, Los Angeles, San Francisco, San Mateo, or Santa Clara;
5. The City and County of Honolulu in Hawaii;
6. The Nevada county of Clark;
7. The Washington county of King;
8. The Massachusetts counties of Suffolk, or Middlesex; or

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<sup>22</sup>

<https://www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO%20Order%20FINAL%20GENERIC%2011.8.2019.pdf>.

<sup>23</sup>[https://www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO%20GENERIC\\_111518\\_FIN%20AL%20508.pdf](https://www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO%20GENERIC_111518_FIN%20AL%20508.pdf). The November 15, 2018 order continues through May 15, 2019.

<sup>24</sup> Set forth in § II.A.2.ii of the GTO.

9. The Illinois county of Cook.

As a result of the GTOs, U.S. title insurance companies must identify the natural persons behind legal entities<sup>25</sup> used in purchases of residential real estate “without a bank loan or other similar form of external financing.”<sup>26</sup> The purchase amount threshold, which initially varied by jurisdiction, is now set at \$300,000 for each covered metropolitan area. The November 8, 2019, GTO exempted for the first time legal entities that are U.S. publicly-traded companies.

The two triggers for a “Covered Transaction”<sup>27</sup> within the designated jurisdictions were expanded in the November 2018 GTO to include purchases of residential real property by a Legal Entity.<sup>28</sup>

1. Such purchase is made without a bank loan or other similar form of external financing; and
2. Such purchase is made, at least in part, using currency or a cashier’s check, a certified check, a traveler’s check, a personal check, a business check, a money order in any form, a funds transfer,<sup>29</sup> or virtual currency.<sup>30</sup>

The GTOs continue to target metropolitan areas and have not yet reached into resort communities. According to the November 8, 2019 press release announcing the new GTO:<sup>31</sup>

GTOs continue to provide valuable data on the purchase of residential real estate by persons possibly involved in various illicit enterprises. Reissuing the GTOs will further

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<sup>25</sup> Legal entities are defined in the GTO to include a “corporation, limited liability company, partnership, or other similar business entity, whether formed under the laws of a state, or of the United States, or a foreign jurisdiction,” not including companies that are publicly-trade in the United States, or an entity whose sole owner is a publicly-traded company. The exclusion for publicly-traded companies was added in the November 2019 GTO.

<sup>26</sup> Section II.A.2.iv of the GTO.

<sup>27</sup> The term “Covered Transaction” is defined in Section II.A.2 in the GTO, and the definition has expanded over time.

<sup>28</sup> Defined in § III.A.1.ii of the November 2018 GTO as follows: “‘Legal Entity’ means a corporation, limited liability company, partnership or other similar business entity, whether formed under the laws of a state, or of the United States, or a foreign jurisdiction.”

<sup>29</sup> Previously funds wired through the federal banking system were excluded; they are now included.

<sup>30</sup> Set forth in § II.A.2.iii and .iv of the GTO.

<sup>31</sup> <https://www.fincen.gov/news/news-releases/fincen-reissues-real-estate-geographic-targeting-orders-12-metropolitan-areas-0>.

assist in tracking illicit funds and other criminal or illicit activity, as well as inform FinCEN's future regulatory efforts in this sector.

Previously, FinCEN Advisory 2017-A003, issued with the August 22, 2017 GTO, added that, "[a]s of May 2, 2017, over 30 percent of the real estate transactions reported under the GTOs involved a beneficial owner or purchaser representative that had been the subject of unrelated Suspicious Activity Reports (SARs) filed by U.S. financial institutions."<sup>32</sup>

As reported by *Reuters*, the American Land Title Association has expressed its support for these GTOs.<sup>33</sup>

***Additional Record Keeping Requirements for Title Insurance Companies.*** The enforcement/information gathering mechanism for these GTOs are the title insurance companies that close the real estate transactions who must gather and report information regarding the Beneficial Owners of Legal Entities participating in a Covered Transaction. The November 2018 GTO defines the term "Beneficial Owner" to mean "each individual who, directly or indirectly, owns 25% or more of the equity interests of the Legal Entity purchasing real property in the Covered Transaction."

Where a title insurance company is involved in such a transaction, it must report the Covered Transaction to FinCEN within 30 days of the closing on FinCEN Form 8300 (*Report of Cash Payments Over \$10,000 Received in a Trade or Business*).<sup>34</sup> The Form requires reporting a significant amount of information about the transaction, including "the identity of the Beneficial Owner(s) of the Purchaser," and obtaining copies of the Beneficial Owner's driver's license, passport "or other similar identifying documentation."<sup>35</sup>

An attorney acting for a purchaser may not withhold information from the title insurance company under a claim of attorney-client privilege. Information necessary for completing a form 8300, such as a *Suspicious Activity Report* or other Bank Secrecy Act reporting

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<sup>32</sup> [https://www.fincen.gov/sites/default/files/advisory/2017-08-22/Risk%20in%20Real%20Estate%20Advisory\\_FINAL%20508%20Tuesday%2028002%29.pdf](https://www.fincen.gov/sites/default/files/advisory/2017-08-22/Risk%20in%20Real%20Estate%20Advisory_FINAL%20508%20Tuesday%2028002%29.pdf).

<sup>33</sup> The American Land Title Association said its members would continue to work with law enforcement. "The good news is those efforts appear to be beneficial to the government's work identifying money laundering schemes," Michelle Korsmo, ALTA's chief executive officer, said in a statement quoted by *Reuters*. <http://www.reuters.com/article/us-usa-money-laundering-real-estate-idUSKBN16226W?il=0>.

<sup>34</sup> <https://www.irs.gov/pub/irs-pdf/f8300.pdf>.

<sup>35</sup> See the FAQs issued with the November 2018 GTO available at [https://www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO%20FAQs\\_111518\\_FINAL%20508.pdf](https://www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO%20FAQs_111518_FINAL%20508.pdf).

requirement, may not be withheld from the government due to attorney-client privilege as set forth in *United States v. Goldberger & Dublin, P.C.*<sup>36</sup> and *United States v. Leventhal*.<sup>37</sup>

The title insurance company or other “Covered Business”<sup>38</sup> must: (1) retain all records relating to compliance with this Order for a period of five years from the last day that this Order is effective (including any renewals of this Order); (2) store such records in a manner accessible within a reasonable period of time; and (3) make such records available to FinCEN, or any other appropriate law enforcement or regulatory agency, upon request.

A failure by a title insurance company to meet the requirements of the applicable GTO can result in criminal and civil penalties.

***Coming To Colorado?*** The GTOs have not yet come to Colorado, and the GTOs issued to date have focused on metropolitan areas. There is speculation that mountain communities may be a future target of forthcoming GTOs.

## **Conclusion.**

While beneficial ownership legislation seems to be stalled and likely to remain so, the FinCEN GTOs provide a means of getting significant information about all-cash residential real estate purchases in the targeted jurisdictions, even where purchased by shell companies.

Customer due diligence (CDD) requirements imposed on banks, mutual funds, and other financial institutions can obtain similar information in their limited spheres.

Will the existing CDD and other federal rules be sufficient, or will the United States eventually bow to the outcry at FATF and even in some sectors of the United States (as witnessed by the year-after-year legislation)? That, along with the future of a large number of other financial regulations, may depend in part on the policies of the Trump administration and Congress.

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<sup>36</sup> *United States v. Goldberger & Dublin, P.C.*, 935 F.2d 501 (2nd Cir. 1991), holding that absent special circumstances, attorneys are required to disclose client information on Forms 8300.

<sup>37</sup> *United States v. Leventhal*, 961 F.2d 936 (11th Cir. 1992), holding that state bar ethical rules do not constitute a “special circumstance” that would protect clients’ names and fee arrangements from disclosure.

<sup>38</sup> For the purpose of the GTOs, the term “Covered Business means [the] title insurance company and any of its subsidiaries and agents.”



## **GEOGRAPHIC TARGETING ORDER**

The Director of the Financial Crimes Enforcement Network (“FinCEN”), U.S. Department of the Treasury, hereby issues a Geographic Targeting Order (“Order”) requiring [title insurance company] to collect and report information about the persons involved in certain residential real estate transactions, as further described in this Order. This Order supersedes the order applicable to [title insurance company] relating to certain transactions in Miami-Dade County that was executed by the Director of FinCEN on January 6, 2016.

### **I. AUTHORITY**

The Director of FinCEN may issue an order that imposes certain additional recordkeeping and reporting requirements on one or more domestic financial institutions or nonfinancial trades or businesses in a geographic area. *See* 31 U.S.C. § 5326(a); 31 CFR § 1010.370; Treasury Order 180-01. Pursuant to this authority, the Director of FinCEN hereby finds that reasonable grounds exist for concluding that the additional recordkeeping and reporting requirements described below are necessary to carry out the purposes of the Bank Secrecy Act and prevent evasions thereof.<sup>1</sup>

### **II. ADDITIONAL RECORDKEEPING AND REPORTING REQUIREMENTS**

#### **A. Business and Transactions Covered by this Order**

1. For purposes of this Order, the “Covered Business” means [title insurance company] and any of its subsidiaries and agents.
2. For purposes of this Order, a “Covered Transaction” means a transaction in which:
  - i. A Legal Entity (as defined in Section III.A of this Order);
  - ii. Purchases residential real property located in Miami-Dade County, Florida.
  - iii. For a total purchase price in excess of \$1,000,000;

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<sup>1</sup> The Bank Secrecy Act is codified at 12 U.S.C. §§ 1829b, 1951-1959 and 31 U.S.C. §§ 5311-5314, 5316-5332. Regulations implementing the Bank Secrecy Act appear at 31 CFR Chapter X.

- iv. Such purchase is made without a bank loan or other similar form of external financing; and
- v. Such purchase is made, at least in part, using currency or a cashier's check, a certified check, a traveler's check, or a money order in any form.

**B. Reports Required to be Filed by the Covered Business**

1. If the Covered Business is involved in a Covered Transaction, then the Covered Business shall report the Covered Transaction to FinCEN by filing a FinCEN Form 8300 within 30 days of the closing of the Covered Transaction. Each FinCEN Form 8300 filed pursuant to this Order must be: (i) completed in accordance with the terms of this Order and the FinCEN Form 8300 instructions (when such terms conflict, the terms of this Order apply), and (ii) e-filed through the Bank Secrecy Act E-filing system.<sup>2</sup>
2. A Form 8300 filed pursuant to this Order shall contain the following information about the Covered Transaction:
  - i. Part I shall contain information about the identity of the individual primarily responsible for representing the Purchaser (as defined in Section III.A of this Order). The Covered Business must obtain and record a copy of this individual's driver's license, passport, or other similar identifying documentation. A description of such documentation must be provided in Field 14 of the form.
  - ii. Part II shall contain information about the identity of the Purchaser. The Covered Business should select Field 15 on the FinCEN Form 8300, which will enable reporting of multiple parties under Part II of the form.
  - iii. Part II shall also contain information about the identity of the Beneficial Owner(s) (as defined in Section III.A of this Order) of the Purchaser. The Covered Business must obtain and record a copy of the Beneficial Owner's driver's license, passport, or other similar identifying documentation. A description of such documentation must be provided in Field 27 of the form.
  - iv. Part III shall contain information about the Covered Transaction as follows:
    1. Field 28: Date of closing of the Covered Transaction
    2. Field 29: Total amount transferred in the form of a Monetary Instrument
    3. Field 31: Total purchase price of the Covered Transaction

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<sup>2</sup> For more information on E-filing, go to this Website: <http://bsaefiling.fincen.treas.gov/main.html> and do the following: (a) review "Getting Started"; (b) fill out a Supervisory User Application Form; (c) assign the supervisory user to represent your business; (d) obtain a digital certificate; and (e) register on the system.

4. Field 34: Address of real property involved in the Covered Transaction
- v. Part IV shall contain information about the Covered Business.
- vi. The Comments section to the Form 8300 shall contain the following information:
  1. The term “REGTOMIA” as a unique identifier for this Order.
  2. If the purchaser involved in the Covered Transaction is a limited liability company, then the Covered Business must provide the name, address, and taxpayer identification number of all its members, to the extent not otherwise provided on the Form 8300.

### **III. GENERAL PROVISIONS**

#### **A. Additional Definitions**

1. For purposes of this Order:
  - i. “Beneficial Owner” means each individual who, directly or indirectly, owns 25% or more of the equity interests of the Purchaser.
  - ii. “Legal Entity” means a corporation, limited liability company, partnership or other similar business entity, whether formed under the laws of a state or of the United States or a foreign jurisdiction.
  - iii. “Purchaser” means the Legal Entity that is purchasing residential real property as part of a Covered Transaction.
2. All terms used but not otherwise defined herein have the meaning set forth in Chapter X of Title 31 of the United States Code of Federal Regulations.

#### **B. Order Period**

The terms of this Order are effective beginning on March 1, 2016 and ending on August 27, 2016 (except as otherwise provided in Section III.C of this Order).

#### **C. Retention of Records**

The Covered Business must: (1) retain all records relating to compliance with this Order for a period of five years from the last day that this Order is effective (including any renewals of this Order); (2) store such records in a manner accessible within a reasonable period of time; and (3) make such records available to FinCEN or any other appropriate law enforcement or regulatory agency, upon request.



**D. No Effect on Other Provisions of the Bank Secrecy Act**

Nothing in this Order modifies or otherwise affects any provision of the regulations implementing the Bank Secrecy Act to the extent not expressly stated herein.

**E. Compliance**

The Covered Business must supervise, and is responsible for, compliance by each of its officers, directors, employees, and agents with the terms of this Order. The Covered Business must transmit this order to each of its agents. The Covered Business must also transmit the Order to its Chief Executive Officer or other similarly acting manager.

**F. Penalties for Noncompliance**

The Covered Business and any of its officers, directors, employees, and agents may be liable, without limitation, for civil or criminal penalties for violating any of the terms of this Order.

**G. Validity of Order**

Any judicial determination that any provision of this Order is invalid does not affect the validity of any other provision of this Order, and each other provision must thereafter remain in full force and effect. A copy of this Order carries the full force and effect of an original signed Order.

**H. Paperwork Reduction Act**

The collection of information subject to the Paperwork Reduction Act contained in this Order has been approved by the Office of Management and Budget (“OMB”) and assigned OMB Control Number 1506-0056.

**I. Questions**

All questions about the Order must be addressed to the FinCEN Resource Center at (800) 767-2825 (Monday through Friday, 8:00 a.m. - 6:00 p.m. EST).

Dated: January 13, 2016

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Jennifer Shasky Calvery  
Director  
Financial Crimes Enforcement Network  
U.S. Department of the Treasury



**Financial Action Task Force**

Groupe d'action financière

**RBA GUIDANCE FOR REAL ESTATE AGENTS**

**17 June 2008**

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**GUIDANCE ON THE RISK-BASED APPROACH  
TO COMBATING MONEY LAUNDERING AND  
TERRORIST FINANCING**

**HIGH LEVEL PRINCIPLES AND PROCEDURES FOR  
REAL ESTATE AGENTS**

**SECTION ONE: USING THE GUIDANCE**

**PURPOSE OF THE RISK-BASED APPROACH**

**Chapter One: Background and Context**

1. In June 2007, the FATF adopted Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing: High Level Principles and Procedures, which includes guidance for public authorities and guidance for financial institutions. This was the culmination of extensive consultation between private and public sector members of an Electronic Advisory Group (EAG) established by the FATF.
2. In addition to financial institutions, the FATF Recommendations also cover a number of designated non-financial businesses and professions (DNFBPs). At its June 2007 meeting, the FATF's Working Group on Evaluations and Implementation (WGEI) endorsed a proposal to convene a meeting of representatives from the DNFBPs to assess the possibility of developing guidance on the risk-based approach for their sectors, using the same structure and style as the completed guidance for financial institutions.
3. This meeting was held in September 2007 and was attended by organisations which represent lawyers, notaries, accountants, trust and company service providers, casinos, real estate agents, and dealers in precious metals and dealers in precious stones. This private sector group expressed an interest in contributing to FATF guidance on implementing a risk-based approach for their sectors. The guidance for the DNFBPs would follow the principles of the risk-based approach already established by FATF, and would highlight risk factors specific to the DNFBPs, as well as suggest mitigation strategies that fit with the particular activities and businesses of the DNFBPs. The FATF established another EAG to facilitate the work.
4. The private sector group met again in December 2007 and was joined by a number of specialist public sector members. Separate working groups comprising public and private sectors members were established, and private sector chairs were appointed.
5. The EAG continued work until this guidance for real estate agents was presented to the WGEI. After further international consultation with both public and private sectors, the FATF adopted this guidance at its June 2008 Plenary. Guidance for each of the other DNFBP sectors is being published separately.

## Purpose of the guidance

6. The purpose of this Guidance is to:

- Support the development of a common understanding of what the risk-based approach involves.
- Outline the high-level principles involved in applying the risk-based approach.
- Indicate good practice in the design and implementation of an effective risk-based approach.

7. However, it should be noted that applying a risk-based approach is not mandatory. A properly applied risk-based approach does not necessarily mean a reduced burden, although it should result in a more cost effective use of resources. For some countries, applying a rules-based system might be more appropriate. Countries will need to make their own determinations on whether to apply a risk-based approach, based on their specific ML/FT risks, size and nature of the DNFBP activities, and other relevant information. The issue of timing is also relevant for countries that may have applied anti-money laundering and combating the financing of terrorism (AML/CFT) measures to DNFBPs, but where it is uncertain whether the DNFBPs have sufficient experience to implement and apply an effective risk-based approach.

## Target audience, status and content of the guidance

8. This guidance is presented in a way that is focused and relevant for real estate agents when they act for buyers or sellers. The roles and therefore risks of the different DNFBP sectors are usually separate. However, in some business areas, there are inter-relationships between different DNFBP sectors, and between the DNFBPs and financial institutions. For example, real estate transactions often involve financial institution lenders, as well as lawyers or notaries, and real estate agents.

9. DNFBPs provide a range of services and activities that vastly differ, *e.g.* in their methods of delivery, and in the depth and duration of the relationships formed with customers. This guidance is written at a high level to cater for the differing practices of real estate agents in different countries, and the different levels and forms of supervision or monitoring that may apply. Each country and its national authorities should aim to establish a partnership with its real estate agents and other DNFBP sectors that will be mutually beneficial to combating money laundering and terrorist financing.

10. The primary target audience of this guidance is the real estate agents themselves, when they conduct activities that fall within the ambit of the FATF Recommendations, as described below. Other DNFBP sectors, such as lawyers and notaries, might also be involved in a real estate transaction. Separate guidance is being issued for those sectors, and they should therefore apply that guidance. However, all those engaged in real estate transactions may also wish to refer to this real estate guidance, as it is more specifically tailored to real estate agent services.

11. Recommendation 12 requires that the customer due diligence, record-keeping requirements, and transaction monitoring provisions set out in Recommendation 5, 6, and 8 to 11 apply to DNFBPs in certain circumstances. Specifically, Recommendation 12 applies to real estate agents when they are involved in transactions for their client concerning the buying and selling of real estate.

12. Recommendation 16 requires that FATF Recommendations 13 to 15 regarding reporting of suspicious transactions (see paragraphs 131-134) and internal AML/CFT controls, and Recommendation 21 regarding measures to be taken with respect to countries that do not or insufficiently comply with the FATF Recommendations, apply to DNFBPs subject to the certain qualifications. Specifically, Recommendation 16 applies to real estate agents in the circumstances set out in R.13.

13. The wider audience for this guidance includes countries, designated competent authorities and self regulatory organisations (SROs), which are considering how to apply AML/CFT measures to real estate agents. Countries need to identify the most appropriate regime, tailored to address individual country risks, which takes into consideration the idiosyncrasies and activities of real estate agents in their country. This regime should recognise the differences between the DNFBP sectors, as well as the differences between the DNFBPs and financial institutions. However, this guidance does not override the purview of national authorities.

#### Observation on the particular activities carried out by real estate agents

14. The following general observation about real estate agents should help inform the approach. Consideration should also be given to the particular activities performed by real estate agents on a national basis.

15. The worldwide real estate transaction business vastly differs. The residential, commercial, and agricultural real estate markets differ in terms of business practices, local regulations, cultural habits, and value and size of the market. Agents are no longer restricted to localised business. There is an increasing global market involving significant international investment, assisted by the development of technology, including international methods of communication, *e.g.* email.

16. In some countries the use of the word “customer” is not consistent with the terminology used in this guidance. A customer is a client *i.e.* the individual, company, or organisation involved in a transaction of a real property with which the real estate agent has a contractual and/or fiduciary responsibility.

17. It is also important to note that besides real estate agents, other professionals and organisations often undertake real estate transaction activity including real estate developers, builders, financial institutions, property managers, and corporate in-house real estate officers. Real estate agents are real estate professionals or companies who by representing the seller and/or the buyer act in a purchase and/or sale of a real property in a real estate transaction capacity and/or are exercising professional transactional activity, thus facilitating real property transfer.

18. Whilst the role of agents varies from country to country, the core functions may include:

- Traditional exclusive (and non-exclusive) seller representation.
- Traditional exclusive (and non-exclusive) buyer representation.
- Representation of both buyer and seller in the same transaction.
- A number of agents representing sellers or buyers.
- National and transnational referrals.
- Amalgamation or interaction of functions of other professionals, *e.g.* notaries, lawyers, lenders, valuers.
- Auctions.

19. In some markets real estate agents may assume additional functions relative to the transaction, such as mortgage loan assessment, valuation/appraisal and conveyance of property. The risk associated with these functions should be considered with reference to specific applicable regulations and/or guidance.

## **Chapter Two: The Risk-Based Approach – Purpose, benefits and challenges**

### The purpose of the risk-based approach

20. The FATF Recommendations contain language that permits countries to some degree to adopt a risk-based approach to combating money laundering and terrorist financing. That language also authorises countries to permit DNFBPs to use a risk-based approach in applying certain of their AML/CFT obligations.

21. By adopting a risk-based approach, it is possible to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified. This will allow resources to be allocated in the most efficient ways. The principle is that resources should be directed in accordance with priorities so that the greatest risks receive the highest attention. The alternative approaches are that resources are either applied evenly, or that resources are targeted, but on the basis of factors other than risk. This can inadvertently lead to a “tick box” approach with the focus on meeting regulatory requirements rather than on combating money laundering or terrorist financing efficiently and effectively.

22. A number of the DNFBP sectors, including real estate agents, are already subject to regulatory or professional requirements which complement AML/CFT measures. Where possible, it will be beneficial for real estate agents to devise their AML/CFT policies and procedures in a way that harmonises with other regulatory or professional requirements. A risk-based AML/CFT regime should help ensure that the honest customers can access the services provided by real estate agents, but creates barriers to those who seek to misuse those services.

23. A risk analysis must be performed to determine where the money laundering and terrorist financing risks are the greatest. Countries will need to identify the main vulnerabilities and address them accordingly. Real estate agents will need this assistance to help them to identify higher risk customers, products and services, including delivery channels, and geographical locations. These are not static assessments. They will change over time, depending on how circumstances develop, and how threats evolve.

24. The strategies to manage and mitigate the identified money laundering and terrorist financing activities are typically aimed at preventing the activity from occurring through a mixture of deterrence (*e.g.* appropriate CDD measures), detection (*e.g.* monitoring and suspicious transaction reporting), and record-keeping so as to facilitate investigations.

25. Proportionate procedures should be designed based on assessed risk. Higher risk areas should be subject to enhanced procedures; this would include measures such as enhanced customer due diligence checks. It also follows that in instances where risks are low, simplified or reduced controls may be applied.

26. There are no universally accepted methodologies that prescribe the nature and extent of a risk-based approach. However, an effective risk-based approach does involve identifying and categorising money laundering and terrorist financing risks and establishing reasonable controls based on risks identified.

27. An effective risk-based approach will allow real estate agents to exercise reasonable business and professional judgement with respect to customers. Application of a reasoned and well-articulated risk-based approach will justify the judgements made with regard to managing potential money laundering and terrorist financing risks. A risk-based approach should not be designed to prohibit real estate agents from continuing with legitimate business or from finding innovative ways to diversify their business.



28. Regardless of the strength and effectiveness of AML/CFT controls, criminals will continue to attempt to move illicit funds undetected and will, from time to time, succeed. They are more likely to target the DNFBP sectors if other routes become more difficult. For this reason, DNFBPs, including real estate agents, may be more or less vulnerable depending on the effectiveness of the AML/CFT procedures applied in other sectors. A risk-based approach allows DNFBPs, including real estate agents, to more efficiently and effectively adjust and adapt as new money laundering and terrorist financing techniques are identified.

29. A reasonably designed and effectively implemented risk-based approach will provide an appropriate and effective control structure to manage identifiable money laundering and terrorist financing risks. However, it must be recognised that any reasonably applied controls, including controls implemented as a result of a reasonably designed and effectively implemented risk-based approach, will not identify and detect all instances of money laundering or terrorist financing. Therefore, designated competent authorities, SROs, law enforcement, and judicial authorities must take into account and give due consideration to a well reasoned risk-based approach. In cases where there is a failure to implement an adequately designed risk-based approach or failure of a risk-based programme that was not adequate in its design, regulators, SROs, law enforcement or judicial authorities should take action as necessary and appropriate.

#### Potential benefits and challenges of the risk-based approach

##### *Benefits:*

30. The adoption of a risk-based approach to combating money laundering and terrorist financing can yield benefits for all parties including the public. Applied effectively, the approach should allow a more efficient and effective use of resources and minimise burdens on customers. Focusing on higher risk threats should mean that beneficial outcomes can be achieved more effectively.

31. For real estate agents, the risk-based approach allows the flexibility to approach AML/CFT obligations using specialist skills and responsibilities. This requires real estate agents to take a wide and objective view of their activities and customers.

32. Efforts to combat money laundering and terrorist financing should also be flexible in order to adapt as risks evolve. As such, real estate agents will use their judgement, knowledge and expertise to develop an appropriate risk-based approach for their particular organisation, structure and business activities.

##### *Challenges:*

33. A risk-based approach is not necessarily an easy option, and there may be challenges to overcome when implementing the necessary measures. Some challenges may be inherent to the use of the risk-based approach. Others may stem from the difficulties in making the transition to a risk-based system. A number of challenges, however, can also be seen as offering opportunities to implement a more effective system. The challenge of implementing a risk-based approach with respect to terrorist financing is discussed in more detail at paragraphs 45 to 49 below.

34. The risk-based approach is challenging to both public and private sector entities. Such an approach requires resources and expertise to gather and interpret information on risks, both at the country and institutional levels, to develop procedures and systems, and to train personnel. It further requires that sound and well-trained judgement be exercised in the design and implementation of procedures and systems. It will certainly lead to a greater diversity in practice which should lead to innovations and improved compliance. However, it may also cause uncertainty regarding expectations, difficulty in applying uniform regulatory treatment, and a lack of understanding by customers regarding information required.

35. Implementing a risk-based approach requires that real estate agents have a sound understanding of the risks and are able to exercise sound judgement. This requires the building of expertise including for example, through training, recruitment, taking professional advice and “learning by doing”. The process will always benefit from information sharing by competent authorities and SROs. The provision of good practice guidance is also valuable. Attempting to pursue a risk-based approach without sufficient expertise may lead to flawed judgements. Real estate agents may over-estimate risk, which could lead to wasteful use of resources, or they may underestimate risk, thereby creating vulnerabilities.

36. Real estate agents may find that some staff members are uncomfortable making risk-based judgements. This may lead to overly cautious decisions, or disproportionate time spent documenting the rationale behind a decision. This may also be true at various levels of management. However, in situations where management fails to recognise or underestimates the risks, a culture may develop that allows for inadequate resources to be devoted to compliance, leading to potentially significant compliance failures.

37. Designated competent authorities and SROs should have measures in place to determine whether real estate agents have an effective decision-making process with respect to risk management, and sample testing could be used or individual decisions reviewed as a means to test the effectiveness of a real estate agent’s overall risk management. Designated competent authorities and SROs should recognise that even though appropriate risk management structures and procedures are regularly updated, and the relevant policies, procedures, and processes are followed, decisions may still be made that are incorrect in light of additional information not reasonably available at the time.

38. In implementing the risk-based approach, real estate agents should be given the opportunity to make reasonable judgements with respect to their particular situations. This may mean that no two real estate agents or no two businesses are likely to adopt the same detailed practice. Such potential diversity of practice will require that designated competent authorities and SROs make greater effort to identify and disseminate guidelines on sound practice, and may pose challenges to staff working to monitor compliance. The existence of good practice guidance, training, industry studies and other available information and materials will assist the designated competent authority or an SRO in determining whether a real estate agent has made sound risk-based judgements.

39. Recommendation 25 requires adequate feedback to be provided to the financial sector and DNFBPs. Such feedback helps institutions and businesses to more accurately assess the money laundering and terrorist financing risks and adjust their risk programmes accordingly. This in turn makes the detection of suspicious activity more likely and improves the quality of suspicious transaction reports. As well as being an essential input to any assessment of country or sector wide risks, the promptness and content of such feedback is relevant to implementing an effective risk-based approach.

***The potential benefits and potential challenges can be summarised as follows:***

Potential Benefits:

- Better management of risks
- Efficient use and allocation of resources
- Focus on real and identified threats
- Flexibility to adapt to risks that change over time

Potential Challenges:

- Identifying appropriate information to conduct a sound risk analysis
- Addressing short term transitional costs
- Greater need for more expert staff capable of making sound judgements.
- Developing appropriate regulatory response to potential diversity of practice.

### Chapter Three: FATF and the Risk-Based Approach

40. The varying degrees of risk of money laundering or terrorist financing for particular types of DNFBPs, including real estate agents, or for particular types of customers or transactions is an important consideration underlying the FATF Recommendations. According to the Recommendations, with regard to DNFBPs there are specific Recommendations where the degree of risk is an issue that a country either must take into account (if there is higher risk), or may take into account (if there is lower risk).

41. The risk-based approach is either incorporated into the Recommendations (and the Methodology) in specific and limited ways in a number of Recommendations, or it is inherently part of or linked to those Recommendations. For instance, for DNFBPs, including the real estate agents, risk is addressed in three principal areas (a) Customer Due Diligence (R.5, 6, 8 and 9); (b) businesses' internal control systems (R.15); and (c) the approach of oversight/monitoring of DNFBPs, including real estate agents (R.24).

#### *Customer Due Diligence (R. 5, 6, 8 and 9)*

42. Risk is referred to in several forms:

- a) Higher risk – Under Recommendation 5, a country must require its DNFBPs, including real estate agents, to perform enhanced due diligence for higher-risk customers, business relationships or transactions. Recommendation 6 (politically exposed persons) is an example of this principle and is considered to be a higher risk scenario requiring enhanced CDD.
- b) Lower risk – A country may also permit its DNFBPs, including real estate agents, to take lower risk into account in deciding the extent of the CDD measures they will take (see Methodology criteria 5.9). Real estate agents may thus reduce or simplify (but not avoid completely) the required measures.
- c) Risk arising from innovation – Under Recommendation 8, a country must require its DNFBPs, including real estate agents, to give special attention to the risks arising from new or developing technologies that might favour anonymity.
- d) Risk assessment mechanism – The FATF standards expect that there will be an adequate mechanism by which designated competent authorities or SROs assess or review the procedures adopted by the real estate agents to determine the degree of risk and how they manage that risk, as well as to review the actual determinations themselves. This expectation applies to all areas where the risk-based approach is applied. In addition, where the designated competent authorities or SROs have issued guidelines on a suitable approach to risk-based procedures, it will be important to establish that these have been followed. The Recommendations also recognise that country risk is a necessary component of any risk assessment mechanism (R.5 & 9).

#### *Internal control systems (R.15)*

43. Under Recommendation 15, the development of “appropriate” internal policies and training and audit systems will need to include a specific, and ongoing, consideration of the potential money laundering and terrorist financing risks associated with customers, products and services, geographic areas of operation and so forth. The Interpretative Note to Recommendation 15 makes it clear that a country may allow DNFBPs, including real estate agents, to have regard to the money laundering and terrorist financing risks, and to the size of the business, when determining the type and extent of measures required.

*Regulation and oversight by designated competent authorities or SROs (R.24)*

44. Countries should ensure that real estate agents are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. In determining whether the system for monitoring and ensuring compliance is appropriate, regard may be had to the risk of money laundering or terrorist financing in a given business, *i.e.* if there is a proven low risk then lesser monitoring measures may be taken.

Applicability of the risk-based approach to terrorist financing

45. There are both similarities and differences in the application of a risk-based approach to terrorist financing and money laundering. They both require a process for identifying and assessing risk. However, the characteristics of terrorist financing make its detection and the implementation of mitigation strategies challenging due to considerations such as the relatively low value of transactions involved in terrorist financing, or the fact that funds can be derived from legitimate as well as illicit sources.

46. Funds that are used to finance terrorist activities may be derived either from criminal activity or may be from legal sources, and the nature of the funding sources may vary according to the type of terrorist organisation. Where funds are derived from criminal activity, then traditional monitoring mechanisms that are used to identify money laundering may also be appropriate for terrorist financing, though the activity, which may be indicative of suspicion, may not be identified as or connected to terrorist financing. It should be noted that transactions associated with the financing of terrorism may be conducted in very small amounts, which in applying a risk-based approach could be the very transactions that are frequently considered to be of minimal risk with regard to money laundering. Where funds are from legal sources, it is even more difficult to determine if they could be used for terrorist purposes. In addition, the actions of terrorists may be overt and outwardly innocent in appearance, such as the purchase of materials and services to further their goals, with the only covert fact being the intended use of such materials and services purchased. Therefore, while terrorist funds may be derived from criminal activity as well as from legitimately sourced funds, transactions related to terrorist financing may not exhibit the same traits as conventional money laundering. However, in all cases, it is not the responsibility of real estate agents to determine the type of underlying criminal activity, or intended terrorist purpose; rather, the real estate agent's role is to identify and report the suspicious activity. The FIU and law enforcement authorities will then examine the matter further and determine if there is a link to terrorist financing.

47. The ability of real estate agents to detect and identify potential terrorist financing transactions without guidance on terrorist financing typologies or unless acting on specific intelligence provided by the authorities is significantly more challenging than is the case for potential money laundering and other suspicious activity. Detection efforts, absent specific national guidance and typologies, are likely to be based on monitoring that focuses on transactions with countries or geographic areas where terrorists are known to operate or on the other limited typologies available (many of which are indicative of the same techniques as are used for money laundering).

48. Particular individuals, organisations or countries may be the subject of terrorist financing sanctions, in a particular country. In such cases a listing of individuals, organisations or countries to which sanctions apply and the obligations on real estate agents to comply with those sanctions are decided by individual countries and are not a function of risk. Real estate agents may commit a criminal offence if they undertake business with a listed individual, organisation or country or its agent, in contravention of applicable sanctions.

49. For these reasons, this Guidance has not comprehensively addressed the application of a risk-based process to terrorist financing. It is clearly preferable that a risk-based approach be applied where reasonably practicable, but further consultation with key stakeholders is required to identify a more comprehensive set of indicators of the methods and techniques used for terrorist financing,

which can then be factored into strategies to assess terrorist financing risks and devise measures to mitigate them. DNFBPs, including real estate agents, would then have an additional basis upon which to more fully develop and implement a risk-based process for terrorist financing.

#### Limitations to the risk-based approach

50. There are circumstances in which the application of a risk-based approach will not apply, or may be limited. There are also circumstances in which the application of a risk-based approach may not apply to the initial stages of a requirement or process, but then will apply to subsequent stages. The limitations to the risk-based approach are usually the result of legal or regulatory requirements that mandate certain actions to be taken.

51. Requirements to freeze assets of identified individuals or entities, in countries where such requirements exist, are independent of any risk assessment. The requirement to freeze is absolute and cannot be impacted by a risk-based process. Similarly, while the identification of potential suspicious transactions can be advanced by a risk-based approach, the reporting of suspicious transactions, once identified, is not risk-based. See paragraphs 131 to 134.

52. There are several components to customer due diligence – identification and verification of the identity of customers and beneficial owners, obtaining information on the purposes and intended nature of the business relationships, and conducting ongoing due diligence. Of these components, the identification and verification of identity of customers are requirements which must be completed regardless of the risk-based approach. However, in relation to all other CDD components, a reasonably implemented risk-based approach may allow for a determination of the extent and quantity of information required, and the mechanisms to be used to meet these minimum standards. Once this determination is made, the obligation to keep records and documents that have been obtained for due diligence purposes, as well as transaction records, is not dependent on risk levels.

53. Countries may allow real estate agents to apply reduced or simplified measures where the risk of money laundering or terrorist financing is lower. However, these reduced or simplified measures do not necessarily apply to all aspects of customer due diligence. Moreover, where these exemptions are subject to certain conditions being met, it is necessary to verify that these conditions apply, and where the exemption applies under a certain threshold, measures should be in place to prevent transactions from being split artificially to avoid the threshold. In addition, information beyond customer identity, such as customer location, may be needed to adequately assess risk. This will be an iterative process: the preliminary information obtained about a customer should be sufficient to determine whether to go further, and in many cases customer monitoring will provide additional information.

54. Some form of monitoring is required in order to detect unusual and hence possibly suspicious transactions. Even in the case of lower risk customers, monitoring is needed to verify that transactions match the initial low risk profile and if not, trigger a process for appropriately revising the customer's risk rating. Equally, risks for some customers may only become evident once a relationship with a customer has begun. This makes appropriate and reasonable monitoring of customer transactions an essential component of a properly designed risk-based approach; however, within this context it should be understood that not all transactions, accounts or customers will be monitored in exactly the same way. Moreover, where there is an actual suspicion of money laundering or terrorist financing, this could be regarded as a higher risk scenario, and enhanced due diligence should be applied regardless of any threshold or exemption.

#### Distinguishing risk-based monitoring and risk-based policies and processes

55. Risk-based policies and processes should be distinguished from risk-based monitoring by designated competent authorities or SROs. There is a general recognition within supervisory/monitoring practice that resources should be allocated taking into account the risks posed

by individual businesses. The methodology adopted by the designated competent authorities or SROs to determine allocation of monitoring resources should cover the business focus, the risk profile and the internal control environment, and should permit relevant comparisons between businesses. The methodology used for determining the allocation of resources will need updating on an ongoing basis so as to reflect the nature, importance and scope of the risks to which individual businesses are exposed. Consequently, this prioritisation should lead designated competent authorities or SROs to focus increased regulatory attention on businesses that engage in activities assessed to present a higher risk of money laundering or terrorist financing.

56. However, it should also be noted that the risk factors taken into account to prioritise the designated competent authorities' or SROs' work will depend not only on the intrinsic risk associated with the activity undertaken, but also on the quality and effectiveness of the risk management systems put in place to address such risks.

57. Since designated competent authorities or SROs should have already assessed the quality of risk management controls throughout the real estate industry, it is reasonable that their assessments of these controls be used, at least in part, to inform money laundering and terrorist financing risk assessments conducted by individual real estate agents or firms.

<p><b>Summary box: A risk-based approach to countering money laundering and terrorist financing at the national level: key elements for success</b></p> <ul style="list-style-type: none"><li>• Real estate agents, designated competent authorities or SROs should have access to reliable and actionable information about the threats.</li><li>• There must be emphasis on cooperative arrangements among the policy makers, law enforcement, regulators, and the private sector.</li><li>• Authorities should publicly recognise that the risk-based approach will not eradicate all elements of risk.</li><li>• Authorities have a responsibility to establish an atmosphere in which real estate agents need not be afraid of regulatory sanctions where they have acted responsibly and implemented adequate internal systems and controls.</li><li>• Designated competent authorities' or SROs' supervisory staff must be well-trained in the risk-based approach, both as applied by designated competent authorities/SROs and by the real estate agents.</li></ul>
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## SECTION TWO: GUIDANCE FOR PUBLIC AUTHORITIES

### Chapter One: High-Level Principles for Creating a Risk-Based Approach

58. The application of a risk-based approach to countering money laundering and the financing of terrorism will allow designated competent authorities or SROs and real estate agents to use their resources most effectively. This chapter sets out five high-level principles that should be considered by countries when designing a risk-based approach. They could be considered as setting out a broad framework of good practice.

59. The five principles set out in this paper are intended to assist countries in their efforts to improve their AML/CFT regimes. They are not intended to be prescriptive, and should be applied in a manner that is well-considered and is appropriate to the particular circumstances of the country in question.

#### Principle one: understanding and responding to the threats and vulnerabilities: a national risk assessment

60. Successful implementation of a risk-based approach to combating money-laundering and terrorist financing depends on a sound understanding of the threats and vulnerabilities. Where a country is seeking to introduce a risk-based approach at a national level, this will be greatly aided if there is a national understanding of the risks facing the country. This understanding can flow from a national risk assessment.

61. National risk assessments should be tailored to the circumstances of each country. For a variety of reasons, including the structure of designated competent authorities or SROs and the nature of DNFBPs, including real estate agents, each country's judgements about the risks will be unique, as will their decisions about how to implement a national assessment in practice. A national assessment need not be a single formal process or document. The desired outcome is that decisions about allocating responsibilities and resources at the national level are based on a comprehensive and current understanding of the risks. Designated competent authorities and SROs, in consultation with the private sector, should consider how best to achieve this while also taking into account any risk associated with providing information on vulnerabilities in their financial and non-financial systems to money launderers, terrorist financiers, and other criminals.

#### Principle two: a legal/regulatory framework that supports the application of a risk-based approach

62. Countries should consider whether their legislative and regulatory frameworks are conducive to the application of the risk-based approach. Where appropriate the obligations imposed should be informed by the outcomes of the national risk assessment.

63. The risk-based approach does not mean the absence of a clear statement of what is required from the DNFBPs, including from real estate agents. However, under a risk-based approach, real estate agents should have a degree of flexibility to implement policies and procedures which respond appropriately to their own risk assessment. In effect, the standards implemented may be tailored and/or amended by additional measures as appropriate to the risks of an individual business. The fact that policies and procedures, in accordance to the risk levels, may be applied flexibly to different products, services, customers and locations does not mean that policies and procedures need not be clearly defined.

64. Basic minimum AML requirements can co-exist with a risk-based approach. Indeed, sensible minimum standards, coupled with scope for these to be enhanced when the risk justifies it, should be at the core of risk-based AML/CFT requirements. These standards should, however, be focused on the outcome (combating through deterrence, detection, and reporting of money laundering and terrorist financing), rather than applying legal and regulatory requirements in a purely mechanistic manner to every customer.

Principle three: design of a monitoring framework to support the application of the risk-based approach

65. Where designated competent authorities or SROs have been assigned responsibility for overseeing AML/CFT controls, countries may wish to consider whether such authorities and SROs are given the necessary authority to implement a risk-based approach to monitoring. Barriers to this may include inappropriate reliance on detailed and prescriptive requirements in the designated competent authorities' or SROs' rules. These requirements may, in turn, stem from the laws under which the designated competent authority or SRO exercises its powers.

66. Where appropriate, designated competent authorities and SROs should seek to adopt a risk-based approach to the monitoring of controls to combat money laundering and terrorist financing. This should be based on a thorough and comprehensive understanding of the types of activity carried out by real estate agents, and the money laundering and terrorist financing risks to which these are exposed. Designated competent authorities and SROs will probably need to prioritise resources based on their overall assessment of where the risks in the real estate agent's business are.

67. Designated competent authorities and SROs with responsibilities other than those related to AML/CFT will need to consider these risks alongside other risk assessments arising from the competent authority's or SRO's wider duties.

68. Such risk assessments should help the designated competent authority or SRO choose where to apply resources in its monitoring programme, with a view to using limited resources to achieve the greatest effect. A risk assessment may also indicate that the designated competent authority or SRO does not have adequate resources to deal with the risks. In such circumstances, the designated competent authority or SRO may need to obtain additional resources or adopt other strategies to manage or mitigate any unacceptable residual risks.

69. The application of a risk-based approach to monitoring requires that designated competent authorities' and SROs' staff be able to make principle-based decisions in a similar fashion to what would be expected from a real estate agent or the staff of a real estate agent's business. These decisions will cover the adequacy of the arrangements to combat money laundering and terrorist financing. As such, a designated competent authority or SRO may wish to consider how best to train its staff in the practical application of a risk-based approach to monitoring. This staff will need to be well-briefed as to the general principles of a risk-based approach, the possible methods of application, and what a risk-based approach looks like when successfully applied within the context of the national risk assessment.

Principle four: identifying the main actors and ensuring consistency

70. Countries should consider who the main stakeholders are when adopting a risk-based approach to combating money laundering and terrorist financing. These will differ from country to country. Thought should be given as to the most effective way to share responsibility between these parties, and how information may be shared to best effect. For example, consideration may be given to which body or bodies are best placed to provide guidance to real estate agents about how to implement a risk-based approach to AML/CFT.

71. A list of potential stakeholders may include the following:



- Government – This may include legislature, executive, and judiciary.
- Law enforcement agencies – This might include the police, customs, and similar agencies.
- The financial intelligence unit (FIU), security services, other similar agencies.
- Internal revenue/tax services.
- Designated competent authorities/SROs.
- The private sector – This might include real estate agents and their firms, national and international trade bodies and associations, etc.
- The public – Arrangements designed to counter money laundering and terrorist financing are ultimately designed to protect the law-abiding public. However, these arrangements may also act to place burdens on customers of real estate agents' businesses.
- Others – Those who are in a position to contribute to the conceptual basis underpinning the risk-based approach, such stakeholders may include academia and the media.

72. Clearly a government will be able to exert influence more effectively over some of these stakeholders than others. However, regardless of its capacity to influence, a government will be in a position to assess how all stakeholders can be encouraged to support efforts to combat money laundering and terrorist financing.

73. A further element is the role that governments have in seeking to gain recognition of the relevance of a risk-based approach from designated competent authorities and SROs. This may be assisted by relevant authorities making clear and consistent statements on the following issues:

- Real estate agents can be expected to have flexibility to adjust their internal systems and controls taking into consideration lower and high risks, so long as such systems and controls are reasonable. However, there are also minimum legal and regulatory requirements and elements that apply irrespective of the risk level, for example suspicious transaction reporting and minimum standards of customer due diligence.
- Acknowledging that a real estate agent's ability to detect and deter money laundering and terrorist financing may sometimes be necessarily limited and that information on risk factors is not always robust or freely available. There can therefore be reasonable policy and monitoring expectations about what a real estate agent with good controls aimed at preventing money laundering and the financing of terrorism is able to achieve. A real estate agent may have acted in good faith to take reasonable and considered steps to prevent money laundering, and documented the rationale for its decisions, and yet still be abused by a criminal.
- Acknowledging that not all high-risk situations are identical and as a result will not always require the application of precisely the same type of enhanced due diligence.

#### Principle five: information exchange between the public and private sector

74. Effective information exchange between the public and private sector will form an integral part of a country's strategy for combating money laundering and terrorist financing. In many cases, it will allow the private sector to provide competent authorities and SROs with information they identify as a result of previously provided government intelligence.

75. Public authorities, whether law enforcement agencies, designated competent authorities or other bodies, have privileged access to information that may assist real estate agents to reach informed judgements when pursuing a risk-based approach to counter money laundering and terrorist financing. Likewise, real estate agents are able to understand their clients' businesses reasonably well. It is desirable that public and private bodies work collaboratively within applicable law and regulatory frameworks to identify what information is valuable to help combat money laundering and terrorist financing, and to develop means by which this information might be shared (consistent with applicable laws and regulations) in a timely and effective manner.

76. To be productive, information exchange between the public and private sector should be accompanied by appropriate exchanges among public authorities. FIUs, designated competent authorities, SROs, and law enforcement agencies should be able to share information and feedback on results and identified vulnerabilities, so that consistent and meaningful inputs can be provided to the private sector. All parties should of course consider what safeguards are needed to adequately protect sensitive information held by public bodies from being disseminated too widely.

77. Relevant stakeholders should seek to maintain a dialogue so that it is well understood what information has proved useful in combating money laundering and terrorist financing. For example, the types of information that might be usefully shared between the public and private sector would include, if available:

- Assessments of country risk.
- Typologies or assessments of how money launderers and terrorists have abused the DNFBPs, especially real estate agents.
- Feedback on suspicious transaction reports and other relevant reports.
- Targeted unclassified intelligence. In specific circumstances, and subject to appropriate safeguards and a country's legal and regulatory framework, it may also be appropriate for authorities to share targeted confidential information with real estate agents.
- Countries, persons or organisations whose assets or transactions should be frozen.
- Identifying suspicious transactions in the event that large cash elements are involved.

78. When choosing what information can be properly and profitably shared, public authorities may wish to emphasise to real estate agents that information from public bodies should inform, but not be a substitute for, real estate agents' own judgements. For example, countries may decide not to create what are perceived to be definitive country-approved lists of low risk customer types. Instead, public authorities may prefer to share information on the basis that this will be one input into the real estate agents' decision-making processes, along with any other relevant information that is available.

## **Chapter Two: Implementation of the Risk-Based Approach**

### Assessment of risk to inform national priorities:

79. A risk-based approach should be built on sound foundations: effort must first be made to ensure that the risks are well understood. As such, a risk-based approach should be based on an assessment of the threats. This is true whenever a risk-based approach is applied, at any scale, whether by countries or individual firms. A country's approach should be informed by its efforts to develop an understanding of the risks in that country. This can be considered as a "national risk assessment".

80. A national risk assessment should be regarded as a description of fundamental background information to assist designated competent authorities, SROs, law enforcement authorities, the FIU and real estate agents to ensure that decisions about allocating responsibilities and resources at the national level are based on a practical, comprehensive and up-to-date understanding of the risks.

81. A national risk assessment should be tailored to the circumstances of the individual country, both in how it is executed and its conclusions. Factors that may influence the risk of money laundering and terrorist financing in a country could include the following:

- Political environment.
- Legal environment.
- A country's economic structure.
- Cultural factors and the nature of civil society.
- Sources, location and concentration of criminal activity.
- Size and nature of the activity carried out by real estate agents.
- Ownership structure of real estate agents' businesses.
- Corporate governance arrangements in relation to real estate agents and the wider economy.
- The nature of payment systems and the prevalence of cash-based transactions.
- The ability of government agencies to recognise the nature of payment systems and the prevalence of cash-based transactions and its ability to act upon the availability of such intelligence.
- Geographical spread of real estate agents' operations and customers.
- Types of products and services offered by real estate agents.
- Types of customers serviced by real estate agents.
- Types of predicate offences.
- Amounts of illicit money generated domestically.
- Amounts of illicit money generated abroad and laundered domestically.
- Main channels or instruments used for laundering or financing terrorism.
- Sectors of the legal economy affected.
- Underground/informal areas in the economy.

82. Countries should also consider how an understanding of the risks of money laundering and terrorist financing can be best achieved at the national level. Relevant questions could include: which body or bodies will be responsible for contributing to this assessment? How formal should an assessment be? Should the designated competent authority's or SRO's view be made public? These are all questions for the designated competent authority or SRO to consider.

83. The desired outcome is that decisions about allocating responsibilities and resources at the national level are based on a comprehensive and up-to-date understanding of the risks. To achieve the desired outcome, designated competent authorities or SROs should ensure that they identify and provide real estate agents with the information need to design and implement measures to mitigate the identified risks.

84. Developing and operating a risk-based approach involves forming judgements. It is important that these judgements are well informed. It follows that, to be effective, the risk-based approach should be information-based and include intelligence where appropriate. Effort should be made to ensure that risk assessments are based on fresh and accurate information. Governments, in partnership with law enforcement bodies, FIUs, designated competent authorities/SROs and the real estate agents themselves, are well placed to bring their knowledge and expertise to bear in developing a risk-based approach that is appropriate for their particular country. Their assessments will not be static and will change over time, depending on how circumstances develop and how the threats evolve. As such, countries should facilitate the sharing of information among different agencies and entities, so that there are no institutional impediments to information dissemination.

85. Whatever form they take, a national assessment of the risks, along with measures to mitigate those risks, can inform how resources are applied to combat money laundering and terrorist financing, taking into account other relevant country policy goals. It can also inform how these resources are most effectively assigned to different public bodies and SROs, and how those bodies make use of those resources in an effective manner.

86. As well as assisting designated competent authorities and SROs to decide how to allocate funds to combat money laundering and terrorist financing, a national risk assessment can also inform decision-makers on the best strategies for implementing the regulatory/monitoring regime to address the risks identified. An over-zealous effort to counter the risks could be damaging and counter-productive, placing unreasonable burdens on industry. Alternatively, less aggressive efforts may not be sufficient to protect to societies from the threats posed by criminals and terrorists. A sound understanding of the risks at the national level could help obviate these dangers.

#### Effective systems for monitoring and ensuring compliance with AML/CFT requirements – General Principles

87. FATF Recommendation 24 requires that real estate agents be subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. In determining the effective systems, regard may be had to the risk of money laundering or terrorist financing in the sector. There should be a designated competent authority or SRO responsible for monitoring and ensuring its functions, including powers to monitor and sanction.

#### *Defining the acceptable level of risk*

88. The level of AML/CFT risk will generally be affected by both internal and external risk factors. For example, risk levels may be increased by internal risk factors such as weak compliance resources, inadequate risk controls and insufficient senior management involvement. External level risks may rise due to factors such as the action of third parties and/or political and public developments.

89. As described in Section One, all activity involves an element of risk. Designated competent authorities and SROs should not prohibit real estate agents from conducting business with high risk customers as long as appropriate policies, procedures and processes to manage the attendant risks are in place. However, this does not exclude the need to implement basic minimum requirements. For instance, FATF Recommendation 5 (that applies to real estate agents through the incorporation of R.5 into R.12) states that “where [the real estate agent] is unable to comply with (CDD requirements), it should not open the account, commence business relations or perform the transaction; or should terminate the business relationship; and should consider making a suspicious transaction report in relation to the customer.” So the level of risk should strike an appropriate balance between the extremes of not accepting customers, and conducting business with unacceptable or unmitigated risk.

90. Designated competent authorities and SROs expect real estate agents to put in place effective policies, programmes, procedures and systems to mitigate the risk and acknowledge that even with effective systems not every suspect transaction will necessarily be detected. Real estate agents must rely on designated competent authorities and SROs to take appropriate measures once a report of suspicious activity has been filed and the risk-based approach no longer applies. Designated competent authorities and SROs should also ensure that those policies, programmes, procedures and systems are applied effectively to prevent real estate agents from becoming conduits for illegal proceeds and ensure that they keep records and make reports that are of use to national authorities in combating money laundering and terrorist financing. Efficient policies and procedures will reduce the level of risks, but are unlikely to eliminate them completely. Assessing money laundering and terrorist financing risks requires judgement and is not an exact science. Monitoring aims at detecting unusual or suspicious transactions among an extremely large number of legitimate transactions, furthermore the demarcation of what is unusual may not always be straightforward since what is “customary” may vary depending on the customers’ business. This is why developing an accurate customer profile is important in managing a risk-based system. Moreover, procedures and controls are frequently based on previous typologies cases, but criminals will adapt their techniques, which may quickly limit the utility of such typologies.

91. Additionally, not all high risk situations are identical, and therefore will not always require precisely the same level of enhanced due diligence. As a result, designated competent authorities/SROs will expect real estate agents to identify individual high risk categories and apply specific and appropriate mitigation measures. Further information on the identification of specific risk categories is provided in Section Three, “Guidance for Real Estate Agents on Implementing a Risk-Based Approach.”

*Proportionate Supervisory/Monitoring Actions to support the Risk-Based Approach*

92. Designated competent authorities and SROs should seek to identify weaknesses through an effective programme of both on-site and off-site supervision, and through analysis of internal and other available information.

93. In the course of their examinations, designated competent authorities and SROs should review a real estate agent’s AML/CFT risk assessments, as well as its policies, procedures and control systems to arrive at an overall assessment of the risk profile of the real estate agent’s business and the adequacy of its mitigation measures. Where available, assessments carried out by or for real estate agents may be a useful source of information. The designated competent authority/SRO assessment of management’s ability and willingness to take necessary corrective action is also a critical determining factor. Designated competent authorities and SROs should use proportionate actions to ensure proper and timely correction of deficiencies, taking into account that identified weaknesses can have wider consequences. Generally, systemic breakdowns or inadequate controls will result in the most severe monitoring response.

94. Nevertheless, it may be the case that the lack of detection of an isolated high risk transaction, or of transactions of an isolated high risk customer, will in itself be significant, for instance where the amounts are significant, or where the money laundering and terrorist financing typology is well known, or where a scheme has remained undetected for a long time. Such a case might indicate an accumulation of weak risk management practices or regulatory breaches regarding the identification of high risks, monitoring, staff training and internal controls, and therefore, might alone justify action to ensure compliance with the AML/CFT requirements.

95. Designated competent authorities and SROs can and should use their knowledge of the risks associated with products, services, customers and geographic locations to help them evaluate the real estate agent’s money laundering and terrorist financing risk assessment, with the understanding, however, that they may possess information that has not been made available to the real estate agents, or the real estate

agents has been unable to acquire, and, therefore, real estate agents would not have been able to take such information into account when developing and implementing a risk-based approach. Designated competent authorities and SROs (and other relevant stakeholders) are encouraged to use that knowledge to issue guidelines to assist real estate agents in managing their risks. Where real estate agents are permitted to determine the extent of the CDD measures on a risk sensitive basis, this should be consistent with guidelines issued by their designated competent authorities and SROs<sup>1</sup>. Guidance designed specifically for real estate agents is likely to be the most effective. An assessment of the risk-based approach will, for instance, help identify cases where the real estate agents use excessively narrow risk categories that do not capture all existing risks, or adopt criteria that lead to the identification of a large number of higher risk relationships, but without providing for adequate additional due diligence measures.

96. In the context of the risk-based approach, the primary focus for designated competent authorities and SROs should be to determine whether or not the real estate agent's AML/CFT compliance and risk management programme is adequate to: (a) meet the minimum regulatory requirements, and (b) appropriately and effectively mitigate the risks. The monitoring goal is not to prohibit high risk activity, but rather to be confident that firms have adequately and effectively implemented appropriate risk mitigation strategies.

97. Under FATF Recommendation 24, designated competent authorities and SROs should have adequate powers to perform their functions, including the power to impose adequate sanctions for failure to comply with statutory and regulatory requirements to combat money laundering and terrorist financing. Fines and/or penalties are not appropriate in all regulatory actions to correct or remedy AML/CFT deficiencies. However, designated competent authorities and SROs must have the authority and willingness to apply fines and/or penalties in cases where substantial deficiencies exist. Actions may also take the form of a remedial program through the normal monitoring processes.

98. In considering the above factors it is clear that proportionate monitoring will be supported by two central features:

*a) Regulatory Transparency*

99. In the implementation of proportionate actions, regulatory transparency will be of paramount importance. Designated competent authorities and SROs are aware that real estate agents, while looking for operational freedom to make their own risk judgements, will also seek guidance on regulatory obligations. As such, the designated competent authority/SRO with AML/CFT supervisory responsibilities should seek to be transparent in setting out what it expects, and will need to consider appropriate mechanisms of communicating these messages. For instance, this may be in the form of high-level requirements, based on desired outcomes, rather than detailed processes.

100. No matter what individual procedure is adopted, the guiding principle will be that there is an awareness of legal responsibilities and regulatory expectations. In the absence of this transparency there is the danger that monitoring actions may be perceived as either disproportionate or unpredictable which may undermine even the most effective application of the risk-based approach by real estate agents.

*b) Staff Training of Designated Competent Authorities, SROs, and Enforcement Staff*

101. In the context of the risk-based approach, it is not possible to specify precisely what a real estate agent has to do, in all cases, to meet its regulatory obligations. Thus, a prevailing consideration will be how best to ensure the consistent implementation of predictable and proportionate monitoring actions. The

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<sup>1</sup> FATF Recommendations 5 and 25, Methodology Essential Criteria 25.1 and 5.12.

effectiveness of monitoring training will therefore be important to the successful delivery of proportionate supervisory/monitoring actions.

102. Training should aim to allow designated competent authorities/SRO staff to form sound comparative judgements about AML/CFT systems and controls. It is important in conducting assessments that designated competent authorities and SROs have the ability to make judgements regarding management controls in light of the risks assumed by real estate agents and their firms and considering available industry practices. Designated competent authorities and SROs might also find it useful to undertake comparative assessments so as to form judgements as to the relative strengths and weaknesses of different firms or business arrangements.

103. The training should include instructing designated competent authorities and SROs about how to evaluate whether senior management has implemented adequate risk management measures, and determine if the necessary procedures and controls are in place. The training should also include reference to specific guidance, where available. Designated competent authorities and SROs also should be satisfied that sufficient resources are in place to ensure the implementation of effective risk management.

104. To fulfil these responsibilities, training should enable designated competent authorities' and SROs' monitoring staff to adequately assess:

- i. The quality of internal procedures, including ongoing employee training programmes and internal audit, compliance and risk management functions.
- ii. Whether or not the risk management policies and processes are appropriate in light of the real estate agents' risk profile, and are periodically adjusted in light of changing risk profiles.
- iii. The participation of senior management to confirm that they have undertaken adequate risk management, and that the necessary procedures and controls are in place.

**SECTION THREE:**  
**GUIDANCE FOR REAL ESTATE AGENTS**  
**ON IMPLEMENTING A RISK-BASED APPROACH**

**Chapter One: Risk Categories**

105. In order to implement a reasonable risk-based approach, real estate agents should identify the criteria to assess potential money laundering and terrorist financing risks. Identification of the money laundering and terrorist financing risks, to the extent that such terrorist financing risk can be identified, of customers or categories of customers, and transactions will allow real estate agents to determine and implement proportionate measures and controls to mitigate these risks.

106. Money laundering and terrorist financing risks may be measured using various categories. Application of risk categories provides strategy for managing potential risks by enabling real estate agents to subject customers to proportionate controls and oversight. The most commonly used risk categories are: country or geographic risk, customer risk, and transaction risk. The weight given to each category (individually or in combination) in assessing the overall risk of potential money laundering and terrorist financing may vary from one real estate agent to another, depending upon their respective circumstances. Consequently, real estate agents will have to make their own determination regarding risk weighting. Parameters set by law or regulation may limit a real estate agent's discretion.

107. While there is no agreed upon set of risk categories for real estate agents, the examples provided herein are the most commonly identified risk categories. There is no one single methodology to apply these risk categories, and the application of these risk categories is intended to provide a strategy for managing potential risks. The following risk categories can indicate a higher risk of money laundering or terrorist financing, dependent upon all of the surrounding circumstances, taking into account the norms of the market at any given time.

Country/geographic risk

108. Potential elements contributing to risk include:

- Location of property(s) in relation to the buyer. Different countries pose different levels and types of risks pertaining to cross border, non-face to face transactions, *e.g.* some countries have higher or lower levels of criminality and/or regulation.
- Location of the buyer and seller.

109. There is no universally agreed definition by either competent authorities, SROs, or real estate agents that prescribes whether a particular country or geographic area represents a higher risk. Country risk, in conjunction with other risk factors, provides useful information as to potential money laundering and terrorist financing risks. Factors that may result in a determination that a country poses a higher risk include:



- Countries subject to sanctions, embargoes or similar measures issued by, for example, the United Nations (UN). In addition, in some circumstances, countries subject to sanctions or measures similar to those issued by bodies such as the UN, but which may not be universally recognised, may be given credence by a real estate agent because of the standing of the issuer and the nature of the measures.
- Countries identified by credible sources<sup>2</sup> as lacking appropriate AML/CFT laws, regulations and other measures.
- Countries identified by credible sources as providing funding or support for terrorist activities that have designated terrorist organisations operating within them.
- Countries identified by credible sources as having significant levels of corruption, or other criminal activity.
- Countries where there is no mandatory registration of real property.

### Customer risk

110. The behaviour and motivations of customers may be a source of money laundering or terrorist financing risk. However, agents may also form concerns or suspicions about the other parties in a transaction, which may need to be reported to their own compliance office (often referred to as the Money Laundering Reporting Officer, depending on applicable laws and firms' procedures). Mitigation of customer risk primarily centres on CDD, including customer identification.

111. The main customer risk categories are:

- Significant and unexplained geographic distance between the agent and the location of the customer.
- Customers where the structure or nature of the entity or relationship makes it difficult to identify the true owner or controlling interest.
- Cash intensive businesses.
- Charities and other non-profit organisations that are not subject to monitoring or supervision.
- The use of intermediaries who are not subject to adequate AML/CFT laws and measures and who are not adequately supervised.
- Politically exposed persons (PEPs).

### Transaction risk

112. This category of risk is associated with the factors related to the property, the financing of the transaction and the parties to the transaction.

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<sup>2</sup> "Credible sources" refers to information that is produced by well-known bodies that generally are regarded as reputable and that make such information publicly and widely available. In addition to the Financial Action Task Force and FATF-style regional bodies, such sources may include, but are not limited to, supra-national or international bodies such as the International Monetary Fund, the World Bank and the Egmont Group of Financial Intelligence Units, as well as relevant national government bodies and non-governmental organisations. The information provided by these credible sources does not have the effect of law or regulation and should not be viewed as an automatic determination that something is of higher risk.

- Speed of the transaction (transactions that are unduly expedited without a reasonable explanation may be higher risk).
- Type of properties (residential or commercial, vacant land, investment, high-turnover properties, multi-unit properties for lettings/leases).
- Successive transactions, especially of same property in short period of time with unexplained changes in value.
- Conversion of properties into smaller units.
- Introduction of unknown parties at a late stage of transactions, *e.g.* arrangements made between purchasers.
- Third-party vehicles (*i.e.* trusts) used to obscure true ownership of buyer.
- Under- or over-valued transactions.
- Sale of properties immediately before restraint or insolvency.
- Property value not in the profile of the customer.

113. Financing risk is associated with the factors related to the funding and/or source of funding relative to a transaction. Potential elements contributing to financing risk include:

- Location of client's and/or customer's source of funds.
- Unusual sources, *e.g.* funds obtained from unknown individuals or unusual organizations.
- Purchase with large amounts of cash.
- Cash deposits or money orders from unusual sources or countries as identified under country/geographic risks.
- Use of complex loans, or other obscure means of finance, versus loans from regulated financial institutions.
- Unexplained changes in financing arrangements.

114. Financing practices vary between countries, and cultural differences must be recognised. While in some markets, large (or all cash) transactions may seem higher risk, this may be common in other markets, particularly where the currency may fluctuate a great deal or there is no well-functioning mortgage market.

115. Agents who are involved at any level in the obtaining, processing or closing of a loan, mortgage or other financial instrument must consider the specific risks that raises, and make reference to guidance for financial service providers. Real estate agents who handle purchase funds must also ensure that their policies and procedures are sufficiently robust to account for the additional risk this poses.

116. In some national systems it is a requirement or common practice that other professions or businesses with CDD requirements under the FATF Recommendations are involved with the transactions, predominantly lawyers, notaries, and financial institutions. This involvement of more than one profession or business might have implications regarding CDD and might reduce risk.

### Variables that impact upon risk

117. There are a number of variables that may impact upon these risk categories, dependent upon all of the surrounding circumstances:

- Involvement of other parties, *e.g.* financial institutions, lawyers or notaries, and whether they are subject to AML/CFT requirements.
- How the client was introduced to the agent.
- Method of communication between client and agent, *e.g.* email or personal contact.
- Whether the client is a PEP.
- Whether there is a beneficial owner that is different from the direct customer.
- The products/services used by the client or the purchaser.
- The person with whom the real estate agent has the relationship, for example legal persons or arrangements with no clear structure might pose a higher risk than a natural person.

### Controls for higher risk situations

118. Real estate agents should implement appropriate measures and controls to mitigate the potential money laundering risks of those customers that are determined to be higher risk as the result of the agent's risk-based approach. These measures and controls may include:

- Increased awareness by the real estate agent of higher risk customers and transactions within business lines across the institution.
- Increased levels of know your customer (KYC) or enhanced due diligence.
- Escalation for approval of the establishment of an account or relationship.
- Increased monitoring of transactions.
- Increased levels of ongoing controls and frequency of reviews of relationships.
- The same measures and controls may often address more than one of the risk criteria identified, and it is not necessarily expected that real estate agents establish specific controls targeting each and every risk criteria.

## **Chapter Two: Application of Risk-Based Approach**

119. Real estate agents should conduct risk assessments of their business taking into account the following factors:

- The size of their business, *e.g.* the financial value of the transactions facilitated.
- Nature of business, overseas and/or domestic, residential and/or commercial.
- How instructions are obtained, *e.g.* through advertising, or through referrals.

120. Risk mitigation policies and procedures should be devised and implemented in the following areas. The effectiveness of these policies and procedures should be kept under review:

## Customer due diligence

121. Customer Due Diligence/Know Your Customer is intended to enable a real estate agent to form a reasonable belief that it knows the true identity of each customer. In the normal course of acting for customers real estate agents may also learn surrounding information which may be helpful in terms of AML/CFT, *e.g.* the reason for the sale/purchase<sup>3</sup>, and/or the source of funding.

122. The real estate agent's procedures should include procedures to:

- i. Identify and verify the identity of each customer/client.<sup>4</sup>
- ii. Identify the beneficial owner, and take reasonable risk-based measures to verify the identity of any beneficial owner. The measures that have to be taken to verify the identity of the beneficial owner will vary depending on the risk.
- iii. Obtain appropriate additional information to understand the customer's circumstances and business, including the expected nature and level of transactions.

123. Failure to verify the identity of a beneficial owner to the real estate agent's satisfaction as a result of the lack of CDD information, could be the basis for an agent's reporting of the transaction as a suspicious transaction to the relevant authorities

124. Identification documents should be a secure form of document as recognised by the respective country (*e.g.* passport, driver's license). The extent of the verification will need to take into account the level of risk that the customer poses, and that the objective is to understand the overall ownership and control structure of the customer. These checks should be approached using a risk-based approach. This should ensure that the requirement does not become disproportionately onerous, but that greater checks are made in higher risk situations. Public sources of information may assist with checks on beneficial ownership.

125. When considering CDD, agents should bear in mind that there is unlikely to be different levels of risk between buyers and sellers in general as both sides are participating in a financial transaction, either by releasing finance from a property they already own, or by introducing purchase funds.

## Monitoring of customers and transactions

126. The degree and nature of monitoring by a real estate agent will depend on the size of the agent's business, the AML/CFT risks that it has, the monitoring method being utilised (manual, automated or some combination), and the type of activity under scrutiny. The degree of monitoring will be based on the perceived risks associated with the customer, the transactions undertaken by the customer and the location of the customer and the real property. Monitoring methodologies and processes also need to take into account the resources of the real estate agent's firm.

127. Depending upon the size of the real estate agent's business, effective monitoring may include the following:

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<sup>3</sup> Agents must be aware of the possibility of relationships between the sellers and buyers of a property who may be colluding to create a paper transaction for dishonest purposes.

<sup>4</sup> In transactions where either the vendor or purchaser is not a client/customer of a real estate agent, the agent acting in the transaction should apply reasonable risk-based CDD measures to the party that is not their client.

- Record keeping consistent with any relevant duty of care, and/or local domestic requirements or limitations.
- The role of the compliance officer (*e.g.* Money Laundering Reporting Officer or MLRO) including their function in relation to:
  - Monitoring transactions, *e.g.* routine or spot checking.
  - Making external suspicious transaction reports to the national authorities.
  - Regular reporting to senior management about AML/CFT performance.
- The role of the government in identifying cash elements of the transaction<sup>5</sup>.

### Suspicious transaction reporting

128. The reporting of suspicious transactions or activity is critical to a country's ability to utilise financial information to combat money laundering, terrorist financing and other financial crimes. Countries' reporting regimes are laid down in national law, requiring institutions to file reports when the threshold of suspicion is reached.

129. Where a legal or regulatory requirement mandates the reporting of suspicious activity once a suspicion has been formed, a report must be made and, therefore, a risk-based approach for the reporting of suspicious activity under these circumstances is not applicable.

130. A risk-based approach is, however, appropriate for the purpose of identifying suspicious activity, for example, by directing additional resources at those areas a real estate agent has identified as higher risk. As part of a risk-based approach, it is also likely that a real estate agent will utilise information provided by designated competent authorities or SROs to inform its approach for identifying suspicious activity. A real estate agent should also periodically assess the adequacy of its system for identifying and reporting suspicious transactions.

131. The requirement to make reports is supported by the following:

- Staff internal reporting line to the MLRO.
- Confidentiality of reports, *i.e.* how to deal with customers, and others involved in a transaction, after an internal or external report has been made.

### Counter financing of terrorism

132. Real estate agents should make reference to paragraphs 45 to 49 in relation to terrorist financing.

### Training and awareness

133. Real estate agents should consider the following:

- New staff, and update training for staff.
- Legal and other obligations.
- Good practice education which should include appropriate and proportional training with regard to money laundering and terrorist financing.

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<sup>5</sup> Registration of mortgages should aim to identify the cash elements of the transactions.

- What may be suspicious.

134. Recommendation 15 requires that real estate agents are provided with AML/CFT training, and it is important that agents receive appropriate and proportional training with regard to money laundering and terrorist financing.

135. Applying a risk-based approach to the various methods available for training, however, gives each real estate agent's firm additional flexibility regarding the frequency, delivery mechanisms and focus of such training. A firm should review its own workforce and available resources and implement training programmes that provide appropriate AML/CFT information that is:

- Tailored to the appropriate staff responsibility (*e.g.* customer contact or operations).
- At the appropriate level of detail.
- At a frequency related to the risk level of the transactions involved.
- Testing to assess knowledge commensurate with the detail of information provided.

### **Chapter Three: Internal Control Systems**

136. Many DNFBPs differ significantly from financial institutions in terms of size. By contrast to most financial institutions, a significant number of DNFBPs have only a few staff. This limits the resources that small businesses and professions can dedicate to the fight against money laundering and terrorist financing. For a number of DNFBPs, a single person may be responsible for the functions of front office, back office, money laundering reporting, and senior management. This particularity of DNFBPs, including real estate agents, should be taken into account in designing a risk-based framework for internal controls systems. The Interpretative Note to Recommendation 15, dealing with internal controls, specifies that the type and extent of measures to be taken for each of its requirements should be appropriate having regard to the size of the business.

137. In order for real estate agents to have effective risk-based approaches, the risk-based process must be imbedded within the internal controls of the firms. The success of internal policies and procedures will be dependent largely on internal control systems. Following are two key systems identified.

#### Culture of compliance amongst all

138. This should encompass:

- Developing, delivering, and maintaining a training program for all designated agents and employees.
- Monitoring of any government regulatory changes.
- Undertaking a regularly scheduled review of applicable compliance policies and procedures within the brokerage firms will help constitute a culture of compliance in the industry.

#### Senior management ownership

139. Strong senior management leadership and engagement in AML/CFT is an important aspect of the application of the risk-based approach. Senior management must create a culture of compliance, ensuring that staff adheres to the real estate agent firm's policies, procedures and processes designed to limit and

control risks. Within estate agencies, the front line of the transaction is with the individual agent. Therefore, policies and procedures are effective only at the point that firm/company owners and senior management support the guidance.

140. Having regard to the size of the real estate agent's firm, the framework of internal controls should:

- Provide increased focus on real estate agents' operations (products, services, customers and geographic locations) that are more vulnerable to abuse by money launderers and other criminals.
- Provide for regular review of the risk assessment and management processes, taking into account the environment within which the real estate agent operates and the activity in its market place.
- Designate an individual or individuals at management level responsible for managing AML/CFT compliance.
- Provide for an AML/CFT compliance function and review programme.
- Ensure that adequate controls are in place before new products are offered.
- Inform senior management of compliance initiatives, identified compliance deficiencies, corrective action taken, and suspicious activity reports filed.
- Provide for programme continuity despite changes in management or employee composition or structure.
- Focus on meeting all regulatory record keeping and reporting requirements, recommendations for AML/CFT compliance and provide for timely updates in response to changes in regulations.
- Implement risk-based customer due diligence policies, procedures and processes.
- Provide for adequate controls for higher risk customers, transactions and products, as necessary, such as transaction limits or management approvals.
- Enable the timely identification of reportable transactions and ensure accurate filing of required reports.
- Provide for adequate supervision of employees that handle currency transactions, complete reports, grant exemptions, monitor for suspicious activity, or engage in any other activity that forms part of the institution's AML/CFT programme.
- Incorporate AML/CFT compliance into job descriptions and performance evaluations of appropriate personnel.
- Provide for appropriate training to be given to all relevant staff.
- For groups, to the extent possible, there should be a common control framework.

## ANNEXES

### ANNEX 1 – SOURCES OF FURTHER INFORMATION

Various sources of information exist that may help governments and real estate agents in their development of a risk-based approach. Although not an exhaustive list, this section highlights a number of useful web-links that governments and real estate agents may wish to draw upon. They provide additional sources of information, and further assistance might also be obtained from other information sources such as AML/CFT assessments.

#### A. Financial Action Task Force Documents

The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. Key resources include the 40 Recommendations on Money Laundering and 9 Special Recommendations on Terrorist Financing, the Methodology for Assessing Compliance with the FATF Recommendations, the Handbook for Countries and Assessors, methods and trends (typologies) reports and mutual evaluation reports.

<http://www.fatf-gafi.org>

#### B. Other sources of information to help assist countries' and real estate agents' risk assessment of countries and cross-border activities

In determining the levels of risks associated with particular country or cross border activity, real estate agents and governments may draw on a range of publicly available information sources, these may include reports that detail observance of international standards and codes, specific risk ratings associated with illicit activity, corruption surveys and levels of international cooperation. Although not an exhaustive list the following are commonly utilised:

- IMF and World Bank Reports on observance of international standards and codes (Financial Sector Assessment Programme):
  - World Bank reports: <http://www1.worldbank.org/finance/html/cntrynew2.html>
  - International Monetary Fund: <http://www.imf.org/external/np/rosc/rosc.asp?sort=topic#RR>
  - Offshore Financial Centres (OFCs) IMF staff assessments  
[www.imf.org/external/np/ofca/ofca.asp](http://www.imf.org/external/np/ofca/ofca.asp)
- Mutual evaluation reports issued by FATF Style Regional Bodies:



1. Asia/Pacific Group on Money Laundering (APG)  
<http://www.apgml.org/documents/default.aspx?DocumentCategoryID=8>
  2. Caribbean Financial Action Task Force (CFATF)  
<http://www.cfatf.org/profiles/profiles.asp>
  3. The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)  
<http://www.coe.int/moneyval>
  4. Eurasian Group (EAG)  
<http://www.eurasiangroup.org/index-7.htm>
  5. GAFISUD  
<http://www.gafisud.org/miembros.htm>
  6. Middle East and North Africa FATF (MENAFATF)  
<http://www.menafatf.org/TopicList.asp?cType=train>
  7. The Eastern and South African Anti Money Laundering Group (ESAAMLG)  
<http://www.esaamlg.org/>
  8. Groupe Inter-gouvernemental d'Action contre le Blanchiment d'Argent (GIABA)  
<http://www.giabasn.org>
- OECD Sub Group of Country Risk Classification (a list of country of risk classifications published after each meeting)  
[http://www.oecd.org/document/49/0,2340,en\\_2649\\_34171\\_1901105\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/49/0,2340,en_2649_34171_1901105_1_1_1_1,00.html)
  - International Narcotics Control Strategy Report (published annually by the US State Department)  
<http://www.state.gov/p/inl/rls/nrcrpt/>
  - Egmont Group membership – Coalition of FIU's that participate in regular information exchange and the sharing of good practice, acceptance as a member of the Egmont Group is based a formal procedure that countries must go through in order to be acknowledged as meeting the Egmont definition of an FIU.  
<http://www.egmontgroup.org/>
  - Signatory to the United Nations Convention against Transnational Organized Crime  
[http://www.unodc.org/unodc/crime\\_cicp\\_signatures\\_convention.html](http://www.unodc.org/unodc/crime_cicp_signatures_convention.html)
  - The Office of Foreign Assets Control ("OFAC") of the US Department of the Treasury economic and trade, Sanctions Programmes  
<http://www.ustreas.gov/offices/enforcement/ofac/programs/index.shtml>
  - Consolidated list of persons, groups and entities subject to EU Financial Sanctions  
[http://ec.europa.eu/comm/external\\_relations/cfsp/sanctions/list/consol-list.htm](http://ec.europa.eu/comm/external_relations/cfsp/sanctions/list/consol-list.htm)
  - UN Security Council Sanctions Committee – Country Status:  
<http://www.un.org/sc/committees/>

## ANNEX 2 – GLOSSARY OF TERMINOLOGY

### **Beneficial Owner**

The natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.

### **Competent authorities**

*Competent authorities* refers to all administrative and law enforcement authorities concerned with combating money laundering and terrorist financing, including the FIU and supervisors.

### **Country**

All references in the FATF Recommendations and in this Guidance to *country* or *countries* apply equally to territories or jurisdictions.

### **Designated Non-Financial Businesses and Professions (DNFBPs)**

- a. Casinos (which also includes internet casinos).
- b. Real estate agents.
- c. Dealers in precious metals.
- d. Dealers in precious stones.
- e. Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to ‘internal’ professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering.
- f. Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under these Recommendations, and which as a business, provide any of the following services to third parties:
  - Acting as a formation agent of legal persons.
  - Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons.
  - Providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement.
  - Acting as (or arranging for another person to act as) a trustee of an express trust.
  - Acting as (or arranging for another person to act as) a nominee shareholder for another person.

## **FATF Recommendations**

Refers to the FATF Forty Recommendations and the FATF Nine Special Recommendations on Terrorist Financing.

## **Identification data**

Reliable, independent source documents, data or information will be referred to as “identification data”.

## **Legal Persons**

*Legal persons* refers to bodies corporate, foundations, anstalt, partnerships, or associations, or any similar bodies that can establish a permanent customer relationship with a financial institution or otherwise own property.

## **Politically Exposed Persons (PEPS)**

Individuals who are or have been entrusted with prominent public functions in a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves. The definition is not intended to cover middle ranking or more junior individuals in the foregoing categories.

## **Self-regulatory organisation (SRO)**

An *SRO* is a body that represents a profession (*e.g.* lawyers, notaries, other independent legal professionals or accountants), and which is made up of member professionals, has a role in regulating the persons that are qualified to enter and who practise in the profession, and also performs certain supervisory or monitoring type functions. For example, it would be normal for this body to enforce rules to ensure that high ethical and moral standards are maintained by those practising the profession.

## **ANNEX 3 – MEMBERS OF THE ELECTRONIC ADVISORY GROUP**

### **FATF and FSRB members and observers**

Argentina; Asia Pacific Group (APG); Australia; Belgium; Azerbaijan; Canada; Chinese Taipei, China; European Commission (EC); Nigeria; France; Hong Kong, China; Italy; Japan; Luxembourg; MONEYVAL; Netherlands; New Zealand; Offshore Group of Banking Supervisors (OGBS); Portugal; Romania; Spain; South Africa; Switzerland; United Kingdom; United States.

### **Dealers in precious metals and dealers in precious stones industries**

Antwerp World Diamond Centre, International Precious Metals Institute, World Jewellery Confederation, Royal Canadian Mint, Jewellers Vigilance Committee, World Federation of Diamond Bourses, Canadian Jewellers Association.

### **Real estate industry**

International Consortium of Real Estate Agents, National Association of Estate Agents (UK), the Association of Swedish Real Estate Agents.

### **Trust and company service providers industry**

The Society of Trust and Estate Practitioners (STEP), the Law Debenture Trust Corporation.

### **Accountants industry**

American Institute of Certified Public Accountants, Canadian Institute of Chartered Accountants, European Federation of Accountants, German Institute of Auditors, Hong Kong Institute of Public Accountants, Institute of Chartered Accountants of England & Wales.

### **Casinos industry**

European Casino Association (ECA), Gibraltar Regulatory Authority, Kyte Consultants (Malta), MGM Grand Hotel & Casino, Unibet, William Hill plc.

### **Lawyers and notaries**

Allens Arther Robinson, American Bar Association, American College of Trust and Estate Council, Consejo General del Notariado (Spain), Council of Bars and Law Societies of Europe (CCBE), International Bar Association (IBA), Law Society of England & Wales, Law Society of Upper Canada.