



February 6, 2020

Via Electronic Submission

Basel Committee on Banking Supervision
Bank for International Settlements
Centralbahnplatz 2
CH-4002 Basel Switzerland

Re: Consultative Document on *Introduction of guidelines on interaction and cooperation between prudential and AML/CFT supervision*

Ladies and Gentlemen:

The Bank Policy Institute¹ welcomes the opportunity to comment on the Basel Committee on Banking Supervision's consultative document entitled *Introduction of guidelines on interaction and cooperation between prudential and AML/CFT supervision*. We appreciate the BCBS's efforts to "describe principles and recommendations for information exchange and cooperation in conducting representative supervisory functions" in order to "enhance the effectiveness of supervision on banks' ML/FT risk management."² BPI members are committed to a strong culture of compliance in their efforts to detect and prevent money laundering and the financing of terrorism and thus appreciate the BCBS's focus on increasing the effectiveness of supervision.

In particular, BPI agrees with the consultative document's suggestions that supervisory "information exchange and cooperation systems: (i) should not lead to duplication of efforts... (iii) should limit the scope of information exchange to existing information held by either supervisor; and (iv) should follow the risk-based approach." Accordingly, supervision or examination must appropriately balance compliance with the purpose of financial institutions' AML/CFT programs – to provide useful information to law enforcement.

In the United States, the Bank Secrecy Act codifies this expectation as requiring "certain reports or records where they have a high degree of usefulness" to the investigation of financial crime.³ While AML compliance expectations are jurisdiction-specific, as the BCBS acknowledges in its *Sound management of risks related to money laundering and financing of terrorism*, a goal is to "preserve[] the integrity of the international financial system as well

¹ The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

² BCBS, *Introduction of guidelines on interaction and cooperation between prudential and AML/CFT supervision*, November 2019, pg. 1, available at <https://www.bis.org/bcbs/pub/d483.pdf>.

³ See 31 U.S.C. § 5311, which states that "[i]t is the purpose of this subchapter [the BSA] to require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism."

as the work of governments in addressing corruption and in combating the financing of terrorism.”⁴ This can only be done in partnership with law enforcement, yet the consultative document doesn’t address the role that law enforcement should play in AML supervision, notably that they must be involved in the establishment and maintenance of regulatory standards, particularly for suspicious activity reporting, in order to efficiently and effectively direct bank compliance resources to areas of greatest risk. In the U.S., BPI has recommended that the public sector establish AML regime priorities for financial institutions to use in focusing their AML programs and such priorities should form the basis of supervisory expectations, which will ultimately promote effective programmatic outputs. Furthermore, BPI has recommended that regulatory expectations be modernized and streamlined and public-private sector AML/CFT information sharing enhanced in order to improve the effectiveness of the U.S. AML regime. These recommendations are driven by members’ practical experiences – that supervisory expectations have led to imbalances and inefficiencies in the system. What gets measured gets done and providing valuable intelligence to law enforcement or national security agencies does not get measured; writing policies and procedures and filing reports does.

Relatedly, we note that the consultative document focuses on the role of prudential supervision in ensuring safety and soundness and highlights instances where safety and soundness and AML examinations are conducted together. While both are individually important regulatory components, AML supervisory expectations should solely reflect the legal and regulatory framework of a jurisdiction and we recommend that the BCBS modify the consultative document to directly state this as well as to acknowledge that AML/CFT programs should be structured to provide highly useful leads to law enforcement.⁵

The consultative document also “highlight(s) international banking group structures and cross-border activities as an important risk factor” and provides recommendations on how relevant supervisors should coordinate their activities, including through information sharing. In particular, the guidelines state that “[i]nformation exchange should be created and maintained, to the extent permitted by applicable laws” between prudential and AML/CFT supervisors and goes further to suggest both domestic and international exchanges “regarding pending or imposed enforcement actions or sanctions on a financial institution.” While it is important to avoid duplicative requests, limit the scope of information exchange and follow a risk-based approach, the guidance remains silent on the level of knowledge subject institutions should have regarding supervisory-related information exchanges. Understanding relevant legal constraints, it would be useful if the guidance stated that sharing of financial institution’s AML/CFT program information (e.g. an institution’s risk assessment) between supervisors should, when applicable, include appropriate notice to the financial institution, provide the purpose for sharing, discuss how shared information will be utilized and provide the institution with a regulatory contact at both agencies where questions can be directed. This would assist in mitigating the risk of a financial institution’s information (e.g. risk assessment) being provided to regulators who are unfamiliar with the institution and therefore might misinterpret how it has constructed its program.

Furthermore, the consultative document, while focusing on international illicit finance risk mitigation, does not discuss the need for supervisory reviews to strike an appropriate policy balance, in compliance with applicable laws and regulations, so as to avoid unintended consequences such as de-risking. Other BCBS guidelines more directly address such concerns, but it is important for this document to also recognize that de-risking is in part a reaction to government and supervisory characterizations of correspondent banking as a high risk business and the evolving standards within the international community and therefore direct supervisors to appropriately tailor

⁴ BCBS, *Sounds management of risks related to money laundering and financing of terrorism*, June 2017, pg. 2, available at <https://www.bis.org/bcbs/pub/d405.pdf>.

⁵ From a U.S. perspective, an “unsafe and unsound banking practice” has a well-defined legal meaning, with the D.C. Circuit Court of Appeals notably stating that, for purposes of 12 U.S.C. § 1818, it “refers only to practices that threaten the financial integrity of the institution.” Other courts have set a similarly high bar. *See* Greg Baer Testimony before the Senate Banking Committee, “Guidance, Supervisory Expectations, and the Rule of Law: How do the Banking Agencies Regulate and Supervise Institutions?” April 30, 2019, available at [bpi.com/wp-content/uploads/2019/05/Greg-Baer-Written-Testimony-Before-Senate-Banking-Committee-on-Guidance-and-Supervision-April-30-2019.pdf](https://www.bpi.com/wp-content/uploads/2019/05/Greg-Baer-Written-Testimony-Before-Senate-Banking-Committee-on-Guidance-and-Supervision-April-30-2019.pdf).

supervisory expectations. Finally, we recommend that the guidance discuss, and potentially provide examples of how, different jurisdictional requirements could be taken into consideration by ML/TF supervisory colleges.

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The Bank Policy Institute appreciates the opportunity to submit comments on the BCBS's consultative document. If you have any questions, please contact the undersigned by phone at 202-589-1935 or by email at *Angelena.Bradfield@bpi.com*.

Respectfully submitted,



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