

## **Informational Report by the ABA Task Force on Gatekeeper Regulation and the Profession**

The ABA Task Force on Gatekeeper Regulation and the Profession (“Task Force”) was established in February 2002 to address certain issues arising from increased interest among U.S. government regulatory officials, as well as regulatory officials elsewhere in the world, in combating money laundering and terrorist financing and enlisting the assistance of certain professionals in this effort (colloquially known as the “Gatekeeper Initiative”). Originally proposed at a meeting of the G-8 in 1999, the Gatekeeper Initiative is directed at certain professionals, including lawyers, accountants, and auditors, who are involved in assisting clients with domestic and international financial transactions and business dealings. It calls on countries to consider enlisting these professionals as “gatekeepers” to the domestic and international financial and business markets to prevent money laundering and terrorist financing by, among other things, adopting certain recommendations promulgated by the Financial Action Task Force (“FATF”).

The 2008 Mid-Year Meeting represents the fifth anniversary of the adoption of the ABA policy in February 2003 pertaining to anti-money laundering compliance for lawyers and the attorney-client relationship (see attached). The Task Force has been actively following and developing expertise on the various anti-money laundering and anti-terrorist financing initiatives within the United States and around the world; it has carefully studied these initiatives and given extensive and careful consideration to the implications of these initiatives to the profession, the clients served by the profession, and the values the profession is entrusted to uphold and protect; and it has been an active promoter of education for the profession in this regard. The purpose of this Informational Report is to summarize the activities of the Task Force to date and to underscore the fact that much work remains to be done.

1. **Involvement with FATF**. FATF is an inter-governmental body based in Paris, France whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. FATF is thus a “policy-making body” that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas. The Task Force has met several times with FATF and its delegation, including meetings in Amsterdam in November 2006, London in September 2007, and Bern, Switzerland in December 2007. The issues under discussion at these meetings include the following: (a) the issues involved in developing a risk-based approach to client due diligence, (b) the differences between traditional financial institutions and the legal profession in developing anti-money laundering and anti-terrorism financing guidelines or best practices, (c) the need for the legal profession (and not a third party or governmental entity) to develop guidance for its members that is specifically tailored to address any risks that might arise, and (d) typologies and evidence of lawyer involvement in money laundering and terrorist financing (in particular, the Task Force has requested that FATF provide documentation showing the extent to which

lawyers are being used *unwittingly* to facilitate money laundering and terrorist financing activities). The Task Force is engaged with FATF, along with other international and specialty bar associations, in the development of risk-based guidelines. This effort will continue in 2008 and beyond.

2. **Liaison with Other Bar Groups.** Given the national and international dimensions of the Task Force’s work, the Task Force has worked collaboratively with numerous domestic and international bar groups, including those identified in the table below:

<b>Domestic</b>	<b>International</b>
American College of Trusts and Estates Counsel	Council of the Bars and Law Societies of the European Union
American College of Real Estate Lawyers	International Bar Association
American College of Mortgage Attorneys	Council of the Notariats of the European Union
ABA Section of Real Property, Trust and Estate Law	Swiss Notaries Association; including the Swiss Bar Association and the Federation of the European Bar
ABA Section of International Law	Society of Trust and Estate Practitioners
ABA Section of Business Law	Japan Federation of Bar Associations

Members of the Task Force have met with the international bar groups at a number of meetings (including Singapore in October 2007) and have had numerous conference calls with one or more of these groups. All of these bar associations, and legal professionals around the world, are concerned with anti-money laundering compliance as it may impact on the role of the attorney in society, the attorney-client relationship and privilege, and the ethical requirements of lawyers.

3. **Interaction with U.S. Department of Treasury.** For the last few years, the Task Force has been working collaboratively with representatives from the U.S. Department of Treasury on the development of best practices guidance for designated non-financial businesses and professions (including the legal profession) in lieu of governmentally-imposed regulations. For example, when the Treasury Department issued an Advance Notice of Proposed Rule-Making, under the USA PATRIOT Act, for proposed anti-money laundering compliance requirements to be applied to “persons involved in real estate closings and settlements”, the Task Force provided extensive comments and met with Treasury Department officials to discuss various aspects of how such requirements would apply to real estate lawyers. The Task Force also was asked to provide views relating to the FATF Revised Forty Recommendations, issued in June 2003, that for the first time applied anti-money laundering disciplines to legal professionals, notaries, and other non-financial service professionals. We have also been asked by the Treasury Department for information relating to the efforts of the ABA and

others to build awareness in the legal profession to money laundering risks, the CLE offerings that have been provided over the last five years, and for our perspectives relating to anti-money laundering developments for lawyers in non-U.S. jurisdictions (such as legal challenges to reporting obligations for lawyers in Canada and Belgium). More recently, the Task Force has engaged in discussions with the Treasury Department on the issues involved in identifying and disclosing the beneficial ownership of legal entities as part of the effort to combat money laundering and terrorist financing, as well as for views on the possible development of best practices guidance for lawyers in complying with U.S. anti-money laundering requirements.

4. **Development of Best Practices Guidance.** In response to requests from FATF and the Treasury Department, the Task Force has been working on the development of best practices guidance for the application of a risk based approach to combat money laundering and terrorist financing. Any such guidance would be consistent with existing ethical requirements of lawyers practicing in the United States, as well as the attached ABA policy.

The Task Force remains actively engaged in the Gatekeeper Initiative and looks forward to opportunities and challenges the legal profession faces in working with FATF, the Treasury Department, bar associations, and other stakeholders in this critically important area for the legal profession.

Edward J. Krauland  
Chair

February 2008