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President

**AMERICAN BAR ASSOCIATION**

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Re: Avoiding Unnecessary Federal Government Regulation of Lawyers and the Legal Profession by Encouraging Compliance with the “Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing”

Dear Fellow Bar President:

We all agree money laundering is wrong and that we want our profession doing what it can to stop it. Newly crafted guidelines, called “Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing” (the “Voluntary Guidance”), are an effective tool in this effort.

In our view, the Voluntary Guidance is the most effective means of both combating money laundering and avoiding the passage of federal legislation or adoption of rules that would impose unnecessary, costly, and burdensome new regulations on lawyers and the legal profession and adversely affect the clients that we serve. We would greatly appreciate any assistance that you and your bar could provide in encouraging your members to follow the Voluntary Guidance.

This letter offers additional, important details about the Voluntary Guidance and how you can help disseminate it to your bar’s members.

#### The Government’s “Gatekeeper Initiative”

First, some brief history and context. More than two decades ago, the major industrialized nations formed an intergovernmental body known as the Financial Action Task Force on Money Laundering (“FATF”). Part of the FATF mission is to impose stringent anti-money laundering and counter-terrorist financing obligations on “gatekeepers” to domestic and international monetary systems—such as lawyers, civil law notaries, trust and company service providers, real estate agents, accountants and auditors.

The FATF issued a comprehensive set of international anti-money laundering standards known as the “Forty Recommendations,” followed by nine additional Special Recommendations designed to fight terrorist financing. These international standards—known collectively as the “40+9 Recommendations”—encourage countries to develop a “risk-based approach” to prevent money laundering and to combat the financing of terrorism.

This risk-based approach, favored by the ABA and many others in the legal profession, is intended to focus greater resources (and require greater due diligence) where the money laundering and terrorist financing risks are the highest and, conversely, focus fewer resources (and require less due diligence) where such risks are lower. The alternative would be a far more burdensome and costly “rules-based

approach,” in which a person would be required to comply with particular laws, rules, or regulations irrespective of the underlying quantum or degree of risk.

In recent years, leaders in both houses of Congress have proposed legislation that follows a rules-based approach. During the last Congress, Senator Carl Levin (D-MI) and Representative Carolyn Maloney (D-NY) introduced bills that would have imposed onerous anti-money laundering obligations on lawyers and opened the door for regulations that could have required lawyers to report certain confidential client information to the government in violation of state bar ethical rules. The idea of imposing rules-based anti-money laundering measures on lawyers and other gatekeepers is still active today, and Sen. Levin and Rep. Maloney are expected to reintroduce similar legislation in the near future.

Adoption of legislation or regulations that follow a rules-based approach would be a negative development for all of us. Any lawyer who closes the sales of businesses or real estate, handles client money through a firm trust account, or creates entities could be subjected to rigid and unnecessary anti-money laundering and counter-terrorist financing rules and obligations. This is true even if the transaction is totally domestic in nature. Because the rules-based approach is so broad, it would impose costly and burdensome regulations on a very large segment of the legal profession.

#### ABA Development and Adoption of the Voluntary Guidance for Lawyers

After receiving extensive input from the legal profession, the FATF issued broad risk-based guidance in 2008. The FATF Lawyer Guidance identifies the money laundering and terrorist financing issues specific to the legal profession and outlines the risk factors that lawyers need to consider in developing a risk-based system. Instead of offering detailed directions, the FATF Lawyer Guidance urges the legal profession to develop an effective risk-based approach.

In response, the ABA—through its Task Force on Gatekeeper Regulation and the Profession and several ABA sections with expertise in this area—worked in cooperation with a number of specialty bar associations to develop voluntary good practices guidance designed to alert U.S. lawyers to the risks of money laundering and terrorist financing. The Voluntary Guidance was formally approved by the ABA House of Delegates last August.

The Voluntary Guidance enables lawyers to assess the money laundering and terrorist financing risk posed by each client. In the view of the FATF, every client poses some risk, but the risks posed by certain types of clients and cases are far greater than those posed by others. The Voluntary Guidance allows U.S. lawyers to combat money laundering by taking prudent, appropriate steps based on the individual situation rather than adhering to a burdensome and difficult “one-size-fits-all” approach.

This voluntary, legal profession-initiated effort will help lawyers comply with their existing state bar ethical duties and other legal obligations, while effectively combating money laundering and terrorist financing. In addition, by following the Voluntary Guidance, lawyers and the legal profession can help eliminate the need for federal legislation or agency regulations that could conflict with existing state bar ethical rules, interfere with and undermine the confidential attorney-client relationship, and adversely affect client service.

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Your Help is Urgently Needed

The ABA needs your help and support on this critical issue. Specifically, we would greatly appreciate your assistance in alerting your members to the government's ongoing "gatekeeper initiative" designed to combat money laundering and terrorist financing and its various implications, including the adverse effects that prescriptive rules could have on lawyers and the legal profession. We also urge you to encourage your members to review and adopt the Voluntary Guidance.

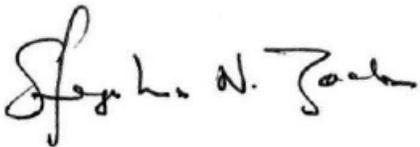
Please educate your bar about this issue. You can do so in whatever communications best reach and suit your members, be it an article, column, or other medium. In addition, please also consider disseminating both the full text of the Voluntary Guidance (available on the ABA's website at <http://www.americanbar.org/content/dam/aba/migrated/leadership/2010/annual/pdfs/116.authcheckdam.pdf>) and a detailed set of "Frequently Asked Questions" regarding the Guidance (available at [http://www.americanbar.org/content/dam/aba/publications/criminaljustice/gatekeeper\\_faq.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/criminaljustice/gatekeeper_faq.authcheckdam.pdf)) to your members. These documents could be posted on your bar's website and sent to your members through other appropriate channels.

If you have any questions or need additional information, please contact the chair of the ABA Gatekeeper Task Force, Kevin Shepherd, at 410-244-7772, [klshepherd@venable.com](mailto:klshepherd@venable.com), or Larson Frisby of the ABA Governmental Affairs Office at 202-662-1098, [l Larson.frisby@americanbar.org](mailto:l Larson.frisby@americanbar.org).

In addition, if you or your bar takes steps to help disseminate information about the Voluntary Guidance to your members, please let us know. That information will both encourage other bars to act and discourage Congress and federal agencies from implementing more burdensome approaches.

Thank you again for your assistance on this issue, which is so vital to our society, our profession, and the clients we serve.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen N. Zack". The signature is written in a cursive, flowing style.

Stephen N. Zack