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THE FINANCIAL ACTION TASK FORCE
CLASHES WITH THE MODEL RULES

HISTORY OF THE FATF

The Financial Action Task Force ("FATF") was established in 1989 by the G-7 nations (United States, United Kingdom, Germany, France, Italy, Japan, and Canada), the European Commission, and eight other countries. It was created to combat the money laundering "threat posed to the banking system and to financial institutions."[1] In 1990, within a year of its inception, the FATF issued the original version of its now well-known Forty Recommendations which, as amended in subsequent years, are essentially a comprehensive plan to fight money laundering.

In 2001, the FATF's mission was expanded to include the fight against terrorist financing (Combat the Financing of Terrorism, or "CFT"). In October 2001, following the events of September 11, the FATF added eight new Special Recommendations to the original forty, and in 2004 added a ninth Special Recommendation. These Recommendations are referred to sometimes as the 40+9 Recommendations. By 2007, there were a total of 34 FATF member countries dedicated to following and taking steps to implement the FATF 40+9 Recommendations.

As a practical matter, the FATF enforcement process, such as it is, works as an international peer pressure system. Delegates to the FATF are not elected, and the FATF has no legislative authority. The FATF member countries voluntarily support and are committed to its principles. The work of the FATF is to make policy recommendations and then monitor the implementation of those recommendations through periodic evaluations of its member countries to measure compliance. As the FATF notes on its website:

> "In the self-assessment exercise, every member country provides information on the status of its implementation of the Forty Recommendations and Nine Special Recommendations by responding each year to a standard questionnaire. This information is then compiled and analyzed, and provides the basis for assessing the extent to which the Recommendations have been implemented by both individual countries and the group as a whole.
>
> "The second element for monitoring the implementation of the Forty Recommendations is the mutual evaluation process. Each member country

is examined in turn by the FATF on the basis of an on-site visit conducted by a team of three or four selected experts in the legal, financial and law enforcement fields from other member governments. The purpose of the visit is to draw up a report assessing the extent to which the evaluated country has moved forward in implementing an effective system to counter money laundering and to highlight areas in which further progress may still be required.

"The mutual evaluation process is enhanced by the FATF's policy for dealing with members not in compliance with the Forty Recommendations. The measures contained in this policy represent a graduated approach aimed at reinforcing peer pressure on member governments to take action to tighten their anti-money laundering systems."[2]

The United States most recently underwent the mutual evaluation process in 2005-2006, which culminated in the FATF's issuance of a 300 page long evaluation report containing 6 appendices (annexes).[3] This document concludes with a summary report on the various Recommendations with four "grade" levels of compliance: compliant, largely compliant, partially compliant, and non-compliant. United States lawyers were listed as non-compliant in the areas of customer due diligence, monitoring of customers and filing of suspicious activity reports.

It is important to remember that the delegates sent by each country to the FATF are typically bureaucrats from their nation's tax policy and tax collection agencies (similar to the U.S. Treasury) and financial crimes enforcement groups (similar to FinCEN)[4]. Like all bureaucrats, they come to the FATF with certain perspectives, agendas, objectives, and prejudices.

When it comes to trusts, those perspectives and prejudices can be especially pronounced among delegates from the FATF member states which are not common law states, as their understanding of and experience with trusts are very limited. Trusts are not part of their jurisprudence, they do not readily understand the fundamental trust concept of separation of legal and beneficial ownership, and they typically only encounter trusts (and associate trusts) with tax evasion.

Indeed, the FATF Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing (June 2007, p.24) describes the following services as high risk for money laundering abuses:

> "Services that inherently have provided more anonymity or can readily cross international borders, such as online banking, stored value cards, international wire transfers, private investment companies and <u>trusts</u>." (emphasis added)

To get a grip on what it views as an abused legal structure, the FATF at one time proposed an international registry of all trusts, showing the settlor, trustee and beneficiaries. While this concept was soon discarded as impractical, it nevertheless demonstrates the suspicion with which the FATF regards trusts.

In the United Kingdom, part of the response to the FATF 40+9 Recommendations was the Proceeds of Organized Crimes Act, which among other things, requires attorneys to file Suspicious Activity Reports ("SARs") on their clients with the additional requirement that attorneys may not tip off clients that an SAR had been filed (the so-called "No Tipping Off" rule, or "NTO"). In the first nine months of 2007, solicitors in the U.K. filed 11,200 SARs on their clients.[5] Thus, in a very real way, solicitors in the U.K. have become part of the law enforcement system in that country, which would seem to create an uncomfortable duality with their traditional role in the judicial process.

In the United States, some legislation has been enacted (in at least partial) response to the Recommendations. The Bank Secrecy Act as amended by the USA PATRIOT Act takes some measures toward implementation of the Recommendations. For other examples, see the June 2006 U.S. Mutual Evaluation Report.[6]

As discussed in greater detail below, the FATF has sponsored a series of meetings to engage certain Designated Non-Financial Businesses and Professions ("DNFBPs"), including lawyers, in the anti-money laundering/terrorist financing dialogue. In general, the main objective of these discussions is to have these specifically identified businesses and professions adopt and implement the core anti-money laundering ("AML") rules that financial institutions have adopted:

- Customer Due Diligence ("CDD") and Know Your Customer ("KYC") procedures
- maintain CDD records
- monitor customers on an ongoing basis
- report suspicious transactions

Other FATF goals include: (1) increased transparency of legal persons and arrangements, i.e., the actual ownership or beneficial ownership of LLCs, corporations, partnerships, trusts, etc. should be reported and available to law enforcement authorities; and (2) increased communication and sharing of information among all these involved in the AML and CFT struggles.

While the FATF has no power to enact law, its power of political pressure and the publication of mutual evaluations will likely produce further compliance with the 40+9 Recommendations by FATF member nations (and those who wish to trade with member nations). The fact that the United States supports the FATF's AML and CTF goals as part of the War on Terror and has itself pressured other countries to enact legislation to implement the 40+9 Recommendations makes it awkward for the United States to lag in its own compliance. The FATF also has powerful institutional allies in the World Bank and the International Monetary Fund, and the FATF has suggested that the influence of these organizations will be brought to bear against recalcitrant nations worldwide.

The FATF's meetings with the private sector and with the DNFBPs have been held in:

- Paris (2004)
- Brussels (2005)
- Amsterdam (2006)
- London (2007)
- Berne (2007)

ACTEC Fellows and members of the ABA have attended and participated in all of these meetings. Because of the very high level of suspicion with which trusts are regarded by the FATF and the resulting high level of scrutiny of trust structures, ACTEC has been proactively involved in an effort to impact the FATF process. As part of that effort, in October 2005 ACTEC issued its Recommendations of Good Practices for ACTEC Fellows Seeking to Detect and Combat Money Laundering.

At the 2006 Amsterdam meeting, invitees included lawyers, accountants, notaries, and trust and company service providers. It was the beginning of a dialogue in which various groups took positions on their reaction to the FATF's proposals affecting DNFBPs. At that time, the ABA expressed its strong resistance to requirements for SARs, NTO, and Suspicious Transaction Reports ("STRs").

In London in 2007, the invitees included casino owners, dealers in precious metals and stones, real estate agents, accountants, notaries, trust and company service providers, and lawyers. All DNFBPs are apparently viewed as monolithic by the FATF, which deems them all to be at risk of abuse by money launderers and terrorist financiers. Consequently, the FATF wants all DNFBPs to enact and support the same core AML rules and regulations required of banks and other financial institutions, including:

- CDD and KYC
- Enhanced Due Diligence ("EDD")
- Monitoring of customers and transactions
- SARs and STRs
- NTO

Attorneys consider their profession to be uniquely situated among the various categories of professionals lumped together by the FATF as DNFBPs, and there was considerable resistance at this meeting from attorneys who articulated the special position and protective role that attorneys play in society and within legal systems. Due to the wide range of countries represented at the meeting, there were variations on the theme, but there was also an extraordinary degree of harmony and unanimity from this group in resisting the FATF's attempts to treat attorneys like every other DNFBP.

In December 2007, the FATF reconvened the same DNFBPs in Berne. The meeting began with a report on the Swiss experience with the Risk Based Approach ("RBA") for DNFBPs. Ms. Dina Beti, Head of the Swiss AML Control Authority, discussed the experience of the public sector in Switzerland with the RBA for DNFBPs.[7] The Swiss RBA was introduced by ordinance in 2003 and obligated all financial intermediaries in Switzerland to comply with the new RBA beginning January 2005. Under the Swiss RBA, all financial intermediaries have the following obligations: (a) establish a list of risk criteria both for customers and transactions, (b) conduct an efficient monitoring of customers and transactions based on these criteria, and (c) increase the level of due diligence in respect of higher risk customers and transactions. (It should be noted that under Swiss law a "financial intermediary" is one who handles or "touches" the money and has the further obligation to file SARs.)[8]

Ms. Beti made clear that the Swiss intended to avoid a "check the box" approach for categorizing risk. She then reviewed the risk categorization for customers and clients. Politically exposed persons ("PEPs") are a mandatory risk criterion. Other risk categories for customers include the nature and location of their business, the absence of personal contact between the financial intermediary and the customer, the type of requested services or products, the amount of the assets deposited, the amount of incoming and outgoing funds, and countries from which or to which frequent payments are made. The mandatory risk category criteria for transactions center on the amount of a deposit or withdrawal or the amount of a money transfer transaction. Other transactions risk categories include the amount of the incoming and outgoing funds and any significant divergence from the type, volume, or frequency of transactions that would be usual in the context of the business relationship of and with the customer.

Under the Swiss RBA, each of Switzerland's approximately 6,500 financial intermediaries is subject to an annual audit. Of these financial intermediaries, about 18% are lawyers or notaries. Ms. Beti noted that the first evaluation of the RBA during 2005 revealed that the financial intermediaries had not fully understood their legal responsibilities. For example, some financial intermediaries lacked any risk categorization. Others had vague risk criteria. In 2006, the Swiss experience improved because of increased acceptance and understanding of the RBA. However, the audits continue to reveal systemic issues with the RBA among the DNFBPs. Ms. Beti observed that for small financial intermediaries (i.e., a "one person show"), the RBA is often perceived as artificial and does not necessarily guarantee a more efficient anti-money laundering system.

After Ms. Beti's presentation, the FATF created breakout groups so that each group could begin to focus on what would be appropriate guidance for its respective business or profession using an RBA. The breakout group for lawyers suggested an RBA to guide attorney conduct in the AML fight which emphasizes the use of good judgment and reason for clients and transactions, as opposed to the implementation of a rigid checklist that is automatically applied to all clients regardless of circumstance.

For example, under an RBA it makes no sense for a lawyer in Great Falls, Montana, to apply a due diligence process to a rancher whom the lawyer has represented for decades. By contrast, from an RBA perspective, it may make sense for that lawyer to make serious inquiries about a stranger from Reno, Nevada who claims to have won $2,000,000 cash at the casinos and wants to create a Montana LLC to purchase various mountain properties. Notwithstanding the foregoing, however, and given its track record thus far, it is likely the FATF will not accept a "good judgment and reason" standard of conduct for attorneys and will insist on substantial detail and formality in the implementation of the RBA for lawyers.

U.S. Treasury officials have been invited to all these meetings and have attended all but the London conference. Treasury is responsible for implementing the FATF Recommendations in the United States and has been in active dialogue with the ABA. To date, at least, Treasury has been supportive of the ABA's position on SARs, STRs and NTO.

RISK-BASED APPROACH GUIDANCE FOR LAWYERS

A working group of United States lawyers consisting in part of members from the ABA and Fellows from ACTEC, the American College of Mortgage Attorneys, and the American College of Real Estate Lawyers (but without any authority to bind their respective organizations) are engaged with lawyers from other countries and with the FATF to prepare an RBA guidance document for attorneys, notaries, and other designated legal professionals. This work-in-progress is titled Guidance for Designated Legal Professionals on Implementing a Risk-Based Approach ("Guidance"). Participation by other lawyers in this process is typically through an organization such as the International Bar Association ("IBA"), the Council of Bars and Law Societies of Europe ("CBE"), or The Society of Trusts & Estate Practitioners ("STEP"). By June 2008, the FATF wants a final draft of the Guidance which it can adopt at its plenary meeting in London.

The FATF is interacting with the lawyers group through an electronic Working Group Evaluation & Inspection ("WGEI") headed by Phillip Robinson, UK Financial Crimes Sector, and John Carlson, former prosecutor from New South Wales, Australia. The WEGI oversees a web-based discussion group where the lawyers' drafts are posted and critiqued. A first draft of the Guidance was posted February 19, 2008, and a revised draft was posted on March 19, 2008.

The Guidance is intended to closely parallel the form and format of the guidance adopted by the FATF for the financial services sector and emphasizes the following concepts:

1. Particular focus on the following "regulated activities":

    a. Buying and selling real estate;
    b. Managing client money;
    c. Organization of contributions to create, operate or manage companies;
    d. Creating, operating, and managing legal entities and arrangements; and
    e. Buying and selling businesses.

2. Responsibility for monitoring clients and transactions in certain situations.

3. Importance of non face-to-face interactions.

4. Unusual, risky or suspicious transactions.

5. Implementation of AML policies and procedures to manage and mitigate risk.

6. Responsibility of Self Regulating Organizations (e.g., state bar associations) to educate and regulate.

7. Identification of risks by category. The most commonly used risk criteria are country or geographic risk, client risk, and risk associated with the particular service offered by the legal professional. The weight given to these risk categories (individually or in combination) in assessing the overall risk of potential money laundering or terrorist financing may vary from one client to another, particularly given the size, sophistication, nature and scope of services offered by the legal professional.

    a. Country/Geographic Risk. Factors that may result in a determination that a country or geographic area poses a higher money laundering or terrorist financing risk include:

        - Countries subject to sanctions, embargos or similar measures by the United Nations or other reputable governmental or non-governmental organizations.

        - Countries identified by the FATF as generally lacking appropriate AML laws, regulations or other measures.

        - Countries identified by credible sources as providing funding or support for terrorist activities or that have terrorist organizations operating within their borders.

        - Countries identified by credible sources as having significant levels of corruption or other criminal activity.

    b. Client Risk. Determining the potential money laundering or terrorist financing risks posed by a client, or category of clients, is critical to the development and implementation of an overall risk-based framework. Categories of clients whose activities may indicate a higher risk include:

- Clients conducting their business relationships or requesting services in unusual or unconventional circumstances, such as:

  - Significant and unexplained geographic distance between the client and the location of the organization/subject of the work for which the client has retained the legal professional, and/or where there is no logical nexus among the type of work being undertaken, the client, and that organization.

  - Where a client has instructed the legal professional to undertake a single transaction-based service (as opposed to an ongoing advisory relationship), the instructions from the client are not received face to face, and/or the client has not been referred from a reliable source.

- Clients where the structure or nature of the entity or relationship makes it difficult to identify the true beneficial owner or controlling interests in the transaction.

- Clients that are cash (and cash equivalent) intensive businesses including:

  - Casinos, betting and other gambling-related activities.

  - Unregulated businesses that, while not normally cash intensive, generate substantial amounts of cash.

- Charities and other "not for profit" organizations that are not subject to monitoring or supervision by competent authorities (especially those operating on a "cross-border" basis).

- Clients using intermediaries who are not subject to adequate AML laws and measures or who are not otherwise adequately supervised by competent authorities.

- Clients who are PEPs or have a criminal record.

c. Service Risk. An overall risk assessment should also include a determination of the potential money laundering or terrorist financing risks presented by the services offered by the legal professional. Consideration should be given to such factors as:

- Services where legal professionals acting as financial intermediaries handle the receipt and transmission of cash proceeds on behalf of clients.

- Services to conceal improperly beneficial ownership from competent authorities (as opposed to services intended legitimately to screen ownership from the general public, such as for privacy or other reasons).

- Services requested by the client for which the legal professional does not have the requisite expertise.

- Commercial or real property transactions having structures with no apparent legitimate business, economic, tax or legal reasons or substance.

- Services knowingly designed to illegally evade revenue or other government authorities' claims concerning an asset or other property.

- Payments received from unrelated third parties and payments of fees in cash.

- Transactions where it is readily apparent that there is inadequate consideration.

- Legal entities and arrangements where a client, controller or significant legal owner cannot be identified in a timely fashion.

- Clients who offer to pay extraordinary fees for services which would not ordinarily warrant such a premium.

8. Variables that may impact risk: e.g., reputation of the client; businesses or companies that are otherwise regulated; lawyer's prior relationship with client.

9. Controls for higher risk situations, i.e., training and education of professionals and staff, and procedures for CDD, EDD, or periodic reviews of clients.

10. Application of risk-based approach principles, including CDD/KYC procedures.

11. Monitoring clients and activities on an ongoing basis. This could be both internally (e.g., by a law firm) and externally (e.g., by a regulator, like a state bar association).

12. Training and awareness, internally and externally.

13. Internal controls:

    a. Engagement and focus at the partner or management level.

    b. Policies and procedures.

    c. Compliance officer.

14. The notion of "beneficial ownership" of an asset or entity is a recurring term and recurring concept in the Guidance:

    a. It appears in Section 3.20 of the Guidance (dealing with client risk) where the structure or nature of the entity or relationship makes it difficult to identify the "true beneficial owner."

    b. It is used in Section 3.21 of the Guidance (the service risk section) regarding services "designed to conceal improperly beneficial ownership from competent authorities."

    c. While the term is not pointedly directed at trusts in the Guidance, for trust lawyers the term "beneficial ownership" has a precise connotation. One should keep in mind that the FATF is convinced that trusts have been and will be used to deliberately "obfuscate ownership."

d. At this point, the concept of knowing everything about the transaction is not mandated by the Guidance. However, the implication is clear that attorneys had best "know all" about the transaction if it begins to look suspicious or if additional information arouses their suspicion. Willful ignorance isn't an acceptable excuse for missing AML and CFT problems.

- Consider potential risk in a complex real estate investment where equity and financing are coming from different investors or sources.

- Consider potential risk in preparing a will and revocable trust for an investor who owns varying percentages in a number of corporations, LLCs and partnerships.

PERSONAL OBSERVATIONS AND PREDICTIONS

1. The FATF has no authority to make or enact law, but it is unwise to underestimate its power and influence.

2. The FATF has not yet convinced any of the lawyer groups that lawyers are, in fact, being used unwittingly by money launderers and terrorist financiers, although it has probably happened on occasion.

3. The USA PATRIOT Act does not serve as a legal framework for the regulation of lawyers. The Levin bill pending in Congress (Stop Tax Haven Abuse Act) might provide a basis for some regulation of lawyers.

4. A DC Court of Appeals case (2005) sets forth the standard for <u>federal</u> regulation of attorneys.[9]

5. Lawyers certainly have had regulations imposed upon them by the federal government, and examples include the following cases:

   a. Circular 230

   b. Preparer liability – IRC §94-§6696

   c. Sarbanes Oxley – requiring an attorney to report a violation of securities law.

6. There is an interesting dialogue underway among U.S. Treasury, the Department of Justice ("DOJ"), and the Uniform Law Commission ("ULC" – formerly the National Conference of Commissioners on Uniform State Laws) regarding transparency in the formation of new business entities. The ULC suggests the following approaches to create more transparency in partnerships, corporations, limited liability companies, and other business entities:[10]

   a. Every entity must maintain a list of the names and addresses of its record owners.

   b. The list of an entity's record owners must indicate for an owner that is not an individual:

      - if the owner is an entity, the jurisdiction whose laws control its internal affairs;

      - if the owner is a testamentary, inter vivos, or charitable trust, the names and addresses of its trustees; and

      - if the owner is a decedent's estate, the name and address of the personal representatives of the decedent.

   The theory behind these proposals is to provide a system under which it will be possible to trace the ownership of an entity back to the ultimate beneficial owners. For any entity with 25 or fewer record owners, there must be one individual (whose principal residence is in the United States) who has access to the list of the entity's owners, and the name and United States address of that individual must be set forth in the public filing that creates the entity.

   Treasury would prefer that all this information be maintained by the various Secretaries of State and would include the requirements of photos of all individual owners as well as a photo identification, e.g., driver's license or passport. Treasury would also add a definition of "beneficial owner". Treasury does not mention trusts as one of the entities to be covered by these changes, but trusts are in the forefront of the FATF's concerns, and there is going to be pressure to require some sort of state or federal law mandating transparency of trusts.

Query: What sort of regulation is it if DOJ and Treasury demand that all states adopt the same version of a uniform law? Is that state or federal regulation?

7. The Guidance will continue to evolve and will ultimately be adopted by the FATF, presumably in June 2008. It will deal with STRs, one way or the other. The FATF will undoubtedly use that document to lobby its member states for further action and legislation. The final form of the document is, therefore, extremely important.

8. Predictions:

   a. Efforts to defeat proposals to impose STRs, SARs, and NTO on lawyers in the U.S. should be successful.

   b. There will be some additional regulation of lawyers, hopefully at the state level, only, and largely through the state bar associations.

   c. There will be more CLE on AML and perhaps CFT.

   d. There will be some requirement for education, training and awareness of lawyers and law firm staff with internal control policies and compliance officers for CDD/KYC, EDD and monitoring.[11]

   e. There will be more documents like ACTEC's "Good Practices." Treasury really wants to push this approach with other lawyer organizations.

   f. There will be a higher degree of regulation where lawyers "touch the money" or otherwise act as financial intermediaries.

   g. There may be some audit procedure whereby an external auditor tests what a law firm is doing regarding CDD/KYC, EDD, monitoring, training, and adopting/implementing policies and procedures.

   h. There will be transparency legislation on entities and business arrangements.

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[1] FATF-GAFI, http://www.fatf-gafi.org (last visited Feb. 28, 2008).

[2] According to the article "Monitoring the Implementation of the Forty Recommendations", which can be found on the FATF website (www.fatf-gafi.org), the FATF's policy for handling non-compliant countries includes steps such as the following: requiring the non-compliant country to submit a progress report; a letter or a high-level mission from the President of the FATF to the country not in compliance; a statement to financial institutions requesting that special attention be given to any transactions involving the non-compliant country; finally, the FATF may suspend the non-compliant country's membership in the FATF.

[3] Financial Action Task Force, Summary of the Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism; United States of America (FATF/OECD 2006).

[4] According to the FinCEN website (www.fincen.gov), the Financial Crimes Enforcement Network (FinCEN) of the United States Department of the Treasury consists of analysts, administrative and managerial professionals, regulatory specialists, technology experts, federal agents, and other law enforcement agencies that work together to combat domestic and international money laundering through information sharing. See also http://www.fincen.gov/af_organization.html for more information on how the FinCEN is organized.

[5] Anita Rice, "Solicitors lead way on fraud reporting," Nov. 29, 2007 issue of the *Law Gazette*, published by The Law Society of England and Wales.

[6] Financial Action Task Force, Summary of the Third Mutual Evaluation Report on Anti-Money Laundering and Combating the Financing of Terrorism; United States of America (FATF/OECD 2006).

[7] The three paragraphs summarizing the Swiss experience are taken from Kevin Shepherd's report to the ABA on this topic.

[8] Examples of financial intermediaries are: professionals acting as board members of an offshore company, protectors, trustees, and attorneys who accept funds from a client with the intention of assisting the client in investing or transferring the funds, or signatories on a financial account on behalf of another person or entity. Under the Swiss federal anti-money laundering law, financial intermediaries' obligations include, but are not limited to the following: registering with a self-regulatory institution or the federal anti-money laundering authority, identifying the client and beneficial owner of the funds, record-keeping, etc. In the event that a financial transaction overseen by a financial intermediary raises suspicion in terms of compliance with the federal anti-money laundering law, the financial intermediary is then obligated to inquire further with the client or beneficial owner of the funds. If the financial intermediary then has reasonable grounds to suspect that the transaction is connected to a crime, which, under Swiss law, is defined as an offense punishable by imprisonment (tax evasion, for example, is not considered a crime), he must freeze the funds in question, and notify the federal authorities. At that point, only the authorities may remove the freeze on the funds associated with the unlawful transaction.

[9] *Am. Bar Ass'n v. Federal Trade Comm'n*, 430 F.3rd 457 (D.C. Cir. 2005). The court ruled that nowhere did Congress authorize the Federal Trade Commission ("FTC") to regulate the legal profession. In response to the FTC's position that Congress sought to regulate the legal profession by enacting the Gramm-Leach-Bliley privacy legislation, the court noted that "[Congress] does not . . . hide elephants in mouseholes." Id. at 467. In a metaphor rich passage

supportive of the federalism notion that states, and not the federal government, have historically and exclusively regulated the legal profession, the court remarked:

> When we examine a scheme of the length, detail, and intricacy of the one before us, we find it difficult to believe that Congress, by any remaining ambiguity, intended to undertake the regulation of the profession of law–a profession never before regulated by "federal functional regulators"–and never mentioned in the statute. To find this interpretation deference worthy, we would have to conclude that Congress not only had hidden a rather large elephant in a rather obscure mousehole, but had buried the ambiguity in which the pachyderm lurks beneath an incredibly deep mound of specificity, none of which bears the footprints of the beast or any indication that Congress even suspected its presence.

Id. at 469. This case lends strong support to the view that, absent express congressional authority, federal regulators cannot regulate the legal profession. It is undisputed that the regulation of the practice of law is traditionally the province of the states. Federal law "may not be interpreted to reach into areas of State sovereignty unless the language of the federal law compels the intrusion." *City of Abilene v. FCC*, 164 F.3d, 52 (D.C. Cir. 1999). Otherwise put, "if Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.'" *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 65 (1989) (quoting *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242 (1985)).

[10] Memorandum dated January 8, 2008 from William H. Clark, Jr. to the National Conference of Commissioners on Uniform State Laws Drafting Committee on the Record Owners of Business Act. (Note: The National Conference of Commissioners on Uniform State Laws is now known as the Uniform Law Commission.)

[11] Suggested CDD/KYC procedures for clients include: (1) Accurint background check on client at http://www.accurint.com; (2) Google search for client; (3) Check client against the SDN list, DPL list and Entity list at http://www.ustreas.gov/offices/eotffc/ofac/sdn/t11sdn.pdf and http://www.bis.doc.gov/dpl/Default.shtm; (4) Obtain copy of client's passport and a certification of the passport; (5) Affidavit of client's financial condition; (6) Written personal and business history of client.