



November 20, 2015

***Sent via email***

Financial Action Task Force Secretariat  
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Re: Technical questions for banks on correspondent banking and money or value transfer service (MVTs) operators

Dear Sir or Madam:

World Council of Credit Unions (World Council) appreciates the opportunity to comment on the Financial Action Task Force's (FATF) technical questions for banks on correspondent banking and money or value transfer service (MVTs) operators. World Council is the leading trade association and development organization for the international credit union movement. Worldwide, there are 57,000 credit unions in 105 countries with USD 1.8 trillion in total assets serving 217 million physical person members.<sup>1</sup>

**De-Risking Affects Credit Unions both as Service Providers and as Bank Customers**

World Council urges the FATF to clarify the rules regarding financial institutions' anti-money laundering/countering the financing of terrorism (AML/CFT) responsibilities in the context of correspondent banking and providing service to MVTs operators. We urge the FATF to clarify these rules in order to reduce the phenomenon of financial institutions "de-risking" their customer bases both domestically and internationally.

"De-risking" occurs when financial institutions are not willing to provide services to types of businesses, such as credit unions or MVTs operators, because of the perceived AML/CFT compliance risks and costs, enforcement risks and reputational risks associated with that class of customers. More specifically, banks typically weigh these AML/CFT risks and compliance costs in relation to the potential fee income that the customer generates, or would generate, when deciding whether or not to begin or continue a customer relationship. This phenomenon is not limited to international correspondent relationships and has frequently occurred in the context of credit unions or MVTs operators that only operate domestically in one jurisdiction.

A commonly cited reason for "de-risking" is that banks and other financial institutions believe that they are responsible for customer due diligence on their customers' customers—either directly or based on "heightened monitoring" responsibilities—under the FATF's *International*

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<sup>1</sup> World Council of Credit Unions, *2014 Statistical Report* (2015), available at <http://www.woccu.org/publications/statreport>.



*Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations (2012).*<sup>2</sup>

De-risking affects credit unions in two ways: (1) in credit unions' capacity as service providers to MVTS operators and similar money services businesses, or as service providers to other credit unions; and (2) when credit unions have difficulty establishing or maintaining bank accounts that they need to facilitate domestic or cross-border payments activities.

World Council's comments in response to the FATF's technical questions for banks on correspondent banking and MVTS operators therefore address both the scenario of credit unions as a service provider to MVTS operators or other credit unions, as well as the scenario of credit unions as customers of banks in a correspondent banking or agent banking context.

## **I. What type of correspondent banking services do you provide? What type of correspondent banking services, if any, do you not provide and why not?**

Wholesale credit unions—which are typically called “central credit unions,” “corporate credit unions,” or “credit union federations”—provide payments, settlement, and liquidity services to retail-level credit unions that serve physical persons and small businesses. These institutions are “credit unions for credit unions” in the same manner as a bankers' bank. Some wholesale credit unions provide international and domestic payments services while others only provide domestic payments services because of insufficient demand for international payments services from their memberships.

Wholesale credit unions that engage in international payments are typically customers of foreign correspondent banks. Payments are usually made using wire transfer systems like SWIFT with settlement occurring through correspondent bank accounts, or are made through automated clearing house (ACH) systems.

In most cases, wholesale credit unions have a “common bond of association” which limits their membership to credit unions that are based in the same jurisdiction as the wholesale institution. For example, the membership of wholesale credit unions in Canada is typically limited to retail-level credit unions that are based in one or more specific Canadian provinces (e.g., all credit unions based in British Columbia and Ontario) and the membership of wholesale credit unions in the United States of America is typically limited to retail-level credit unions based in the United States.

Wholesale credit unions do not exist in all jurisdictions that have significant credit union movements, however, because not all jurisdictions have enabling legislation that authorizes the establishment of wholesale credit unions. For instance, European credit union systems do not have wholesale credit unions and therefore retail-level European credit unions rely on commercial banks to have access to correspondent banking services for domestic and international payments.

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<sup>2</sup> FATF, *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations (2012)*, available at [http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf).



In Great Britain, for example, many credit unions—especially smaller credit unions whose accounts generate relatively low levels of fee income—have had difficulty establishing and maintaining bank accounts in recent years because of banks’ concerns about AML/CFT-related risks and compliance costs.

Retail-level credit unions with a significant focus on international payments services—such as credit unions that serve the employees of international organizations like the United Nations—also often directly engage commercial banks to provide corresponding banking services because it is more efficient to do so as an operational matter and because a credit union can typically only become a member of a wholesale credit union located in its home jurisdiction (because of the “common bond” rules referenced above).

Many of these internationally focused credit unions have also recently had trouble establishing and maintaining bank accounts because of banks’ concerns about AML/CFT-related risks and compliance costs.

- II. Can you explain in detail what factors you consider when you onboard, maintain, and decide to restrict or terminate correspondent banking and MVTs relationships?**
- III. Once you have onboarded a foreign correspondent or MVTs, what steps do you take to mitigate the risks posed by funds transferred by those intermediary clients?**
- IV. What factors do you consider when you consider terminating or restricting a correspondent banking or MVTs relationship? How do you decide if sufficient risk mitigants can be put in place or the relationship should be terminated?**
- V. What are the main difficulties facing correspondent banks when assessing data/information prior to opening a new correspondent relationship?**

The United States of America’s National Credit Union Administration (NCUA) has recently published guidance concerning credit unions’ AML/CFT responsibilities regarding MVTs operators and other “money services businesses” (MSB) such as check cashing companies and dealers in foreign exchange.<sup>3</sup> We believe that this NCUA guidance is representative of the factors that credit unions consider vis-à-vis deciding whether to onboard, maintain, and/or to restrict or terminate correspondent banking and MVTs relationships in most jurisdictions.

According to the NCUA guidance, a credit union should first analyze the risks associated with the MVTs operator or similar member relationship by considering the following risk factors:<sup>4</sup>

- “Diverse products, services and customer base;
- “Lack ongoing customer relationships;

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<sup>3</sup> See National Credit Union Administration, *Money Services Businesses*, Supervisory Letter No. 14-05 (Dec. 19, 2014), available at [http://www.ncua.gov/Resources/Documents/SupervisoryLetter\\_MoneyServices.pdf](http://www.ncua.gov/Resources/Documents/SupervisoryLetter_MoneyServices.pdf).

<sup>4</sup> *Id.* at 3.



- “Minimal or no identification requirements;
- “Limited recordkeeping;
- “Frequent currency transactions;
- “Various levels of oversight;
- “Frequent change of product mix, location, operations.”

Low-risk indicators cited by NCUA include:<sup>5</sup>

- “Primarily conducts routine transactions with moderate frequency in low amounts;
- “Offers only a single line of money services business product (for example, only check cashing);
- “Is a check casher that does not accept out-of-state checks;
- “Is a check casher that does not accept third-party checks or only cashes payroll or government checks;
- “Is an established business with an operating history;
- “Only provides services such as check cashing to local residents;
- “Is a money transmitter that only remits funds to domestic entities; or
- “Only facilitates domestic bill payments.”

High-risk indicators cited by NCUA include:<sup>6</sup>

- “Allows customers to conduct higher-amount transactions with moderate to high frequency;
- “Offers multiple types of money services products;
- “Is a check casher that cashes any third-party check or cashes checks for commercial businesses;
- “Is a money transmitter that offers only, or specializes in, cross-border transactions, particularly to jurisdictions posing heightened risk for money laundering or the financing of terrorism or to countries identified as having weak anti-money laundering controls;
- “Is a currency dealer or exchanger for currencies of jurisdictions posing heightened risk for money laundering or the financing of terrorism or countries identified as having weak anti-money laundering controls;
- “Is a new business without an established operating history; or
- “Is located in an area designated as a High Intensity Financial Crime Area (HIFCA) or a High-Intensity Drug Trafficking Area (HIDTA).”

Risk mitigation factors cited by NCUA include:<sup>7</sup>

- “Proper identification of MSB relationships;

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<sup>5</sup> *Id.* at 3-4.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.* at 5.



- “Adequate assessment of potential risks;
- “Adequate understanding of the business model and activity of the MSB;
- “Adequate and ongoing due diligence relative to the risk assessed;
- “Adequate and ongoing suspicious activity monitoring;
- “Adequate staffing, expertise, and resources.”

The NCUA guidance states that “[i]f a credit union determines that a member MSB presents a higher level of money laundering or terrorist-financing risk, enhanced due diligence measures should be conducted in addition to minimum due diligence procedures. Depending on the level of potential risk, as well as the size and sophistication of a particular MSB, a credit union may pursue some or all of the following actions as part of an appropriate enhanced due diligence review:

- “Reviewing an MSB’s [AML/CFT] program.
- “Reviewing results of an MSB’s independent testing.
- “Reviewing written procedures for the operation of an MSB.
- “Conducting on-site visits of an MSB.
- “Reviewing an MSB’s written employee screening practices.”<sup>8</sup>

The NCUA guidance also states the following:<sup>9</sup>

“Not all money services businesses pose the same level of risk. Each will require a different level of due diligence based on the credit union’s review and assessment. As noted above, MSBs providing services to other MSBs can pose a significantly higher level of risk that warrants heightened due diligence and monitoring.”

Many credit unions based in the United States have reported facing push-back from examiners regarding their provision of services to MVTS operators and similar MSBs. Some of these credit unions have refused to open account for MVTS/MSB companies or closed the accounts of their MVTS/MSB members because of these supervisory concerns, although other credit unions continue to serve the MVTS/MSB sector.

Wholesale credit unions in the United States have also on occasion closed the accounts of member retail credit unions that they perceive as presenting unduly high AML/CFT risks based on the retail credit unions’ account activities (such as a pattern of unusual payments).

Retail-level credit unions in the United States that have significant international payments activities—based on the needs of their physical person members—have also had problems establishing and maintaining correspondent accounts with both domestic and foreign banks because of perceived AML/CFT-related risks and compliance costs. This is especially true for credit unions serving international organizations like the United Nations that have members

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<sup>8</sup> *Id.* at 6.

<sup>9</sup> *Id.*



located in many different parts of the world, including in jurisdictions that have higher AML/CFT risks.

Similarly, Canadian credit unions have had increasing difficulties over the past several years in terms of establishing and maintaining “agent banking” services as the downstream clients of foreign correspondent banks. An international payment originated by a Canadian credit union will typically be processed initially by a Canadian wholesale credit union or a Canadian bank that uses its network of correspondent banks to effect international payments. Recently, however, these types of arrangements have faced considerable challenges with such “agent banks” giving Canadian credit unions notice of their intention to end these relationships because they believe that serving credit unions presents undue AML/CFT-related risks and compliance costs.

But retail credit unions can also be shut out of the correspondent banking system even if they do not engage in international payments and offer relatively few lines of business.

In Great Britain, for example—where the average asset size of a credit union is roughly the equivalent of USD 5.4 million in total assets<sup>10</sup>—a number of credit unions have found difficulty in opening bank deposit accounts with major highstreet banks as a result of concerns about their AML/CFT compliance programs.

Evidence suggests that this flows from concerns regarding the regulatory and legal liability of the bank in providing payment services to credit unions who serve physical person depositors. This is despite credit unions being regulated deposit-takers in their own right, operating a relatively low-risk, domestic business model and, in particular, being subject to full AML/CFT and financial crime regulation of their own via the United Kingdom’s (UK) Financial Conduct Authority.

According to a recent submission to the UK’s Treasury Select Committee, the British Bankers’ Association (BBA) reported that:<sup>11</sup>

“The uncertainty about exposure to risk and the resources needed to comply with financial crime compliance obligations have been important factors influencing the risk management approach of firms. Banks have also faced very significant litigation from customers affected by financial crime compliance actions. Other factors such as a lack of clarity on the practical requirements of policies emanating from international bodies, variations in laws and regulations in some jurisdictions and the challenges posed to law enforcement in responding to sophisticated money laundering techniques further exacerbate the challenges posed to banks.”

British credit unions’ problems with respect to gaining and maintaining access to banking services are compounded by the fact that only five major banks control access to the clearing system in the UK and there are no British wholesale credit unions.

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<sup>10</sup> See World Council of Credit Unions, *2014 Statistical Report* (2015), available at <http://www.woccu.org/publications/statreport>.

<sup>11</sup> BBA, *BBA response to Treasury Select Committee request for written evidence: Access to Banking Services*, at 2 (Jan. 15, 2015).



**VI. What issues should be covered in the Guidance?**

The provision of more detailed FATF guidance or recommendations surrounding supervisory AML/CFT expectations would assist credit unions significantly in the fight against “de-risking” both in the context of credit unions providing financial services to MVTS operators or other MSBs, and in the context of credit unions as bank customers. Specific recommendations or requirements that address the subject of “de-risking” and how credit unions and their partners can work with correspondent banks would be highly beneficial for credit unions and their members, many of whom are physical persons of modest means.

Ideally, FATF guidance should encompass both the provision of correspondent banking services as well as detailed information on expectations for clients of correspondent banks. We believe that clearer “rules of the road” concerning what are and what are not higher-risk relationships—as well as clearer supervisory expectations about under what circumstances an institution is likely to be subject to an enforcement action or reputational damage—will help stem the “de-risking” phenomenon significantly by reducing the perceived AML/CFT risks and compliance costs associated with these relationships.

A lack of fair access to banking and payments limits credit unions’ ability to fulfil their mission of promoting the financial inclusion of underserved individuals. Clearer rules of the road will make it easier for financial institutions, their supervisors and their examiners to have clear, consistent, and cost-effective approaches to AML/CFT compliance that will succeed in keeping bad actors out of the financial system without also harming the operations of credit unions and other legitimate financial businesses.

We thank the FATF for considering our comments in response to its technical questions for banks on correspondent banking and money or MVTS operators. We urge the FATF to continue its project of developing guidance on “de-risking” that will better allow credit unions everywhere to continue to benefit their members by promoting thrift and providing them access to loans and payments services at fair rates.

If you have questions about our comments, please feel free to contact me at [medwards@woccu.org](mailto:medwards@woccu.org) or +1-202-508-6755.

Sincerely,

A handwritten signature in black ink that reads "Michael S. Edwards". The signature is fluid and cursive.

Michael S. Edwards  
VP and General Counsel  
World Council of Credit Unions, Inc.