

Notes From The Chair

To combat money laundering and terrorist financing, the international community has issued various laws, regulations and guidance on international financial flows.

U.S. residents, for example, have had to report on material overseas financial holdings under the Bank Secrecy Act³ since 1970 and in recent years have had to disclose significant personal information when opening financial accounts and to file additional reports on material overseas financial holdings.

Additional recent changes reflect the efforts of the international Financial Action Task Force (FATF), established in 1989 to "set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system." In 2010 FATF issued its Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing (Recommendations) to combat these threats.

These Regulations may create serious conflicts for lawyers. They require a lawyer to file suspicious activities reports (SARs) with government agencies on potential or ongoing client activities that the lawyer suspects may involve money laundering or terrorist financing and, at the same time, they call for a ban on informing clients about these reports (the "no tipping-off" rule). These recommendations clearly conflict with the ABA's Model Rules of Professional Conduct and state professional ethics rules under which attorney-client confidentiality generally takes precedence over disclosure requirements. The U.K. has already adopted this aspect of the FATF recommendations, and lawyers there are filing significant numbers of SARs and complying with the no tipping-off requirements.

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