United States Government Accountability Office Questions for Interview with the American Bar Association (ABA)

and

Responses of Kevin L. Shepherd, Former Chair of the ABA Task Force on Gatekeeper Regulation and the Profession, on Behalf of the ABA

1. **How does the ABA identify money laundering and terrorist financing risks in the legal profession? What information sources are used in this analysis?**

   ABA Response:

   The ABA is a voluntary professional association, and as such does not have regulatory authority over lawyers. Licensing and disciplining lawyers for violation of applicable ethics rules, including for criminal conduct, is the purview of state supreme courts. Each jurisdiction has a lawyer disciplinary office that investigates and prosecutes allegations that lawyers have violated applicable professional conduct rules.

   The ABA is committed to the ethical practice of the law by all lawyers. Therefore, the ABA Board of Governors created the ABA Task Force on Gatekeeper Regulation and the Profession (ABA Task Force) in 2002 to study money laundering and terrorist financing risks in the legal profession as well as other related subjects and to help coordinate the ABA's response to these challenges. The ABA Task Force, in collaboration with representatives from other ABA entities and specialty bar associations with expertise in this area, subsequently developed the Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing (Good Practices Guidance), and the ABA House of Delegates adopted it as official ABA policy in August 2010. (See ABA Resolution 116 and the attached Good Practices Guidance).

   As explained in the Good Practices Guidance, the Financial Action Task Force (FATF) previously issued risk-based guidance for the legal profession in October 2008 known as "RBA Guidance for Legal Professionals" (FATF Lawyer Guidance). The FATF Lawyer Guidance is a complex document that identified the anti-money laundering (AML) and combatting the financing of terrorism (CFT) issues specific to the legal profession and outlined the risk factors that lawyers need to consider in developing a risk-based system. Because the FATF Lawyer Guidance is "high level" guidance intended to provide a broad framework for implementing a risk-based approach for the legal profession in general—but did not offer detailed direction on applying this approach to specific factual situations—it urged the legal profession to develop "good practice in the design and implementation of an effective risk-based approach." Therefore, the ABA, with input from other specialty bars, developed and adopted the Good Practices Guidance in response to the FATF's request.

   The Good Practices Guidance identified, discussed, and analyzed a wide range of money laundering and terrorist financing risks encountered by the legal profession within the three general risk categories listed by the FATF (i.e., country/geographic risk, service risk, and client risk). The Good Practices Guidance then suggested numerous specific voluntary good practices designed to assist lawyers in detecting and combating money laundering while satisfying their professional obligations, including protecting the attorney-client privilege and fulfilling their ethical duties to keep confidential information relating to the representation of the client. The ethical obligation of client confidentiality is broader than the evidentiary attorney-client privilege. Accordingly, the purpose of the Good Practices Guidance was to serve as a valuable resource that lawyers can use in identifying the different types of risks and developing an

appropriate risk-based protocol for client intake and assessment to help the lawyers avoid inadvertently facilitating money laundering or terrorist financing on the part of their clients or prospective clients.

The information sources used by the ABA Task Force, other ABA entities, and other lawyer organizations in preparing the Good Practices Guidance included the information and analysis contained in the FATF Lawyer Guidance, the extensive practical and legal knowledge and experience of the prominent lawyers who drafted the Good Practices Guidance, and the work product generated by lawyer organizations in other countries, including the Council of Bars and Law Societies of Europe (CCBE) and the Law Society of England and Wales.

2. **What are the goals of the Gatekeeper Task Force with respect to addressing risks of money laundering in the legal profession? Are there any ways that you measure success or whether more attention is needed?**

ABA Response:

Since the ABA Task Force was created by the ABA Board of Governors in 2002, its broad goals for addressing risks of money laundering in the legal profession have been to (1) analyze the growing challenges of money laundering and terrorist financing and initiatives by the Treasury Department, the Department of Justice, other U.S. federal agencies, the Congress, and the FATF to address those problems; (2) help the ABA develop and adopt policies to effectively detect and combat money laundering and terrorist financing without creating unnecessary new federal or state legislative or regulatory mandates that would conflict with state supreme courts' inherent authority to regulate the legal profession, the attorney-client privilege, or the confidential lawyer-client relationship; and (3) work with ABA leadership, the ABA Governmental Affairs Office, and other relevant ABA entities to implement those ABA policies.

The ABA Task Force, in conjunction with other ABA entities, actively pursued and largely achieved these goals in several different ways. For example, the Task Force developed two new policies adopted by the ABA House of Delegates in 2003 and 2008 that expressed support for reasonable and balanced, risk-based measures to combat money laundering and terrorist financing while opposing any law or regulation that would undermine the courts' inherent authority to regulate and oversee the legal profession, the attorney-client privilege, or the confidential lawyer-client relationship.

After the House of Delegates adopted these policies, the Task Force worked closely with the ABA leadership, ABA Center for Professional Responsibility, and ABA Governmental Affairs Office for years to analyze numerous proposed bills and regulations and ensure that any measures actually adopted or enacted were consistent with these and other ABA policies.

After the ABA submitted two comment letters to the Treasury Department's Financial Crimes Enforcement Network (FinCEN) in 2012 and 2014, respectively, expressing the Association's positions and concerns, FinCEN issued its final Customer Due Diligence Rule in 2016 that included ABA-recommended language protecting confidential client information. In addition to submitting comments to FinCEN, the ABA also expressed concerns to Congress regarding numerous different beneficial ownership reporting bills that would have (1) expressly required lawyers and their small business clients—instead of just the small businesses—to report the businesses' beneficial ownership information to FinCEN and (2) regulated lawyers as "formation agents" under the Bank Secrecy Act, thus forcing them to file suspicious activity reports against their clients. After considering the views of the ABA and many other stakeholders, Congress ultimately enacted a revised bill known as the Corporate Transparency Act (CTA), which was contained in Title LXIV of the National Defense Authorization Act for Fiscal Year 2021, P.L. 116-283. Although the ABA did not support the CTA due to our general opposition to federal beneficial ownership reporting legislation, we believe that the CTA as enacted was far preferable to the previous bills because the CTA omitted the two most harmful ABA-opposed provisions described above.

As explained above, the ABA Task Force also developed the Good Practices Guidance to help lawyers detect and combat money laundering and terrorist financing (adopted as ABA policy in 2010). In addition, the Task Force prepared "Frequently Asked Questions" about the Guidance, helped persuade the Conference of Chief Justices to endorse the Guidance, and worked with the ABA leadership to disseminate the Guidance and Frequently Asked Questions to all state and local bar associations throughout the country. The ABA Task Force worked with the International Bar Association (IBA) and the CCBE to develop an international lawyer's guide (Lawyer's Guide) to help lawyers around the world to detect and fight money laundering. The ABA Task Force also spent considerable time educating the legal profession, including lawyer regulators in partnership with the ABA Center for Professional Responsibility, about the importance of following the Good Practices Guidance and the ABA/IBA/CCBE Lawyer's Guide.

The ABA Task Force worked collaboratively with the ABA Standing Committee on Ethics and Professional Responsibility (ABA Ethics Committee) and the ABA Standing Committee on Professional Regulation (ABA Professional Regulation Committee) to address the ethical obligations of lawyers with respect to client due diligence in the AML and CFT context. In 2013, the ABA Ethics Committee directly addressed the issues raised in the Good Practices Guidance by issuing its Formal Opinion 463 (May 23, 2013) titled "Client Due Diligence, Money Laundering, and Terrorist Financing." Subsequently, the ABA Ethics Committee issued its Formal Opinion 491 (April 29, 2020) addressing a lawyer's duty, under ABA Model Rule of Professional Conduct 1.2(d), to avoid counseling or assisting in a crime or fraud by explaining that a lawyer must inquire into the matter when the facts show a "high probability" that a client is seeking to use the lawyer's services to assist criminal or fraudulent conduct. In addition, both the ABA Ethics Committee and the ABA Professional Regulation Committee continue to consider possible changes to the ABA Model Rules of Professional Conduct (and/or changes to the Comments to the Model Rules) to further strengthen and clarify this due diligence obligation.

After the ABA Task Force achieved its primary goals described above, the ABA Board of Governors recently voted to sunset the Task Force at the conclusion of the ABA Annual Meeting which takes place this month. Because ABA Task Forces are not permanent entities, but rather are created by the ABA Board of Governors for a limited time to address a specific legal issue, the sunsetting of Task Forces once their work is largely complete is part of the ABA's standard procedure. Once the ABA Task Force is sunset this month, the ABA's continuing work on these issues will shift to the ABA Ethics Committee and the ABA Professional Regulation Committee, as those committees address possible changes to the ABA Model Rules and/or their Comments. Should future events so require, the ABA may also address these issues with the assistance of its entities with relevant expertise (including the ABA Business Law; Real Property, Trust, & Estate Law; International Law; Criminal Justice; and Taxation Sections) and the ABA Governmental Affairs Office.

3. **Interest on Lawyer Trust Account (IOLTA) accounts have been identified by FATF and the Treasury Department as a mechanism that can be used to aid in money laundering. Do you have views on whether these risks exist? If so, are there any additional steps the legal profession could take to reduce the risk of IOLTA accounts being used to facilitate money laundering?**

ABA Response:

It is important to note that the "IOLTA" feature of some trust accounts simply refers to the requirement that the interest generated by the account be used to fund civil legal aid programs for low-income Americans. We believe this is irrelevant to the money laundering discussion. It is more useful to use the term "client trust account" instead. Not all client trust accounts are IOLTA accounts, but all IOLTA accounts are client trust accounts. Although there have been isolated press reports of unscrupulous individuals or businesses using law firm client trust accounts as a mechanism to aid in money laundering, these practices appear to be rare, and we are not aware of any widespread incidence of misuse of client trust accounts for this purpose.

The ABA explained the necessity for client trust accounts—and the distinction between IOLTA and non-IOLTA accounts—in two recent comment letters to the FDIC and FinCEN. For example, as the ABA explained in its comments to the FDIC's then proposed rule on Recordkeeping for Timely Deposit Insurance Determination in 2016, when lawyers receive funds from clients—whether for advance legal fees, settlement funds for a lawsuit, or other purposes—the lawyers are legally and ethically required to hold the funds in a separate trust account and not comingle them with the law firm's funds. In particular, the ABA explained that:

> Lawyers and law firms often handle money that belongs to clients, such as settlement checks, fees advanced for services not yet performed, or money to pay various court fees. If the funds are large or will be held long enough so that they can earn net interest for the benefit of the client, lawyers deposit the funds into one or more separate trust accounts they establish at banks or other financial institutions and the net interest earned is provided to the client. Often, however, the amount of money that a lawyer handles for a single client is small or held for only a short period of time and hence cannot earn interest for the client in excess of the costs incurred to collect that interest. In those instances, a lawyer places these deposits into a combined, or pooled, trust account—in most states, an "Interest on Lawyers' Trust Account" (IOLTA) (footnote omitted).
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> Explaining the need for these client trust accounts, the U.S. Supreme Court has noted that "attorneys are frequently required to hold clients' funds for various lengths of time . . . (and it) has long been recognized that they have a professional and fiduciary obligation to avoid commingling their clients' money with their own, but it is not unethical to pool several clients' funds in a single trust account." *Brown v. Legal Foundation of Washington*, 538 U.S. 216, 220-221 (2003) (discussing *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 160-161 (1998)). Consistent with those general principles, ABA Model Rule of Professional Conduct 1.15, dealing with "Safekeeping of Property," requires lawyers to hold property of clients or third persons that is in the lawyer's possession in connection with the legal representation separate from the lawyer's own property (footnote omitted). Every state court system has adopted—and vigorously enforces—binding rules similar to ABA Model Rule 1.15 (footnote omitted).
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> Under Model Rule 1.15, lawyers are required to deposit into a client trust account any legal fees and expenses that have been paid in advance, and the lawyer is permitted to withdraw funds from the trust account "only as fees are earned or expenses incurred" (footnote omitted). While the client's funds are held in the trust account, the lawyer is obligated to maintain on a current basis books and records in accordance with generally accepted accounting practices and comply with any recordkeeping rules established by law or court order, such as the Model Rules for Client Trust Account Records (footnote omitted). The lawyer must also maintain complete records on such funds for a period of five years after termination of the representation (footnote omitted). In addition to safeguarding legal fees and expenses advanced by clients, many lawyers and law firms also establish separate client trust accounts for other purposes, such as when the lawyer or law firm is "administering estate monies or acting in similar fiduciary capacities" for the client (footnote omitted).

See the ABA's June 24, 2016 Comment Letter to the FDIC, at page 3. See also the ABA's October 3, 2014 Comment Letter to FinCEN in response to its then proposed Customer Due Diligence Rule.

The ABA has consistently opposed proposals to require lawyers or law firms to disclose the identity of clients whose funds are held in the client trust accounts or to require that lawyers or law firms disclose the beneficial ownership of clients with funds in those accounts. After considering the ABA's concerns that the two proposals referenced above would be unduly burdensome and undermine lawyers' ethical obligations to preserve client confidentiality, both FinCEN and the FDIC modified their proposed rules to clarify that such disclosure on the part of lawyers and their law firms is neither appropriate nor required.

In both letters, the ABA argued that requiring lawyers and law firms to report their clients' identities, beneficial ownership, and account information would be costly, burdensome, impractical, and inconsistent with lawyers' ethical duties to preserve client confidentiality under applicable state court ethics rules. In its final Customer Due Diligence Rule, FinCEN agreed that such reporting would be inappropriate, reasoning as follows:

> One commenter representing the legal profession [the ABA] requested that escrow accounts established by lawyers to keep their clients' funds in trust be given the same treatment [as other intermediated accounts], due to lawyers' professional obligations to maintain client confidentiality under State law and codes of professional conduct. This commenter proposed that in the case of such accounts, only the lawyers and law firms establishing these accounts would be deemed legal entity customers from which beneficial ownership information would be collected.
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> FinCEN understands that many attorneys maintain client trust or escrow accounts containing funds from multiple clients and other third parties in a single account. Funds flow in and out of these accounts during the normal course of business, and while these movements may not be as frequent as those found in, for example, pooled accounts in the securities and futures industries, they nevertheless create significant operational challenges to collecting this information with reference to the relevant clients and third parties. As in the case of nonexcluded pooled investment vehicles, FinCEN believes that it would be unreasonable to impose such collection obligations for information that would likely be accurate only for a limited period of time.
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> FinCEN also understands that State bar associations impose extensive recordkeeping requirements upon attorneys with respect to such accounts, generally including, among other things, records tracking each deposit and withdrawal, including the source of funds, recipient of funds, and purpose of payment; copies of statements to clients or other persons showing disbursements to them or on their behalf; and bank statements and deposit receipts (footnote omitted).

See Department of the Treasury Financial Crimes Enforcement Network Final Rule—Customer Due Diligence Requirements for Financial Institutions; RIN 1506-AB25; Docket Number FINCEN—2014-0001; 81 Fed. Reg. 29398, 29416 (May 11, 2016). Therefore, the final FinCEN rule included language clarifying that when lawyers and law firms open escrow or client trust accounts at financial institutions on behalf of their clients, the law firms will only have to disclose their own beneficial ownership, not the identity or beneficial ownership of their clients for whom the accounts were established.

Similarly, in 2016, the FDIC published its final rule on Recordkeeping for Timely Deposit Insurance Determination that included ABA-proposed language designed to protect client confidentiality. The final rule clarifies that while law firms must continue to maintain complete and detailed records regarding their IOLTA and other client trust accounts held at large banks, confidential client information regarding those accounts need not be disclosed to the financial institution or the FDIC unless and until the institution fails. See Federal Deposit Insurance Corporation Final Rule—Recordkeeping for Timely Deposit Insurance Determination; RIN 3064–AE33; 81 Fed. Reg. 87734, 87750 (December 6, 2016).

Although the ABA does not believe that law firm client trust accounts are a major factor in facilitating money laundering—and continues to oppose any new proposal to require lawyers or law firms to disclose the identity or beneficial ownership of law firm clients whose funds are held in such accounts for the reasons cited by the FDIC and FinCEN in their two final rules above—we believe there are additional steps the legal profession could take to reduce the risk.

First, we continue to encourage all lawyers to follow the Good Practices Guidance when dealing with a new client or a new client matter.

Second, we encourage all transactional lawyers to read and follow ABA Formal Opinion 491, which sets forth a lawyer's affirmative duty to inquire into the legitimacy of a client's proposed transaction, if and when the lawyer determines that there is a "high probability" that the client is seeking the lawyer's services to further criminal or fraudulent activity, including money laundering.

Third, we continue to encourage the ABA Ethics and Professional Regulation Committees and the ABA House of Delegates to consider possible changes to ABA Model Rules of Professional Conduct and/or its Comments to highlight the ethical obligations of lawyers with respect to client due diligence in the AML and CFT context. If such changes are proposed to the ABA Model Rules and adopted by the ABA House of Delegates, the revisions would become the policy of the ABA. Because the ABA is not a regulator, the revised Rule would only become a binding ethical obligation on lawyers when adopted by the state supreme courts that license and regulate those lawyers. In our view, any potential changes to these or any other lawyer ethical obligations should be adopted, if at all, by the highest courts of the states in which the lawyers are licensed or admitted to practice law, not by Congress or federal agencies, consistent with longstanding ABA policy.

4. **We have obtained the Voluntary Good Practice guidance from 2010 and would like to make sure we have the most up-to-date version. Is there a newer version available or does the ABA have any plans to update its Voluntary Good Practice guidance?**

ABA Response:

The Voluntary Good Practices Guidance, which was adopted by the ABA House of Delegates as its official policy in 2010 and then broadly disseminated to state and local bars, courts, and the legal community, is the first and only version of the Good Practices Guidance produced thus far. However, the ABA and the other lawyer associations that prepared the Guidance intend to update it in the near future to reflect the recent enactment and ongoing implementation of the Corporate Transparency Act, the FATF Lawyer Guidance as updated in June 2019, and other recent developments.

5. **The Voluntary Good Practice guidance lays out some basic protocol for client intake and assessment to supplement existing client intake and conflicts review system. Can you talk about what due diligence a lawyer would perform specifically for clients interested in corporate formation?**

ABA Response:

As explained in detail throughout the Good Practices Guidance, the Guidance adopts a risk-based approach in which the level of recommended client due diligence that a lawyer should consider performing when representing a new client or handling a new matter for an existing client varies depending on many factors. The Good Practices Guidance applies to lawyers representing clients in corporate formation services—and many other types of transactional legal services as well—but it does not establish specific standards for lawyers representing clients interested in corporate formation per se.

Instead, the Good Practices Guidance establishes numerous suggested client due diligence (CDD) protocols that vary based on many factors, including whether clients and matters appear to present average risk, lower risk, or enhanced risk. Under its risk-based approach, the Good Practices Guidance recommends that lawyers follow standard risk CDD, reduced risk CDD, or enhanced CDD, depending on the circumstances. (See, e.g., Good Practices Guidance, Section 6, "Basic Protocol for Client Intake and Assessment," at pgs. 34-37, and "Appendix A: Basic Client Intake," at pgs. 38-39.) These differing levels of suggested CDD

based on risk level would generally apply to all transactional legal services, including but not limited to corporation formation.

a. A practice pointer in the guidance suggests that "lawyers should consider using third-party escrow agents to avoid responsibility generally" in managing client money, securities, and other assets. How, if at all, would the use of a third-party escrow agents modify any responsibilities that an attorney would have to perform client due diligence?

ABA Response:

To put the practice pointer from the Good Practices Guidance referenced above in context, the text of the Guidance immediately preceding the practice pointer quoted above states as follows:

> 2. Managing of client money, securities or other assets. The Lawyer Guidance does not define "managing of client money, securities or other assets." Here, as well as under items 3 and 4 below, the lawyer would in all cases be handling the client's funds and as emphasized above, FATF is particularly focused on the potential risk in situations where the lawyer is actually handling funds. In any situation where the lawyer controls the use, application, or disposition of funds or has signatory authority over the client's financial account, the risk must be addressed at some level. Recognize, however, that in almost all cases the funds in the lawyer's control will have been transferred to the lawyer through a financial institution that has performed its own required due diligence and, in some cases, the lawyer should be able to rely on that in lieu of conducting the lawyer's own due diligence. In other cases, however, the financial institution may have simply satisfied itself that the money is flowing into the trust account of a reputable lawyer or law firm. Nonetheless, any time lawyers "touch the money" they should satisfy themselves as to the bona fides of the sources and ownership of the funds in some manner and should inquire of any involved financial institution as to any CDD performed by such institution.

See Good Practices Guidance at pages 12-13.

Although the ABA Model Rules of Professional Conduct and the binding state court rules that are based on the ABA Model Rules do not impose any explicit duties of due diligence on lawyers with regard to the sources and ownership of client funds handled by the lawyers, the Good Practices Guidance section quoted above recommends that lawyers who handle client funds "should satisfy themselves as to the bona fides of the sources and ownership of the funds in some manner and should inquire of any involved financial institution as to any CDD performed by such institution." Therefore, if the client's funds are held by a third-party escrow agent and not held by the lawyer or the lawyer's law firm in the lawyer's client trust account or otherwise, the lawyer would still need to assess the risk factor regarding sources and ownership of client funds as set forth in the Good Practices Guidance's due diligence recommendations. However, the third-party escrow agent would also need to perform the appropriate due diligence for the sources and ownership of the client funds.

6. The Voluntary Good Practice Guidance references the importance of on-going education efforts. Does the ABA offer training to lawyers on detecting money laundering or terrorist financing? Are there any other sources of professional training that address this issue?

ABA Response:

After the ABA adopted the Good Practices Guidance in 2010, the ABA Task Force and its individual members, as well as the ABA Center for Professional Responsibility and specialty and state and local bar associations, have engaged in robust and extensive educational outreach efforts to help lawyers detect and combat money laundering and terrorist financing. These efforts include live programming, webinar

programs, article preparation, and interaction with the Conference of Chief Justices and international bar associations and law societies, including the International Bar Association, CCBE, Japan Federation of Bar Associations, and Federation of Law Societies of Canada.

For example, the recent publications produced by the ABA Task Force or its individual members include the following:

> "Beneficial Ownership Disclosure and the Corporate Transparency Act: Overdue or Overwrought?", *Probate & Property* (July/August 2021)
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> "Inside the ABA's New Guidance on Willful Blindness," *Law360*, May 7, 2020
>
> "New Global Anti-Money Laundering Guidance for Lawyers: Why U.S. Lawyers Should Take Notice," *Probate & Property* (Jan./Feb. 2020)
>
> "Inside the New Anti-Money Laundering Guidance for Attorneys," *Law360*, June 28, 2019
>
> "The Relevance of FATF's Recommendations and Fourth Round of Mutual Evaluations to the Legal Profession," FORDHAM INT'L LAW JOURNAL, 2018
>
> "Real Estate Industry in Anti-Money Laundering Crosshairs," *Law360*, August 24, 2017
>
> "ABA Needs a New Model Legal Ethics Rule," *Law360*, April 6, 2017
>
> "A Lawyer's Guide to Detecting and Preventing Money Laundering," October 2014, a collaborative publication of the International Bar Association, the American Bar Association, and the Council of Bars and Law Societies of Europe.
>
> "Money Laundering and Scrubbing Your Clients: The Ethical Dimensions of the Gatekeeper Initiative," International Council of Shopping Centers Law Conference Papers (October 2014).
>
> "Ethics and the Gatekeeper Initiative: What are My Obligations?," *ACREL Papers* (Spring 2014).
>
> "Ethically Speaking. . . . Just What are My Obligations Under the Gatekeeper Initiative?," Probate & Property 43 (Sept./Oct. 2013). This article analyzes the May 23, 2013 formal opinion on Gatekeeper issues by the ABA Standing Committee on Ethics and Professional Responsibility.
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> "The Gatekeeper Initiative and the Risk-Based Approach to Client Due Diligence," *The Review of Banking & Financial Services*, April 2012.
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> "The Gatekeeper Initiative and the Risk-Based Approach to Client Due Diligence: The Imperative for Voluntary Good Practices Guidance for U.S. Lawyers," 37 ACTEC LAW JOURNAL 1 (Summer 2011).
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> "The Gatekeeper Initiative and the Risk-Based Approach to Client Due Diligence: The Imperative for Voluntary Good Practices Guidance for U.S. Lawyers," J. OF THE PROFESSIONAL LAWYER 83 (2010).

As noted in response to Question 2 above, the Task Force also prepared "Frequently Asked Questions" about the Good Practices Guidance and disseminated it to specialty and state and local bar associations along with a link to the Good Practices Guidance.

In addition, the Task Force and/or its various individual members (and those working closing with the Task Force) have coordinated, participated in, or promoted the numerous educational programs set forth below. The involvement also includes the use of materials generated or prepared by Task Force members that are used by others in these educational programs (such as outlines, PowerPoint presentations, and articles).

2021

Date	Title/Location
March 10, 2021	Webinar, "Beneficial Ownership Disclosure Under the Corporate Transparency Act: Is It a Big Deal?", AmTrust Title
March 9, 2021	Webinar, "Beneficial Ownership Disclosure Under the Corporate Transparency Act: Is It a Big Deal?", Maryland State Bar Association
March 3, 2021	Webinar, "Beneficial Ownership Disclosure Under the Corporate Transparency Act: Is It a Big Deal?", American College of Real Estate Lawyers
February 25, 2021	Webinar, "Beneficial Ownership Disclosure Under the Corporate Transparency Act: Overdue or Overwrought?", American Bar Association

2020

Date	Title/Location
November 25, 2020	Webinar, "A Global Comparative Analysis of Beneficial Ownership Approaches: How Burdensome? How Effective?", International Bar Association
November 9, 2020	Webinar, "Risky Business: Steering Clear of Money Laundering and Financial Schemes in the Covid Economy," ABA Center for Professional Responsibility

August 26, 2020	Webinar, “Lawyers as Gatekeepers of Financial System Integrity: Comparative Regulations and Issues,” Association of Certified Financial Crime Specialists

2019

Date	Title/Location
September 23, 2019	“Initial Coin Offerings (ICOs) and Cryptocurrencies: Financial Crime Issues,” 2019 annual meeting of the International Bar Association, Seoul, South Korea
July 24, 2019	Telephonic Briefing for the Private Investor Coalition on H.R. 2513 and S. 1978, the Corporate Transparency Act of 2019

2018

Date	Title/Location
October 11, 2018	Panel, “Beneficial Ownership Reporting,” LLC Institute sponsored by the LLCs, Partnerships and Unincorporated Entities Committee of the ABA Business Law Section, Washington, D.C.
October 8, 2018	Panel, “Who’s Who in the Colosseum?,” 2018 annual meeting of the International Bar Association, Rome, Italy
October 8, 2018	Panel, “Lawyers in the Crosshairs: Anti-Money Laundering Strategies and the Balance Between Security and Professional Core Values,” 2018 annual meeting of the International Bar Association, Rome, Italy

June 28, 2018	Webinar, "Lawyers' Anti-Money Laundering Obligations: Have We reached the Perfect Storm"
March 13, 2018	Speaker, "Gatekeeper Update," Maryland State Bar Association, Real Estate Section, Baltimore, Maryland
February 2, 2018	Panel, "Am I My Client's Gatekeeper? Lawyers' Anti-Money Laundering Obligations," National Organization of Bar Counsel, Vancouver, British Columbia, Canada

2017-16

Date	**Title/Location**
December 6, 2017	Webinar, "Breaking Bad: The Role of Lawyers in Combating Money Laundering and Terrorist Financing," ABA Real Property, Trust, and Estate Law Section
October 10, 2017	Panel, "Not Quite 'Surf n Turf' But Essential AML and Sanctions Knowledge for Your Practice: Perspectives from Other Jurisdictions and the Australian Context," 2017 annual meeting of the International Bar Association, October 10, 2017, Sydney, Australia
September 14, 2017	Panel, "Evolving Due Diligence Challenges and Technological Solutions for Financial Institutions and their Counsel," ABA Business Law Section annual meeting, September 14, 2017, Chicago, Illinois
April 28, 2017	Panel, "Has the Legal Profession Lost its Moral Compass? The Panama Papers Lawyers' Professional Ethics and Due Diligence Obligations," ABA Section of International Law, April 28, 2017, Washington, D.C.

March 20, 2017	Panel, "Global Priorities for AML/CFT in 2017," FATF Private Sector Consultative Meeting, March 20, 2017, United Nations Complex, Vienna, Austria
September 8, 2016	"60 Minutes, Panama Papers, CDD Financial Institution Rules; Developments Affecting Attorneys," ABA Business Law Section, Annual Meeting, Boston, Massachusetts
September 8, 2016	"Ethical Issues Under Beneficial Ownership Rules For Attorneys Representing a Closely Held Business Organization," ABA Business Law Section, Annual Meeting, Boston, Massachusetts

7. **We have identified several ABA comment letters on FinCEN proposed rules. Did ABA provide written comments on FinCEN's Advanced Notice of Proposed Rulemaking (ANPRM) for Beneficial Ownership Reporting Requirements that was included in the Federal Register on April 1st of this year? If so, could we get a copy?**

ABA Response:

On May 4, 2012, the ABA submitted its initial comment letter to FinCEN's Advance Notice of Proposed Rulemaking (ANPRM) regarding its development of its Customer Due Diligence Rule for financial institutions. In that comment letter, the ABA objected to language in the ANPRM that would have required law firms to disclose confidential information about their clients' identities and beneficial ownership whenever they receive advance legal fees from their clients and deposit those funds in the firms' trust accounts or if they establish new bank accounts on behalf of clients. The ABA comments also expressed concerns that the FinCEN proposal could have imposed unreasonable and excessive burdens on many lawyers and law firms with client trust accounts and could have undermined both traditional state court regulation of lawyers and the confidential lawyer-client relationship.

As further explained in response to Question 3 above, the ABA submitted a second comment letter to FinCEN on October 3, 2014 in response to the agency's updated customer due diligence proposal. In those comments, the ABA urged FinCEN to include language in its final rule clarifying that when lawyers or law firms open escrow or client trust accounts on behalf of their clients, they need only disclose their own beneficial ownership information, not the identity or beneficial ownership of their clients for whom the accounts were established. After considering the comments submitted by the ABA and many other stakeholders, FinCEN issued its final rule on May 11, 2016 that includes the ABA-proposed language designed to protect client confidentiality. The new rule became fully effective and binding on covered financial institutions on May 11, 2018.

The ABA did not submit written comments on FinCEN's ANPRM for beneficial ownership requirements under the recently enacted Corporate Transparency Act that was published in the Federal Register on April

1, 2021. However, several other specialty bar associations including the American College of Trust and Estate Counsel (ACTEC), American College of Real Estate Lawyers (ACREL), and the American College of LLC and Partnership Attorneys submitted written comments on FinCEN's ANPRM, and several ABA members who are active in the ABA Real Property, Trust & Estate Law Section and the ABA Business Law Section actively participated in the preparation of those other entities' comments.

Once FinCEN issues its new proposed rule under the Corporate Transparency Act later this year, the ABA or one or more of the ABA's individual sections may submit written comments to that proposed rule.

a. FinCEN's website shows that the ABA's public comment on the 2003 ANPRM for Anti-Money Laundering Programs for Persons Involved in Real Estate Closings and Settlements is a 35-page document titled "Comments of the ABA Task Force on Gatekeeper Regulation and the Profession on the Financial Action Task Force Consultation Paper Dated May 30, 2002." Can ABA confirm that this was the ABA's submitted public comments for this ANPRM? If not, could ABA share a copy of its public comment for this ANPRM? (We also identified public comments from the ABA Section of Real Property, Probate and Trust Law, which specifies that it does not represent the ABA's position)

ABA Response:

The ABA did not submit written comments in response to FinCEN's 2003 ANPRM on Anti-Money Laundering Programs for Persons Involved in Real Estate Closings and Settlements. The ABA's official policy on AML and CFT issues in general is expressed in four separate resolutions adopted by the ABA House of Delegates in 2002, 2003, 2008, and 2010, respectively. Within those documents only the Resolution, not the attached background Report, constitutes the official ABA policy.

Although the ABA Task Force submitted its own written comments dated August 23, 2002 to the FATF regarding the FATF Consultation Paper dated May 30, 2002, and the Task Force later submitted a copy of those same 2002 comments to FinCEN in response to FinCEN's 2003 ANPRM for Anti-Money Laundering Programs for Persons Involved in Real Estate Closings and Settlements, those written comments expressed the views of the ABA Task Force only and not the views of the ABA.

As stated on the first page of the ABA Task Force's written comments:

> The views in this report are solely those of the Task Force on Gatekeeper Regulation and the Profession. This report has not been approved by the House of Delegates or the Board of Governors of the American Bar Association. Viewpoints expressed herein are those of the Task Force and do not necessarily represent the official position or policies of the ABA, unless expressly stated.

On June 9, 2003, the ABA Section of Real Property, Probate and Trust Law (which is now known as the ABA Section of Real Property, Trust, and Estate Law) submitted its own comments to FinCEN regarding its ANPRM on Anti-Money Laundering Programs for Persons Involved in Real Estate Closings and Settlements. Like the Task Force's comments above, the ABA Section's comments contained a disclaimer on the first page stating that the views expressed in the comments are those of the Section only and not the views of the ABA.