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Karen M. Moore
Bricker & Eckler LLP
100 S. Third Street
Columbus, OH 43215
(614) 227-2363
kmoore@bricker.com

Executive Director
DEBORAH O. MCKINNON

May 28, 2010

Mr. John Carlson
Principal Administrator
2, rue Andre-Pascal
75775 Paris Cedex 16
France

Re: Recommendations 5, 33, and 34 as they apply to trusts

Dear Mr. Carlson:

The American College of Trust and Estate Counsel ("ACTEC") submits the following comments in response to the invitation at the end of the FATF Meeting with the Private Sector in Vienna, Austria, on May 3, 2010, to provide written comments on the discussions at the meeting.

ACTEC is a national professional association of approximately 2,600 lawyers elected to membership by their peers on the basis of professional reputation and ability in the field of trusts and estates and on the basis of having made substantial contributions to these fields through lecturing, writing, teaching, and bar activities. Fellows of ACTEC have extensive experience in rendering advice to taxpayers on matters of federal taxes, with a focus on estate and gift tax planning and compliance. ACTEC offers technical comments about the law and its effective administration, but does not take positions on matters of policy or political objectives.

Principal responsibility for preparation of these comments was exercised by Duncan E. Osborne of Osborne, Helman, Knebel & Deleery, LLP in Austin, Texas (512) 542-2010 and Henry Christensen, III of McDermott, Will & Emery in New York, New York (212) 547-5658. Members of your staff should not hesitate to contact either one of them for more information regarding these comments.

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Recommendation 34 as it applies to trusts would impose unworkable requirements. The focus on beneficial ownership and the requirement that it be identified and be available to law enforcement in some form of registry does not take into account the structure or administration of trusts. Trying to track at all times the grantor, the trustee and all potential beneficiaries would be burdensome, expensive, and ultimately unproductive.

Trusts can literally have hundreds of beneficiaries whose identity may change as circumstances change. These possible beneficiaries have few if any rights, may know nothing of the trust, and may never receive a distribution. To require a trustee to obtain, let alone file in some registry, information on all such hypothetical beneficiaries would not be a sensible use of money and would interfere with the proper use of trusts, which are employed because of their inherent flexibility.

For the reasons detailed in Vienna by Chip Poncey for the United States Department of the Treasury, obtaining data regarding all possible beneficiaries of express trusts from the start of establishing a trust account would not be cost effective and would not address a risk based assessment. Trustees and financial institutions have limited resources and this would not use them efficiently. There are millions of trusts, and financial institutions are trustees of a limited number of those trusts. Family members and trusted friends are the trustees of most trusts. Most trusts are purely domestic trusts with no possible risk of money laundering. Unless FATF is going to apply different standards to different trusts, this would be a dramatically overbroad standard for most trusts.

Many trusts have entirely appropriate reasons for confidentiality. A donor may establish a trust for his grandchildren and not want any of the grandchildren to know about the existence of the trust until they reach the age of, say, 30, so as not to stifle their incentive to succeed on their own. It would violate the privacy of these grandchildren to have information about such arrangements in a public registry.

Against this background, we are NOT suggesting that the information not be available, but rather that it be available in the trustee's records. As a practical matter in dealing with trusts, the focus should be on the trustee. The trustee will have the records, will control the assets, and will be able to identify actual recipients of distributions at various points in time. Presumably law enforcement needs to make sure that when money moves, it can ascertain how much is moved and to whom it is moved. Furthermore, to effectively engage trustees in the fight against money laundering and terrorist financing, the real emphasis should be on due diligence in selecting trustees and due diligence by trustees in making distributions to beneficiaries.

In the United States, all trustees (with a de minimis exception for trusts with no nonresident alien as a beneficiary and with one other exception that is unimportant for these purposes) are required to file income tax returns with detailed financial information and with specific data on all distributions to beneficiaries. (The exception is revocable trusts and other grantor trusts which are totally transparent as to the grantor or settlor.) At one point all trustees were required to file a copy of the trust document with the first tax

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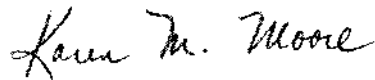
return of the trust. It would be relatively straightforward to reinstate that requirement and also to have the grantor (settlor) perform due diligence with respect to the trustee. The trustee in turn would have to do due diligence with respect to the grantor and know the circumstances of the trust.

In years following the initial creation of the trust, the trustee would be required to file any amendments, exercises of powers of appointment, or other modifications to the trust. In addition, the trustee would be required to keep records on distributions to beneficiaries. Finally, as with other stakeholders, the trustee would be required to keep records of all these documents and activities for five years and, in appropriate circumstances, make them available to law enforcement.

All of these actions would be relatively easy for the grantor and trustee to perform and would be relatively easy to implement. That is because most of these actions would be consistent with the trustee's current duties under the law and with the tax returns that the trustee is currently required to file. Indeed, in the United States, these anti-money laundering and terrorism financing rules and obligations could be added to the instructions that deal with the filing of tax returns.

We hope that you will give serious thought to our comments and allow us to work with you in the future to implement practical and effective anti-money laundering and terrorism financing rules with respect to trusts.

Sincerely,



Karen M. Moore
President

KMM:ls

cc: Chip Poncy, Director
Office of Strategic Policy Terrorist Financing and Financial Crimes
Edward J. Krauland, Esq.
Kevin L. Shepherd, Esq.
Bruce Zagaris, Esq.