

# **ACAMS New York Chapter**

## **Developing and Maintaining An Effective PEP Management Program**

**Ernst & Young  
April 27, 2010**

Ted Greenberg  
TG Global  
[ted.s.greenberg@gmail.com](mailto:ted.s.greenberg@gmail.com)

# Politically Exposed Persons

---

- Individuals who are, or have been, entrusted with prominent public functions
- Includes family members and close associates
- Represent a greater ML risk because of the possibility that they will abuse their position and influence to carry out corrupt acts (e.g., extort/pay bribes, steal assets)
- “Not all PEPs are bad” but all require EDD

# Why Focus on PEPs? (1/2)

---

- Devastating effect on development outcomes. Individual PEP can have disproportionate impact.
  - \$1 trillion in bribes each year (World Bank estimate)
  - Marcos (1972 – 86): \$5 – \$10 billion
  - Abacha (1993 – 98): \$2 - \$5 billion
- Portion of the recovered assets could provide much-needed funding for social programs or infrastructure. Every \$100 million:
  - 250,000 household water connections
  - 50-100 million drug treatments for malaria
  - 240 kilometers of two-lane paved road

# Why Focus on PEPs? (2/2)

---

- Legal and reputational risk to individual bank, and reputational risk to a jurisdiction's financial sector as a whole.
- Standard CDD is not sufficient
- Level the playing field – banks are already taking action on PEPs and many go beyond the international standards
- The problem continues: Corrupt PEPs are becoming more effective in hiding their identity through associates, legal entities, and intermediaries.

# Response – UNCAC & FATF

---

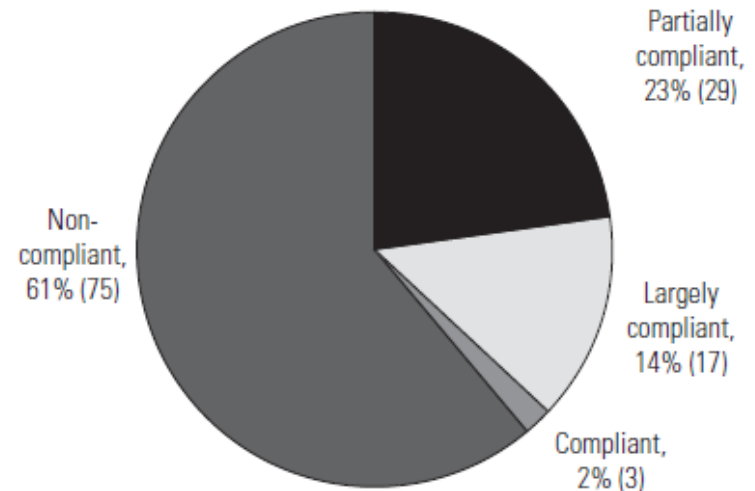
- UNCAC, Article 52 (entered into force Dec 2005):
  - “to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates.”
- FATF 40+9 Recommendations: Rec. 6 (June 2003)
  - Risk management systems to identify PEPs
  - Senior management approval
  - Establish source of funds and source of wealth
  - Conduct enhanced ongoing monitoring

# The Reality: Low Compliance

---

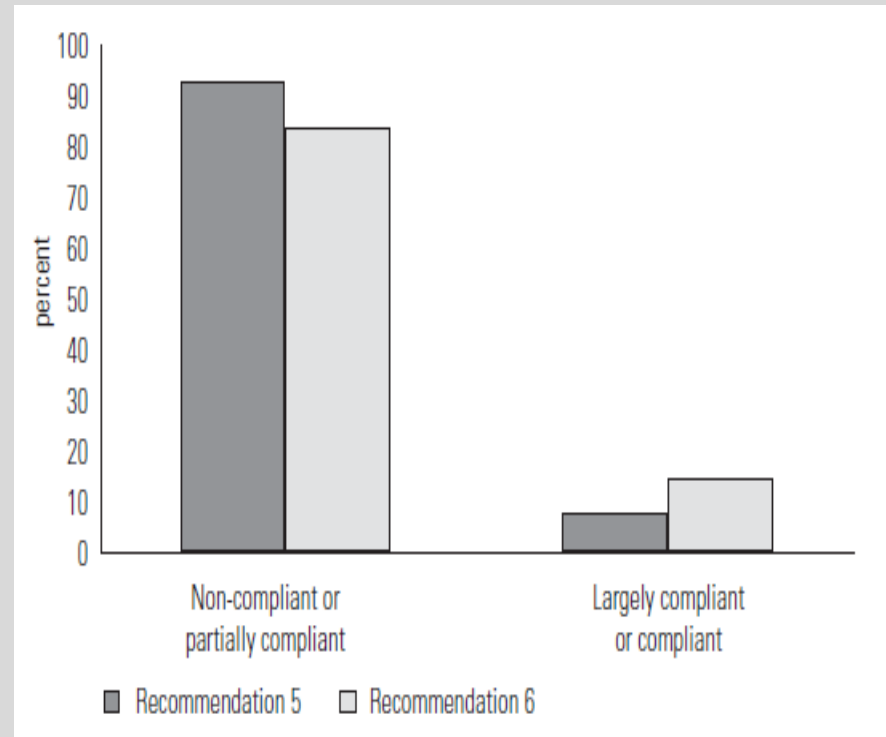
- More than 80% of jurisdictions have not implemented effective measures.
- Compliance lower in FATF jurisdictions

FATF Recommendation 6: Compliance of 124 Jurisdictions



# Link between PEPs and AML Policies

- PEPs should be identified in course of CDD procedures (including identification of beneficial owner)
- Failures in CDD creates risk that PEP will not be identified
- FATF Recommendation ratings build on this link



Recommendation 5 = CDD  
Recommendation 6 = PEPs

# Little Evidence of Monitoring

---

What is reported by banks?

- No corrupt PEP activity in banks or in other sectors
- Few PEP STRs
- Few investigations or prosecutions for grand corruption

Where is the corrupt money?

# Why is PEPs Compliance a Problem?

## (1/2)

---

- Lack of political will
  - Failure to pass and implement legislation and regulations
  - No regulatory sanctions on PEPs
  - Little interest in measuring effectiveness of PEPs measures (e.g., collection of statistics, studies)
  - Few cases

# Why is PEPs Compliance a Problem?

## (2/2)

---

- Need for clarification and harmonization of international requirements – differences have led to confusion about definitions and how to implement

	UNCAC	FATF
Basic definition	Individuals who are, or have been, entrusted with prominent public functions, and their family members and associates	Individuals who are or have been entrusted with prominent public functions in a foreign country...Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves
Foreign or domestic	Foreign and domestic (not explicit)	Foreign only

- “The classic corrupt PEP is dead” -- corrupt PEPs are using complex corporate and trust arrangements and close associates or relatives to veil the identify of the PEP or the PEP’s beneficial ownership



# Stolen Asset Recovery Initiative

## POLITICALLY EXPOSED PERSONS STRENGTHENING PREVENTIVE MEASURES

UNCAC Conference of States Parties

Doha, Qatar

November 12, 2009

Theodore S. Greenberg

Larissa Gray

Delphine Schantz



# Principal Recommendation 1

---

## Apply EDD to All PEPs, Foreign and Domestic

- UNCAC - domestic and foreign PEPs; FATF – foreign only
- Why?
  - Legal and reputation risks remain same – domestic politicians are subject to same pressures and perverse incentives.
  - Increase credibility of commitment to fighting corruption and money laundering
  - Reality: Many banks are already covering both

# Principal Recommendation 2

## Require a Declaration of Beneficial Ownership

- Provides background to assist with identification and verification
- Assist regulatory authorities in evaluating BO practices
- Requirement to sign under criminal penalty, where existing, serves as deterrent
- *One* tool – not *only* tool—to identify and verify BO. Not sufficient to let banks “off the hook”

**BOX 2.2** Sample Form for Declaration of Identify of the Beneficial Owner

**Form X: Declaration of Identity of the Beneficial Owner**

[To be executed by the contracting customer in writing.]   
Account/Deposit No.

Contracting customer: \_\_\_\_\_  
[full name and address]

I, the contracting customer, hereby declare:  
(mark with a "X" where appropriate)

that I am the sole beneficial owner\* of the assets in the account referenced above

OR

that the beneficial owner(s) of the assets in the account referenced above is(are):  
[Provide: Full Name of the natural person(s), Date and place of birth, Nationality, Address/Domicile, Country, Passport Number, National ID Number or similar national identification document and a copy of such documents]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The contracting customer undertakes to [automatically] [or within a reasonable period of time and in any event no less than two weeks] inform the Financial Services Business [insert applicable Bank contact] in writing about any changes in the information provided above.

It is a criminal offense to [deliberately] [intentionally] provide material false information on this form [insert applicable criminal law and penalty in bold type].

Signature(s) of the contracting customer: \_\_\_\_\_ Witnessed by Bank Official: \_\_\_\_\_

Date: \_\_\_\_\_ Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\* Beneficial Owner includes [the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf the transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement and relevant third parties.] [Citations to national law, international standards or conventions as appropriate.]

# Principal Recommendation 3

---

## Request Asset and Income Declarations

- Required in more than 110 countries
- Provides a “snapshot in time” that bank can use to compare with profile or account activity
- Addressing refusals
- Issues: Verification is uneven
- Other uses: PEP identification if public list of filers, analysis of STRs by FIUs

# Principal Recommendation 4

---

## Periodic Review of PEP Customers

- Review of the “big picture” on risk-based approach, at least yearly
- Helps to overcome silo approach
- Should include consideration by at least one senior manager
- Good Practice: PEPs Committee

# Principal Recommendation 5

---

## Avoid Setting Limits on the Time a PEP Remains a PEP

- UNCAC and FATF – “once a PEP always a PEP”
- Problems with time limits
- Consider on case-by-case basis using risk-based approach

# Other Recommendations & Issues

---

- PEPs are an asymmetric risk – no one single tool will solve problem
- Ensure inclusion of “family members” and close associated in definition of PEPs.
- Commercial Databases
- Involvement of group AML/CFT compliance officer in decision to accept customer
- Issue: National List of PEPs

# Regulatory Authorities, FIUs

---

- Include PEPs component in on-site inspections
- “Red flags” or typologies to help identify PEPs, including close associates, and indications of corruption
- Enforcement, use of sanctions
- Guidance on filing PEP STRs
- Collection of statistics

# National Cooperation & Training

---

- Partnerships with government authorities and private sector on PEP issues
  - Strategy
  - implementation of PEPs policy
  - suspicious indicators
  - typologies and trends
- PEP training within banks, regulators, FIU
  - Harm caused, culture of compliance, “red flags”

Thank You