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The Wolfsberg Group

Introduction

This chapter illustrates an early example of corporate Collective Action, the Wolfsberg Group, and charts its development from its inception, in 1999, up to the present day. The Wolfsberg Group is an association of eleven banks[1] that took its name from the Château Wolfsberg where the banks held their first meetings and where they continue to hold their annual forum.

Having started out with the aim of addressing money laundering risks in private banking, the Wolfsberg Group has since developed a broad range of standards and a diverse program of activities. These address not only its original focus of anti-money laundering, but also other financial crime risks within the financial industry, such as corruption, terrorist financing, and sanctions.

The phrase "Collective Action" suggests a positive or proactive approach by participants to an initiative with a common goal that, by implication, is acknowledged by the participants from the outset. For the Wolfsberg Group, this was not the case. The spirit of Collective Action developed gradually through the group's early meetings and the adoption of its working procedures. By now, the notion of Collective Action through consensus is a core principle, but it took time and effort to build up the necessary trust amongst banks that were otherwise competitors. This chapter describes the process that created this trust as well as the past and current work and achievements of the Wolfsberg Group.

Before looking at the Wolfsberg Group's output and program, the question arises as to why the banks decided to join forces in the first place. What were the conditions for the group's foundation? How did the group

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[1] Current members are Banco Santander, Bank of Tokyo-Mitsubishi UFJ, Barclays, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, J.P. Morgan Chase, Société Génerale, and UBS.

proceed beyond the adoption of the first set of principles? That is to say, why did the members decide to continue their collaboration rather than disband and give the floor to others, as would have been a perfectly feasible alternative?

Origins and history

The banks that were eventually to form the Wolfsberg Group first came together in 1999 to address anti-money laundering in private banking. In the course of discussions, they articulated principles that reflected uniformly high standards for this client segment, which carries an increased degree of risk from a money laundering perspective. The impetus for developing these principles can be traced back through the various legal and regulatory developments that together comprise anti-money laundering standards[2]. These developments started in the US and then moved to the international arena.

The US approach to tackling money laundering was premised on the notion that, if cash transactions could be monitored, then it would be possible to curtail criminal activity. The Bank Secrecy Act 1970[3] therefore required financial institutions to keep accurate records of financial transactions and to report domestic and foreign transactions exceeding certain stipulated threshold amounts. This concept was reinforced when the law was amended under US President Ronald Reagan in the course of his "war on drugs". Thus, in 1986, money laundering was made a federal criminal offense and the Bank Secrecy Act was amended to criminalize the "structuring" of transactions to avoid the reporting required under that law. To propagate this approach, an international effort was needed. The criminalization of money laundering was therefore picked up at the international level by the UN in the 1988 Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances[4].

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[2] See Mark Pieth, "International Standards Against Money Laundering", in Mark Pieth and Gemma Aiolfi (eds), *A Comparative Guide to Money Laundering* (Cheltenham: Edward Elgar, 2004), pp. 3–42.

[3] Codified at 31 USC § 5311 et seq. Now included in the International Money Laundering Control and Abatement Act of 2001, adopted as Title III of the US PATRIOT Act.

[4] United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, December 20, 1988, in force November 11, 1990, 1582 UNTS 165.

The UN was not, however, where the next developments occurred. The baton was instead passed to the Financial Action Task Force (FATF), which had been established in response to mounting concern over money laundering by the G7 at their Paris summit of 1989. Hosted by the Organisation for Economic Co-operation and Development (OECD), the FATF issued its first round of 40 Recommendations in 1990. They were conceived of as an initiative to combat the misuse of financial systems by persons laundering drug money but have since been revised a number of times to cover other predicate offenses[5]. The standards on customer due diligence did not develop much beyond their original focus until 2000, when the Wolfsberg Group published its Wolfsberg Anti-Money Laundering Principles for Private Banking (Wolfsberg AML Principles)[6]. The need for sound "know your customer" (KYC) policies was also addressed by the Basel Committee on Banking Supervision (BCBS) in 2001, when it identified related deficiencies in banks around the world and reflected these in a paper, Customer Due Diligence for Banks[7].

In parallel to the deliberations and consultations on the BCBS paper, the OECD Working Group on Bribery in International Business Transactions had started to consider ways to address the misuse of financial institutions by persons seeking to circumvent new provisions designed to combat bribery. The need to address this aspect of bribery led to the involvement of two of the three facilitators who helped to establish the Wolfsberg Group.

Motivations

The members of civil society who helped facilitate the future Wolfsberg members' early meetings included three individuals who were actively involved in raising awareness about the linkages between money laundering and corruption and in promoting the adoption of relevant policies and laws. These were, notably: Peter Eigen and Fritz Heimann of the global,

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[5] See FATF, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations, Paris, 2012. All FATF recommendations are available at www.fatf-gafi.org. For more on the history of the FATF Recommendations, see Pieth, in this volume.

[6] Available at www.wolfsberg-principles.com/pdf/Wolfsberg-Private-Banking-Principles-May-2012.pdf (May 2012 edition).

[7] BCBS CDD 2001.

non-governmental, anti-corruption organization, Transparency International (TI); Mark Pieth, Professor of Criminal Law and Criminology of the University of Basel and Chairman of the OECD Working Group on Bribery, which had recently overseen the drafting of the OECD Anti-Bribery Convention[8]; and Stanley Morris, an international financial consultant and former director of the US financial intelligence unit, FinCEN. Their initial move, in 1998, was to encourage US banks to meet to develop common standards with respect to anti-money laundering (AML). One year later, they directed these same efforts towards a group of international banks. Whether the motives of the "outsiders" were aligned with those of the banks is not clear; regardless, the stage was set. The relationships between the facilitators together with their wider networks, helped several banks from the US and Europe to meet in late 1999. The motivation for the banks to gather with their counterparts for the first time was the prospect of articulating high standards in relation to due diligence in private banking.

Initial meetings

The hesitancy of the participants during the first few meetings was probably due to the sensitive nature of the client sector under discussion and the novelty of the proposal. Up until then, standard setting had been the preserve of regulators and lawmakers. Therefore, the combination of private bankers' discretion and the lack of a roadmap at first made for uncertainty, even awkwardness, among the banks. It took some time and a gradual build-up of mutual trust for them to recognize that Collective Action in this area would be in their mutual interest. Once this realization took hold, the banks acted quickly, however. At their second meeting, they assigned a dedicated group of AML specialists the task of gathering at the Château Wolfsberg to produce a first draft of what were to become known as the Wolfsberg AML Principles. The breakthrough came when participants agreed to exchange their internal standards on due diligence along with their KYC rules for private clients, and to condense the core principles into a common document.

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[8] Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Paris, December 17, 1997, in force February 15, 1999 (1998) 37 ILM 1.

Establishment of the group

The very first meeting comprised the facilitators, the group of American banks that had already met in the US in a first effort to articulate an approach, and a group of European banks with global private banking businesses. Most countries, with the exception of the US and Switzerland, were represented by their largest private bank. The aim from the very beginning was to attract the banks with the largest volume of assets under management in the private client segment so as to ensure that the standards would apply to a large segment of the market. In a second move, which led to an enlargement of the group's industry and geographical expertise and coverage, a major US investment bank, a large bank from Japan, and a Spanish bank with substantial activities in Latin America became members.

Initially, the initiative had the limited task and scope of reviewing AML standards; later, its mandate was extended to producing a common document. However, with this task complete, the group of banks and its facilitators felt that it was in their mutual interest to continue the exercise of articulating principles and make it a more permanent endeavor. The Wolfsberg Group was thus established.

Facilitators

The original facilitators, TI and the Basel Institute on Governance, continued in their roles to varying degrees. Their contributions have proved most valuable when it has come to providing neutral facilitation of debates among the banks as potential competitors. The facilitators represent independent points of view and contribute factual information on aspects of the debate where they command special expertise. Most recently, such input was provided in the formulation of the Wolfsberg Statement against Corruption of 2007 and, later, of the substantially expanded Wolfsberg Anti-Corruption Guidance of 2011.

Development

As noted above, the publication of the Wolfsberg AML Principles in October 2000 could have been the point at which the Wolfsberg Group declared its goal achieved and disbanded. The group, however, had discovered that regular meetings were valuable in and of themselves. And, while

the Wolfsberg AML Principles were an essential starting point, it was clear that their effectiveness in preventing money laundering would be increased by common work on numerous other and more specialized AML-related areas. Therefore, the group decided to continue to meet, choosing correspondent banking as one of the next issues that it would address. As it happened, this decision was overtaken by events: after September 11, 2001 (9/11), the group changed priorities and focused on counter-terrorist financing. The Wolfsberg Group was the first body to come forward with an industry recommendation on how to improve the financial sector's contribution to combating the financing of terrorism, highlighting areas where banks could do better and where there was room for better cooperation with the public sector. External factors drove the agenda for the months following the attacks, with the group deliberating its response in light of the ensuing focus on the financial aspects of the war on terror by the US and other governments.

Over the following years, the group expanded its consideration of principles to correspondent banking, trade finance, the "risk based approach", and various aspects of credit and cash cards. These different areas of focus have been driven both by risks identified by the members themselves and by developments in the regulatory environment.

Beyond its quarterly meetings, the core group has extended its collaboration to running regular workshops on a number of specialist topics; an annual forum with participants from a wider group of banks and regulators; an academy as a cross-institutional training facility; a program of regular outreach to international organizations; and, as a later development, meetings with banks and regulators outside the group's traditional geographic scope.

Current organizational set up and activities

The group

The Wolfsberg Group has neither a written constitution nor any formalized set of rules or statutes. It has developed its practices and procedures over the course of its existence, although it has not put in place a monitoring mechanism or sanctions for omissions by its members. From the outset, it was considered important to gather on a regular basis. It was agreed this

would be quarterly and that the member banks would take it in turns to host the meetings at their respective headquarters. This arrangement has permitted the group to refrain from charging membership fees as each member has born its own share of the hospitality costs.

The ordinary meetings follow an agenda that is set by the two chairpersons in advance. The meetings are nevertheless characterized by an informality that permits sufficient time for discussion and decision-making on a consensus basis. Generally they do not last beyond a day-and-a-half, during which time the group reviews strategic developments and the progress of its working groups, which are formed to address specific topics on an ad hoc basis or to review and update existing papers.

The member banks have generally limited themselves to a maximum of two members as participants in the meetings, with the hosting bank inviting additional employees to attend as guests. Most banks delegate their Global Heads of Compliance, Anti-Money Laundering, or Financial Crime, depending on how their compliance teams are structured. While the members must be able to take decisions on behalf of the banks they represent, there is always a period of internal consultation and approval prior to the finalization of any paper that the group intends to issue.

The working groups that concentrate on specific subjects are formed based on current issues and concerns in the AML sphere. Each bank may participate or delegate employees with the requisite knowledge of the subject matter, so that best practices are identified and collected for inclusion in any paper that may be produced. Banks that take part in the annual forum may also be invited to participate in these working groups if they express particular interest in the topic when discussed at the forum. The working groups then present the drafts to the Wolfsberg Group for deliberation. It is not unusual for the papers to go through several iterations over an extended period of time before they are finalized. This is a potential downside of the group's principle of decision-making by consensus. Then again, anything else would be unacceptable as the group would be unable to present a unified approach to its products and ensure implementation by its members.

The forum

The group addressed the question of expanding its membership by deciding to host an annual three-day forum at Wolfsberg that is open to a much

broader group of participants. The first Wolfsberg Forum was organized in 2004 as an occasion to bring together regulators, law enforcement agencies, and financial institutions from all over the world. The group sought to facilitate discussion of relevant topical issues in plenary and breakout sessions; to broach the possibility of future work products for the Wolfsberg Group; and to test possible approaches to emerging AML challenges. At the same time, the Wolfsberg Group has opened its working groups to non-members on selected issues, thus securing a greater range of input and, it is hoped, buy-in from non-member banks. The various cards papers have been developed in this way, for example.

Invited to the forum are generally large, international financial institutions that operate in major financial centers. The meetings are held in English with no translation facilities[9] and they follow Chatham House rules. The Wolfsberg chairmen open the conference with a review of the previous year's developments and current challenges for the industry in the broad area of AML compliance.

For many participants, the forum is the opportunity par excellence to speak openly to regulators and law enforcement as well as to peers, and to thrash out the theories behind new or proposed policies, testing them against the realities of implementation. Unlike many financial services conferences, there are frank and open discussions with a limited number of set pieces and significant time allocated to discussion in the plenary and in smaller workshops.

The discussions and opinions aired at the forum are further considered by the Wolfsberg Group and may inform its future work.

The academy

The Wolfsberg Academy started in 2006 and has been held every year since. It draws on the expertise of its members, engaging them to serve as mentors to, and discussion partners for, compliance staff who may take on senior roles at some future date within their respective institutions and who are, therefore, also potential representatives for the group. Each member bank selects two employees, usually from compliance. The curriculum of

[9] Though many of the Wolfsberg Group's papers are translated into several languages. See further www.wolfsberg-principles.com.

the three-day program focuses on case studies, risk scenarios, and future work that the Wolfsberg Group itself might pursue.

Meetings with regulators

Domestic and international regulators were invited to Wolfsberg in 2001 for a first meeting to discuss their views on the Wolfsberg AML Principles. These contacts proved extremely useful when, after 9/11, the Wolfsberg Group hosted an ad hoc specialist conference to discuss lessons from the fight against terrorism and how the financial sector could improve the effectiveness of its contribution.

In addition, Wolfsberg Group representatives participate in meetings with the FATF and the Egmont Group of Financial Intelligence Units to give a private sector view on the issues under discussion by those organizations.

Outreach

The Wolfsberg Group regularly meets with industry bodies, such as the European Banking Federation, the International Banking Federation, the New York Clearing House, and the Society of Worldwide Interbank Financial Telecommunication (SWIFT). The meetings address general requests for mutual information and matters of mutual concern, such as improved transparency in international payments or corruption typologies.

International Due Diligence Repository

In the Wolfsberg Principles for Correspondent Banking, which were issued in 2002, the Wolfsberg Group encouraged the development of an international registry for financial institutions that would enable them to obtain relevant information for due diligence on correspondent banks. In 2003, the Wolfsberg Group started working on this topic with the Bankers' Almanac; the latter then launched the "Due Diligence Repository" for the collection and storage of relevant due diligence information and documentation. The initiative aimed to eliminate the need to reproduce and repeatedly supply due diligence information to counterparty banks. Instead, fi-

nancial institutions can direct inquiries to the repository, where the most up-to-date due diligence information will always be stored.

The Wolfsberg Group developed a list of required documents that reflects recognized best practice with respect to the information necessary to complete appropriate due diligence. It includes information on each financial institution's license (and the licenses of its subsidiaries); copies of corporate governance documents; biographies of board members and senior managers; annual reports (including those of subsidiaries); and a completed, standard-form Anti-Money Laundering Questionnaire, which was developed by the Wolfsberg Group's members.

Standards

Described below is a non-exhaustive summary of the group's work that focuses on some of the more prominent papers and frequently asked questions (FAQs) issued by the group[10]. The designations in the titles indicate how the Wolfsberg Group views each topic. "Principles" are standards to be implemented by a "financial institution" throughout its operations, including its branches and subsidiaries globally. "Statements" are position papers that delineate the role of financial institutions within a wider context. "Guidelines" and "papers" are standards that are highly recommended but include optional approaches to the topic discussed. "FAQs" explain a subject in more detail than would otherwise be possible in another format.

Anti-Money Laundering Principles 2000, 2002, and 2012

The first round of the AML principles, published in October 2000, were based on the more advanced AML laws and preempted those that would soon be contained in the BCBS paper, issued in October 2000. Principles included "politically exposed persons" (PEP) and beneficial owner identification, issues that were not adequately dealt with in a number of countries at that time. However, the principles' true novelty lay in the fact that they were to apply to all the banks' subsidiaries, including those in so-called "offshore centers", and that they contained the core elements of the group's

[10] See www.wolfsberg-principles.com for a complete set of documents.

future work, such as the Due Diligence Repository, discussed above, and more detailed deliberations on PEPs.

Statement against terrorist financing 2002

The terrorist attacks of September 11, 2001, had a profound impact on the international financial sector and, as such, were of great concern to all members of the Wolfsberg Group. The immediate reaction from the banks was to play an active part in the fight against terrorism and, at the same time, to manage expectations as to what could be achieved given the way the terrorists had actually used the financial system to support their criminal acts. The group deliberated intensively over a short period of time and the Statement on the Suppression of the Financing of Terrorism was issued in early 2002. The choice of "Statement" in the title sought to convey the position and commitment of the group and the need for a wider, coordinated effort to fight terrorism that was led by governments.

Principles for Correspondent Banking 2002

In fact, the second area of concern to the Wolfsberg Group's AML experts was correspondent banking, which had started to attract the attention of regulators and law enforcement back in 2001. The Wolfsberg Group was the first body to publish a comprehensive set of recommendations on what, in its view, would be good practice in dealing with correspondents, in particular when it comes to due diligence and monitoring.

Guidance on a Risk Based Approach 2006

At one of the first Wolfsberg meetings with regulators, the idea of allocating resources in accordance with perceived risk was presented and discussed at length among and within both the group of regulators and participating banks. It took a few years for the full merit of such a concept to be acknowledged and accepted. In view of the wide practical implications of introducing such a concept, the FATF invited Wolfsberg to nominate a representative to co-chair a joint public-private working group that would develop the concept further. The collaboration finally led to a FATF position paper and the inclusion of the risk based approach as an integral part

of the FATF 40 Recommendations. In parallel, Wolfsberg developed its own paper, the Guidance on a Risk Based Approach for Managing Money Laundering Risks.

Statement on international wire transfer transparency 2007 and 2009

In the course of 2005, it became apparent that the lack of transparency in interbank payment messages (so-called "cover payments") used in international wire transfers had significant implications for anti-money laundering, counter-terrorist financing, and sanctions compliance. To address the relevant problems, which had seemed virtually intractable until then, the Wolfsberg Group collaborated with the Clearing House Association. Together they endorsed measures to enhance the transparency of international wire transfers so as to promote the effectiveness of global anti-money laundering and counter-terrorist financing programs. The measures included both the global adoption of basic messaging principles aimed at promoting good practice with respect to the payment system (2007) and, in conjunction with SWIFT, the development of enhanced payment message formats (effective 2009).

The initiative reflected Collective Action on a global scale for it involved many financial institutions beyond the core group, as well as other private sector entities, numerous regulators, and intergovernmental bodies. Reaction to these developments was positive and welcomed by the regulatory community.

Trade Finance Principles 2009 and 2011

A highly technical area, trade finance has been outside the purview of most regulators and many compliance departments. Concerns about the abuse of trade finance for the purposes of money laundering and the proliferation of prohibited goods (weapons of mass destruction) have been increasing, however. Responding to these concerns, the Wolfsberg Group asked its specialists to look into the matter and to advise on whether general recommendations would be possible for, and useful to, the industry. At the same time, the FATF had been taking a greater interest in the subject, though it had come to realize that it lacked the technical expertise to formulate rec-

ommendations on many aspects relating to the issue. Together with the International Chamber of Commerce, the Wolfsberg Group therefore advised the FATF on these more technical aspects of preventing the abuse of trade finance for money laundering. In the end, the FATF focused on more general recommendations, whilst the Wolfsberg Trade Finance Principles concerned the more practical aspects of the issue for financial institutions and refer to the more general FATF standards. The development of these complementary documents exemplifies an independent but productive public-private partnership.

Anti-Corruption Guidance 2007 and 2011

When the Statement Against Corruption was issued in 2007, it focused primarily on corruption as a predicate offense to money laundering. In response to significant legislative developments – notably the entry into force of the UK Bribery Act 2010 and the related Ministry of Justice Guidance – the approach was substantially broadened in 2011. In a revised paper, now called the Anti-Corruption Guidance, the Wolfsberg Group took a new approach, addressing both client-related risks and the banks' own risks with regard to bribery. The revised paper again drew on the experience and expertise of the institutions associated with the Wolfsberg Group, as both TI and the Basel Institute on Governance were involved in the final reviews of the paper.

Further papers

A wide variety of further papers developed by the group is available at its website, www.wolfsberg-principles.com/standards.html.

The Wolfsberg Group as a model for Collective Action

The Wolfsberg Group is an industry-driven, voluntary initiative to prevent money laundering. It was brought to life with the cooperation and support of non-state actors. And it presents a mature model for consideration by current and future Collective Action initiatives, which could usefully draw on its experiences, as summarized below:

- Collective Action does not happen by itself but usually requires at least one party to make the first move. In practice, this preliminary step will involve one or more external initiators or facilitators. In all likelihood, they will be better placed to stand back from the understandable and inherent skepticism of the industry players, who are used to competing rather than collaborating.
- Because it involves joint action among competitors, Collective Action is likely to encounter skepticism but may also raise legitimate concerns among legal counsels and others entrusted with ensuring compliance with anti-trust laws. This is so even if the goal of the Collective Action is as legitimate as the prevention of money laundering or the development of other ethical standards. Action in furtherance of such goals, however, should not be an issue under anti-trust laws. Concerns that might be raised in regard to these issues – and it is an appropriate practice to consider these concerns from the outset – can be addressed at the commencement of a Collective Action initiative by establishing the appropriate modus operandi going forward. The involvement and presence of independent observers or facilitators can be considered a satisfactory solution to address such concerns.
- Industry leaders respond to the business case for good business practice, i.e., the argument that companies have a common responsibility and business interest in encouraging and supporting good business practice in their sector. Support from senior leadership is, in turn, essential for securing effective Collective Action. It is also likely to enhance its impact because committed leaders of involved companies will actively contribute to internal and external awareness-raising about the goal of the Collective Action.
- Collective Action is most likely to be consensus-based because any other method of decision-making will risk splitting the group at some point and thus diluting the collective nature of the action. Building a consensus requires time and effort to maintain momentum and focus on attainment of the common goal.
- Having a stable membership from the outset will enable the Collective Action to evolve. If membership fluctuates at the beginning, the chances of the action ever getting off the ground will be reduced: the process of integrating and bringing new players up to speed may reduce momentum and diminish the interest of the wider group. Successful Collective Action initiatives with very broad membership are

still likely to have grown from the work of relatively small numbers of actors at the beginning.

– Identifying subjects of common interest will fuel the Collective Action. Where all participants are convinced that the goal of the action is in their own interest, as well as that of the wider group, success is more likely.
– Neutral facilitation can enable competitors, not only to come together in the first place, but also to identify matters in their common interest. The Wolfsberg Group's experience has shown that facilitators have an important role to play and could, for example, act as independent observers, monitors, advisors, or as "sounding boards" on what might be an appropriate group outcome or result.
– If the topic of the Collective Action is defined relatively narrowly, such that the common interest prevails over individual business interests, the chances of successfully reaching the Collective Action's goal are correspondingly increased. As the development of the Wolfsberg Group illustrates, Collective Action can be successful even among competitors when it evolves around issues where common interest prevails. Compliance issues clearly fall into this category. In relation to banks, for example, it is clear that they should compete on all aspects of their business, but not on the formulation and implementation of high compliance standards, which are clearly in the common interest of all stakeholders. As such, Collective Action initiatives can assist in ensuring that competition does not provoke a "race to the bottom" when it comes to standards of ethical behavior.
– The development of mutual trust and understanding amongst the group is a prerequisite to progress on Collective Action. It facilitates the sharing of good practices as well as the airing of problems and challenges, all of which are essential elements of the Collective Action model. The Wolfsberg Group's experience shows that this is true even in a highly regulated and supervised industry, such as the financial industry. Parallels can be found in other industries that seek to address corruption, terrorism, proliferation, and monopoly issues.
– A Collective Action needs time to flourish. The evolution of the Wolfsberg Group is a good example of how, over time, an initiative may develop from a loose meeting with a singular goal to a permanent and much wider and sustainable initiative. Despite its lack of written gov-

ernance rules, the Wolfsberg Group now undertakes a variety of different activities and programs.

– A Collective Action has to remain focused. For the Wolfsberg Group, this means concentrating on anti-money laundering, sanctions, counter-terrorist financing, corruption, and financial crime in the banking industry. The more diffuse the goal of the Collective Action, the greater the challenge of maintaining stable membership – not only of the companies involved, but also of the individuals who attend meetings to represent the companies with respect to the areas under discussion. Of all the various elements summarized here, the loss of focus is likely to have the most far-reaching repercussions for a Collective Action and to present the greatest risk to its sustainability.