



# Consultation on Proposed Changes to the FATF Standards

*Compilation of Responses from NGO's and  
individuals*

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Reference        The Review of the Standards – Preparation for the 4th Round of  
Mutual Evaluation, Second Public Consultation

Date             16 September 2011

Dear Mr Urrutia

Thank you for the opportunity to provide the Secretariat with our view on the consultation report “The Review of the Standards – Preparation for the 4th Round of Mutual Evaluation, Second Public Consultation”. We fully support regulatory developments which further combat money laundering (ML) and terrorist financing (TF). The process has been an exemplary example of openness and transparency, and is welcomed for its cooperative nature in evaluating the proposed ideas.

**Background**

FATF has a mandate from G20 nations to combat money laundering and terrorist financing. They have recently been set with the further task of attempting to integrate the demands of various United Nations Security Council (UNSC) resolutions. Since its inception, the FATF has been extremely effective in reducing money laundering and terrorist financing, making it an ongoing success story.

It is necessary to maintain an ongoing review process as the situation is in constant flux, and new technologies are constantly changing the landscape. This process of allowing everyone to comment in the review and state their opinion on necessary changes, propose their own and request that some changes do not take place allows members a chance to take ownership of the process in a positive way. This helps everyone become more involved in the decisions and more aware of the necessity of the standards.

## Overall Response

The proof of the success of this process is in the number of responses that have been received. It shows the flexibility and strength of a consensus process in action. Furthermore, it has succeeded in steering the international community against rogue or deviant nations. The flexibility of the Risk-based Approach and the strength of the cooperation the 180+ nations have shown only further enhances the chances of reducing money laundering and terrorist financing.

Together, more still needs to be done to encourage all members to achieve internationally consistent standards and transparency. A chain is as strong as its weakest link, and so more must be done to clearly show the message that any individuals and companies committing these heinous acts have nowhere to hide. Although many successes have been and will continue to be attained via the FATF structure, there are areas that still require much further discussion and the re-evaluation of options before any further implementation can be made. We hope that you will continue to keep an open door policy on these issues.

Points that seem relevant to us concerning the June 2011 publication of proposed changes to the current Standards are found below. They have been written under the appropriate section with reference to the original consultation paper.

### **1. Beneficial Ownership: Recommendations 5, 33, and 34**

There is obviously a need for any institution to know who is the main beneficiary behind any transaction as this is a fundamental part of the due diligence process. For too long, financial institutions have had their hands tied by the lack of regulatory alignment for them to achieve their obligations.

As the FATF is proposing, if there is a change in how the countries regulate and supervise the information necessary for the FIs to meet their obligations, then this must be seen as positive progress. However, there are concerns with how this will be achieved and how explicit the definitions will be stated.

As raised in the proposal, there will be a *de facto* definition that will consist of the sum of three definitions. Is this really the best way to move forward when the objective is to enhance clarity? Further, it does not clearly state how R33 and R34 will stop the misusing of the law. This leads one to wonder how the FATF can impose stronger incentives to lead the countries into better compliance.

If this is not applied appropriately, then this will lead to mounting costs and inconsistent records at the financial institutions. Friction will also increase in the coordination of due diligence and investigations between private institutions and regulatory bodies who are already struggling to maintain up-to-date records of customer information.

### **2. Data protection and privacy: Recommendation 4**

This is a difficult situation where there is no clear answer for balancing data protection and privacy against discovering illegal activities and AML/CFT objectives. This is also true in the case of international financial institutions wanting to consolidate their functions for cost and efficiency benefits. It appears that at the moment, the variation in privacy laws inhibits a consistent approach to stopping illegal funds.

In the face of these issues, a consistent approach is necessary, and encouragement for better compliance and coordination between authorities and financial institutions is a necessary step forward. We hope that the FATF will keep in mind the need for checks and balances against the abuse of this power by competent authorities or financial institutions with concealed motives. This includes national governments with questionable human rights records.

Further consideration also needs to be given as to how the proliferation of this information will be stored in the various institutions and for how long. Will there be one consolidated, national database? Or will ghosts of these records reside on each system that the customer happens to come into contact with? Who will oversee the process to ensure that foreign nationals who have never visited the country maintain their right to privacy?

### **3. Group-wide compliance programmes: Recommendation 15**

This proposal appears to be supported in principle by the financial community. An obvious method to lowering costs is to have a validation process that allows all the members within a group to forego further investigative procedures by placing reliance and accepting the assessment of the member introducing the customer as this recommendation does.

However, this brings up further problems as to how the differing needs of the differing members of the group align so that a common set of beneficial information is obtained and subsequently shared in a timely manner. We are concerned that the mechanisms and procedures need to be defined well enough to allow for flexibility of the local situation both with the member, with the group and then within the national legal/regulatory framework.

Further issues crop up concerning conflicts of interest. There will need to be clear stipulations as to how and valid reasons as to why other members of the group have access to the information. Surely there will be external supervision to ensure that the correct balance of privacy protection and due diligence can be achieved. Will the customer be given a choice of sharing the information with relevant parties?

There are also likely to be reasons why smaller financial groups will not welcome the extra cost these proposals impose. There may be a critical threshold below which these measures will actually force an increase in running costs without any effective benefit allowing larger institution a considerable savings in efficiencies and so a business advantage.

Consideration might be given to having this recommendation either optional for the financial sector, or having a mandatory threshold above which the recommendation

applies. A further idea might be to have an additional category of an alliance group. It could be formed with the sole purpose of allowing smaller institutions to lower the costs associated with carrying out the due diligence under this proposal by banding together into bigger groups.

#### **4. Special Recommendation VII (Wire transfers)**

The enhancement of SRVII is necessary to achieve the consistent, international approach necessary for the FATF targets. Fully obtaining all the relevant information of both the originator and beneficiary with an ongoing screening process for the intermediary is a valid idea to strive towards. This is especially so as this very process will allow the data to be checked by a number of parties in their procedures.

This system will affect the lower income population disproportionately as they are a group that are likely to be using one of these services for remittances to their home countries to support dependent family members. Any addition in time spent administrating, checking, and following up order information by the money remittance company will necessarily add costs to the administration charges of sending the money. This proposal will also limit the places where money remittance services are allowable (e.g. post offices and hawala shops), what kind of institutions can administer them, and the kind of customers who can send and receive remittance.

A recent report<sup>1</sup> suggests that with the correct support from governments, the upward trend of immediate funds transfers would continue resulting in it becoming the most popular method for money transfer. This might be the answer to attaining better communication between the originating and beneficiary remittance companies. Further consideration should be given to this option.

#### **5. Targeted financial sanctions in the terrorist financing and proliferation financing contexts**

It is obviously important that once an institution discovers that a transaction/ account/ customer may be linked to financing terrorism, the customer not be allowed to access the funds or continue on its intended course. We welcome the update to the Recommendation as prescribed by the United Nations Security Council.

Making the recommendation more explicit will allow financial institutions to clearly understand how to implement the obligations as stated by SRIII. Further guidance with non-binding examples at a later date will provide additional help for full compliance.

#### **6. The Financial Intelligence Unit: Recommendation 26**

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<sup>1</sup>“Emergence of Immediate Funds Transfer as a General-Purpose Means of Payment”, Bruce J. Summers and Kirstin E. Wells  
[http://www.chicagofed.org/digital\\_assets/publications/economic\\_perspectives/2011/3qtr2011\\_part2\\_summers\\_wells.pdf](http://www.chicagofed.org/digital_assets/publications/economic_perspectives/2011/3qtr2011_part2_summers_wells.pdf)

Further enhancing the role of the financial intelligence units (FIUs) is a good step towards better coordination. Although FIUs have been a useful party in the fight for AML/CTF, their role till date has not been substantial enough.

The limiting nature of the privacy laws in many countries have meant that FIUs often struggled to have a substantial impact on coordinating between financial institutions, and/or countries. Financial institutions have been exasperated with the difficulties that many FIUs have had in maintaining up-to-date records and carry out investigations in a timely manner. The lack of coordination between the authoritative bodies has been an issue raised time and again throughout this consultation process.

The additional powers that are being proposed will allow FIUs to become an integral part of the process and hopefully propel them to the forefront of the FATF bodies. Their focus on core competencies and their status as governmental bodies will mean that they are in a perfect position to lead efforts in both collecting information and apprehending ML/TF actors.

#### **7. International cooperation: Recommendation 40**

Although we applaud the principles behind this proposition, there are concerns with its implementation.

The term “diagonal cooperation” needs to be further defined to fully comprehend the mechanisms being seen as the key to better communication between countries. If the word “diagonal” is used, it suggests that the regulatory bodies in all 180 countries can be clearly categorised into similar functions. It raises the question of access to private information by governments with questionable human records or ulterior motives. Will there be the burden of proof before information can be shown, or will it be accessible by anyone with relevant authority on whim?

Further concerns are changes in privacy law required to allow this recommendation to become law.

#### **8. Other Issues Included in the Revision of the FATF Standards**

It is apparent that there is a lot more that needs to be done to further the AML/CFT aims in the international community. It makes sense to apply a logical approach to deal with financial institutions based in countries with below par compliance. The expanded set of measures will be a welcome toolbox in performing best practice procedures.

However, this does raise questions as to how financial institutions based in countries with lower FATF compliance will apply these measures. The cost of complying will inevitably raise costs of doing business in the domestic market and may be further complicated if the government is dragging its feet over progress. In addition, if the regulatory bodies find it difficult to implement due to the increased costs of monitoring coming up against lack of funding, there may well be a chance of them shirking more of those duties onto the private institutions.

A point that seems unacceptably difficult to implement will be the due diligence on family members and close associates of politically exposed persons (PEPs). This may

be a viable proposal if the information required be voluntarily provided from the PEP with no other verification process necessary. But if further validation is needed, this seems like an impractical approach with little added benefit. Guidance and judgement would be required as to how to define family members, how to assess the relationships, and what would happen in cases where the related member is in a different country. This proposal is clearly a step too far and needs to be reconsidered in its present form.

## **Conclusion**

We fully support FATF's goal to formulate higher standards with respect to the proposed changes. We believe the principles in FATF's consultation papers (Phase 1 and 2) are an important step in the right direction to prepare for the 4th Round of Mutual Evaluation.

In case you might have any questions or you would like to receive additional explanations following my response, please do not hesitate to contact me at +61 41 675 9910.

Thank you.

Yours sincerely

Crispin Yuen, CAMS, CISSP, CISA

### ***About AML Sanctions***

*AML Sanctions is an integrated media platform that focuses on current anti-money laundering, counter-terrorist financing and financial sanctions developments. One key aspect of our focus is to bring together and facilitate an open dialogue among private sector participants, regulators and law enforcement officials on topical issues in the AML and financial sanctions space with a view to fostering better understanding by financial sector participants of their obligations under local and global AML and Sanctions regulatory regimes.*

*AML Sanctions was founded by Crispin Yuen. Crispin focuses on helping compliance professionals in understanding and simplifying the relationships between the various regulatory obligations and their business. He is a strong supporter of utilising real-time information, advanced technology and transparent risk and control systems to strengthen AML and sanctions compliance.*

*Crispin is a Certified Anti-Money Laundering Specialist (CAMS), a Certified Information Systems Security Professional (CISSP) and a Certified Information Systems Auditor (CISA).*



To whom it may concern:

In reading your review of the standards papers published thus far I note that the FATF addresses beneficial ownership requirements but does not discuss ownership through complex structures. How far does a financial institution delve into structures? Does a financial institution look at the applicant company and determine the ultimate beneficial owner or does one have to look through the structure for this "control"? Some financial institution have a 25% ownership criteria others require full disclosure of all the companies within a structure – does the FATF have any guidance on this? It becomes complicated when trying to obtain information on legal entities when the potential client indicates that this or that financial institution does not require this information why should it be a requirement here.

Some guidance here would be helpful.



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## **FATF – Second Public Consultation on proposed change to Standards**

The following comments are submitted by the Gibbons Group of Companies. The Group is a mix of licensed financial entities including a bank, trust company, an investment company, a group of insurance companies and a broad spread of retail outlets including motor vehicles, retail clothing and liquor.

The Group is affected by the FATF standards, both from the regulatory perspective impacting on its licensed financial business operations and through compliance requirements made of it when dealing with other financial institutions such as the banks. The Group is privately held. The Group conducts business in multi-jurisdictions in Bermuda and the northern Caribbean.

### 1. Beneficial Ownership: Recommendations 5, 33 and 34

Jurisdictions around the world enact their own domestic legislation with definitions included. The definition of “beneficial owner” may therefore vary from place to place. While it is not intended to bring forward any changes to the wording of Recommendation 5, there needs to be a common understanding of the definition of the term “beneficial owner” in order to support the types of measures that financial institutions and non-financial businesses are to be required to undertake in verifying the identity of beneficial owners.

In some situations uncovering the beneficial ownership may lead to different steps being taken in different jurisdictions because of differences in domestic law. If for definition purposes it is agreed that corporate ownership is held by shareholders or members; that partnership interests are held by general and limited partners; and in trusts and foundations the term beneficial owner refers to beneficiaries (possibility including settlor or founder), this would provide a common basis to build on. The “types of measures” called for to identify and verify the identity of beneficial owners then follow from the definition. Adding the word “ultimate” to beneficial owner could involve an institution in drilling through various intermediary entities and/or individuals if the ultimate natural person is being sought. The complication in Bermuda and elsewhere is that there is no requirement for the ownership layers to be resident in any given jurisdiction, thus attempts to obtain information will be dependent on laws in other jurisdictions. This can lead to international, inter-jurisdictional competition to operate with minimum disclosure requirements.

Under Recommendation 33 it is proposed that common basic information be available from legal entities and competent authorities. On the basis of the foregoing paragraphs, this idea has to be supported.

The FATF discussion on Recommendation 34 highlights the fact that not every jurisdiction recognizes the concept of a trust, and accordingly it is difficult to require an equivalent level of transparency between trusts and similar arrangements, and companies and other legal persons. If all jurisdictions were to recognize trusts, then all jurisdictions could be required to recognize trustees, beneficiaries and settlors and require these to be registered for identity purposes.

However the FATF discussion goes further and proposes that access should be available to information about trust assets and that access should be available in respect of any trusts with a nexus to the jurisdiction. This means that assets could be in one location (that may not recognize trusts) and trustees or beneficial owners in another (where the concept of a trust is recognized). This verges on international tax collection and does damage to the concept that each international jurisdiction should be responsible for the taxing of entities within its own boundaries. It is a dangerous approach and one that the FATF should be careful of addressing. The FATF is not a body responsible for the problem of tax evasion, or establishing international trust law, especially for countries that do not recognize trusts.

## 2. Data protection and Privacy

The FATF has recognized that there are conflicts between international standards for data protection and privacy and the FATF AML/CTF measures. The transmission of information across international borders by insurance companies is a sensitive matter, especially where personal medical information is concerned. There is a significant amount of work to be done between organizations and governments responsible in order to mitigate conflicts that clearly arise.

Our Group is particularly conscious of different data protection and privacy standards that exist in Europe and North America, and compliance with FATF standards merely adds to complications. This is an important issue for insurance companies and particularly for reinsurance companies.

### 3. Group-wide compliance programmes

To begin with, a definition of a group is required. Sections of our Group are currently being supervised separately, as the Banking Group is reviewed independently from the Insurance Group, (but we have been advised of the Group-wide supervision obligation). This is particularly important when it comes to the capital support from the ultimate shareholder, as we are a privately-held Group.

The entity submitting these comments is a Group-wide committee reflecting the sharing of information within the Group for the purposes of global risk management. At present, information at KYC level is relied upon within the Banking Group (Banking, Trust and Investments) but information at KYC level is not shared between Insurance companies or between the Banking and Insurance Groups. External Audit functions, while conducted by the same firm, are reported on independently between Banking and Insurance. This is primarily due to the Insurance Group operating in overseas locations and the Banking Group operating only domestically.

### 4. Wire Transfers

- (i) The Banking Group requires full originator information for EFTs to be made.
- (ii) Suspicious transactions are reported to the local FIA via the usual SAR procedure.
- (iii) If there are reasons to submit an SAR to the FIA, one would be sent. There are no special provisions relating to cross-border EFTs below the threshold.

### 5. Targeted Financial Sanctions

The local National Anti-Money laundering Committee issues the appropriate Notices concerning designated persons and entities and the instructions are followed by both the Banking and Insurance Groups. The Notices are enforceable.

### 6. Financial Intelligence Unit

SARs are made to the Financial Intelligence Agency in Bermuda. Analysis of the SARs may result in referral to the Investigative Unit of the Police (the F.I.U.) as the information supplied to the F.I.A. is only "information" and the F.I.U. needs to determine whether hard evidence exists to support prosecutions or sanctions.

## 7. Cooperation

The Government of Bermuda is aggressively pursuing the conclusion of Tax Information Exchange Agreements (TIEAs) with other jurisdictions. These clearly determine a mechanism for information exchange internationally between Governments.

Memoranda of Understanding (MOU) are entered into by the Regulatory Authority (Bermuda Monetary Authority) with other similar Regulators within the framework of their responsibilities. A greater degree of effectiveness would be achieved if the Regulator was to publicise the formalization of MOU, as the regulated entities would be aware of the possible cooperative action by the Authority.

## 8. Risk Based Approach

It is noted that dealing with clients based in other countries will require an analysis of that country's risk elements. The risk assessment should be available in accordance with the risk based approach called for by the FATF. The risk assessments of each country should be publicized. Financial institutions could better apply the FATF's proposed risk based approach if the country's risk assessment is generally available for review, allowing enhanced due diligence measures to be applied where appropriate. However a risk-based approach should not proscribe counter measures-these should be left to the client to determine.

In applying a risk-based approach to supervision, the Regulator must take a responsible approach where it considers applying sanctions. The application of additional supervisory resources to high-risk business activity is also sensible, but it should also result in higher fees being charged on that sector that requires the additional supervisory resources. The application of across-the-board fees would be inappropriate.

In all cases a risk based approach calls for a response that is proportionate to the risk. This applies both to the risks identified by the Regulator as much as to the risks identified by the business entity in its client or the country of origin of the client. The business entity must be able to demonstrate to the Regulator that it has evaluated all the risks and responded appropriately. Regulators should also recognize that simplified Customer Due Diligence is applicable in certain circumstances. In this case risks may differ between domestic and foreign PEPs for example. Close associates of PEPs may have to be treated in the same way as PEPs and subjected to enhanced due diligence.

We have no objection to the proposed category of PEP as a person entrusted with a prominent function by an international organization.

9. Other matters

Actions such as weapons trading and nuclear trading, known as Proliferation Financing when International organizations deem them to be wrong, need to be addressed. This is supported.

The broadening of the category of predicate offences to include various categories of tax offences is difficult to police. Entities cannot be experts in the field of international taxation – taxes are specific to jurisdictions.

10. It is hoped that these comments will be of use in addressing proposed changes in the FATF Recommendations.

P. J. Hardy – Chairman  
Gibbons Group Regulatory and Compliance Committee



John Howell & Co. Ltd.  
16 September 2011

**Financial Action Task Force (FATF)**  
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**Subject: Submission on second public consultation paper**

John Howell & Co. Ltd. is a consultancy firm specialising in risk, regulation and financial crime. We have extensive experience, both corporately and individually, in the implementation of international standards on AML/CFT.

We welcome the opportunity to comment on the FATF's proposals contained in the second public consultation paper on the Review of the Standards. Our remarks are based on studies on beneficial ownership we have previously undertaken in the UK and European Union, reviews of national AML/CFT threats, risks and responses (including implementation of the standards at national level), as well as practical experience of the use of front companies to obstruct asset recovery efforts in very large cases arising out of the current banking crisis.

Yours etc.,

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## **John Howell and Co. Ltd. response to FATF 2nd public consultation document**

### **1. Beneficial Ownership: Recommendations 5, 33 and 34**

We understand that the FATF is seeking to clarify what countries and financial institutions are expected to do to implement the requirements; and the types of measures which could be used to ensure beneficial ownership information is available. The text of the consultation document follows the numbering of the Recommendations, which is perhaps unfortunate, as we believe greater emphasis should be placed on the measures countries should introduce to require the provision of beneficial ownership information, rather than the requirements of financial institutions (and DNFBPs) to collect it. We would also suggest more emphasis on the obligations of the relevant legal persons to provide such information (as they are best placed of all to know) and provision for criminal penalties for failing to provide accurate and up-to-date information.

#### **1.1 Recommendation 5**

We broadly agree with the classification of the information required to satisfactorily carry out customer due diligence. As suggested above, we believe there should be an obligation on legal persons to provide beneficial ownership information (to financial institutions and DNFBPs at a minimum, but see below) and a presumption that this can be relied on, subject to satisfactory identification. If no nomination is made, there should be a presumption that the legal owner is the beneficial owner.

However, it is of course entirely possible that during the course of their relevant business, the financial institutions or DNFBP will recognise that ultimate ownership or control lies elsewhere, other than with the declared beneficial ownership, and in these circumstances, enhanced due diligence and reporting requirements should apply.

#### **1.2 Recommendation 33 - Legal Persons**

In our studies of beneficial ownership in the EU and UK<sup>1</sup> and other reports where we have considered the issue<sup>2</sup>, we came to the conclusion that disclosure requirements to public authorities were optimal measures. We suggest a self-certification system be used to simplify recording. Under such a regime the legal owner should be deemed to be the beneficial owner unless they nominate another person as beneficial owner.

Beneficial ownership details should be centrally held, easily accessible and capable of searching and cross-matching with other records. The best way to find anomalies, and therefore potentially criminal activity, is through discrepancy analysis, for example by contrasting the statements of legal and beneficial owners, or the reality seen by financial institutions with the declarations made. This implies duties on both legal persons to report their legal and beneficial ownership structures, and on natural persons to report their beneficial ownerships.

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<sup>1</sup> See, for example, *Scoping Study: Cost Benefit Analysis of Transparency Requirements in the Company/Corporate Field*, European Commission 2005, [http://ec.europa.eu/home-affairs/doc\\_centre/crime/docs/study\\_cost\\_benefit\\_transparency\\_en.pdf](http://ec.europa.eu/home-affairs/doc_centre/crime/docs/study_cost_benefit_transparency_en.pdf)

<sup>2</sup> See, for example, section 5 of *The EU's Efforts in the Fight Against Terrorist Finance*, European Commission 2007, <http://www.statewatch.org/news/2007/sep/eu-terr-finance-report-2007.pdf>



The information needs to be reliable and timely, whilst the collection mechanism needs to be robust. There have to be incentives that make it difficult for criminals to game the system whilst only putting a very light burden on honest owners. The administrative **burden need not be very high, as a “tick box” or default setting would be that the legal owners acknowledge beneficial ownership.** There should be a light touch penalty regime for failure to report or disclose, and a tough penalty regime for failure involving intent to launder criminal proceeds or finance terrorism.

As with company officer details at present, there may be circumstances when there are **genuine reasons why public disclosure is not desirable for individual’s safety.** Anonymity of ownership should only be granted in cases where the threat to life and limb is genuine and severe. The overriding principle should be that respect of the right to privacy is not a guarantee of anonymity.

### **1.3 Recommendation 34 - Legal Arrangements**

We have no specific comments on this Recommendation, but similar principles should apply as to legal persons.

## **2. Data protection and privacy; Recommendation 4**

We welcome the suggestion of effective co-ordination between data protection and AML/CFT authorities. However, the text of any such requirement should recognise that data protection and privacy laws are implemented to safeguard fundamental human rights of privacy. Any erosion of those rights in the field of AML/CFT should be justified in light of an overriding necessity, not an inconvenience for financial services groups.

## **3. Group-wide compliance programmes: Recommendation 15**

We have no particular views on this proposal.

## **4. Special Recommendation VII (Wire Transfers)**

We welcome the explicit acknowledgement in the fifth bullet point under this heading that ordering financial institutions are not able to verify the identity of the beneficiary. However, the text of the second bullet should be altered to take account of this – it refers to ordering FIs **including “full originator information” and “full beneficiary information”.** The definitions of these two terms included in the parentheses are different and there is no mention of the need to verify originator information and not beneficiary information.

## **5. Targeted financial sanctions in the terrorist financing and proliferation financing contexts**

We welcome the intent of this proposal, i.e. to separate and clarify the requirements to have freezing mechanisms for terrorist assets both in the context of UNSCRs and **“ordinary” investigations. It has been our experience working in this field, particularly** in low capacity countries and those with no great experience of terrorist finance, that the current formulation causes confusion. It makes some sense to include the latter obligation under Recommendation 3, but more broadly this raises the question of the **need to have “Special Recommendations” on terrorist financing when including more** and more material on CTF matters in the 40 Recommendations themselves (which in itself has potential for confusion). Ten years after 9/11, it may be the time simply to

have one set of Recommendations, but we recognise such a change is outside the scope of the review the FATF has set itself.

It seem unnecessary (and potentially dangerous) to then include the requirements of UNSCRs in the SR III, as per the three bullet points under this proposal. The definitive version of what UNSCRs require can only be found in the wording of the current Resolutions, and there is no reason in theory why these could not change, leaving the proposed text at variance with the legal requirement. We would far rather see some text relating to the effectiveness of the national regimes for implementing UNSCRs in a timely fashion, including communication with financial institutions, licensing arrangements and reporting mechanisms

The explicit requirement to monitor for compliance with legislation, rules or regulations governing the obligations under SR III is useful, but perhaps should also be referenced under Recommendation 22 (Supervision) for completeness.

Requirements and guidance relating to Proliferation Finance would no doubt be welcomed, particularly in the context of obligations already existing under UN measures. However, simply shoe-horning references to PF related UNSCRs into SR III seems a sub-optimal way to do this (particularly in light of our doubts on the continued need for Special Recommendations on Terrorist Financing, see above). We would rather see more consideration of this issue, preferably driven by an explicit requirement in the new FATF mandate next year.

## **6. The Financial Intelligence Unit; Recommendation 26**

We welcome the intent to align the Recommendation with the Egmont group standards, but note that the text still refers to “receipt and analysis of STRs and other information”, whereas the Egmont definition refers to “disclosures of financial information”.

Although clearly the FIU should focus on the information it can provide to law enforcement agencies for detection, equally important in prevention is the analysis and provision of information for other competent authorities, particularly AML/CFT supervisors. We hope this will be reflected in the interpretative note on analysis, as we have found it to be a weak link in our work with FIUs in various jurisdictions.

## **7. International cooperation: Recommendation 40**

Improvement of international cooperation is, of course, to be welcomed. However, the FATF must take care not to introduce unworkable requirements, especially where restrictions on information sharing are imposed for good reason, such as protection of fundamental human rights.

## **8. Other issues included in the revision of the FATF Standards**

### **8.1 Adequate/inadequate implementation of the FATF Recommendations**

We welcome the recognition that compliance with FATF Standards is only part of an AML/CFT risk assessment of a country and that measures applied should be effective and proportionate to the risks. We feel it may still be grossly simplistic to talk about “overall risk” [posed by a country], as the risks depends on many factors, including the proposed engagement. The vocabulary of financial crime “risk” has not been fully developed and we would look for more nuanced guidance in this regard, particularly in applying the proposed additional countermeasures. As these amount, in some instances,

to *de facto* sanctions, the risks which could prompt their use must be rigorously and transparently assessed.

## **8.2 Risk-based approach in supervision**

There is little detail on this proposal, which could require entirely new (and difficult to design and implement) supervisory systems in countries, perhaps applying solely to AML/CFT. It has merit as a suggestion, but much more specification of what is meant by **“a risk based approach to supervision”** is required if it is to become a mandatory requirement.

In our experience of regulatory transformation projects, rules-based supervisors may struggle for a period of years to introduce effective risk-based supervision. It requires not only a change in law and policy, but significant organisational and culture change, within both the supervisor and the regulated sector. These challenges should not be underestimated, particularly if a supervisor finds itself in a rules-based world for other supervisory responsibilities, but risk-based for AML/CFT.

## **8.3 Further consideration of Politically Exposed Persons**

In our opinion, the suggested requirements on PEPs risk becoming bright line rules, taking away the ability of financial institutions to operate a truly risk based approach to CDD. The rationale behind the suggestion that an individual entrusted with prominent functions by an international organisation should be equated to a domestic PEP is not explained. It seems to us that always the actual function of a PEP in the relationship the **institution has with them (e.g. on the PEP’s own account, or on behalf of a legitimate national or international organisation they hold as a result of their position)** should be a key part of the risk assessment, not the foreign/domestic/international organisation split.

**John Howell & Co. Ltd.  
September 2011**

Dear Sir

You have invited comments on the Consultation Paper on the Review of the Standards.

In regard to recommendation 30 in para 8.3, where it is proposed that requirements for foreign and domestic PEPS should apply equally to family members or close associates of such PEPS, it is suggested that some thought should be given to whether it is reasonable or proportionate to impose enhanced CDD measures on family members

(a) automatically and (b) without any time-frame being considered.

To give a simple example, the effect of the recommendation is that the seventeen year old daughter of a PEP is subject to enhanced due diligence for the rest of her life even though, perhaps, she is in no way affected in a relevant sense by her father's PEP status.

Should there not be at least some recognition that family members are not necessarily involved in a relevant sense with the PEP status of a relative, and that it is unreasonable and disproportionate to impose this additional scrutiny upon them for the entirety of their lives- even after the PEP has died?

The risk of "family" taint is of course appreciated.

However, enhanced due diligence is not a matter to be treated lightly, and to "inflict" the PEP enhancement scrutiny on relatives automatically should not be automatically imposed - or it will take on the appearance of a collective punishment.

Where enhanced due diligence is not accompanied by any enquiry into whether the relative is relevantly affected by the parent and whether that effect if any continues beyond a certain time, the process has the potential to become needlessly oppressive.

It is suggested that the recommendation be that "the requirements for foreign and domestic PEPS should apply equally to family members or close associates of such PEPS wherever it is reasonable to conclude, having regard to the proximity of the relationship and the length of time since the relationship may have terminated, that enhanced due diligence ought to be applied to such persons."

Thank you for your courtesy and co-operation.

Kind regards

Michael T. Darwyne MA, BCL, LL.M.  
Attorney.

Dear Colleagues,

Please find my following comments to the review of FATF standards:

1) par. 15 - Data protection and privacy: Recommendation 4, p. 7

We have to remember that cooperation is the most important issue, if we wish to fight with ML and TF effectively. For that reason it is not acceptable that refusing of providing with information is done on the base of so called "data protection". I hope that "effective mechanism in place" really will help to cooperate and coordinate this issue.

2) par. 16 - Group-wide compliance programmes: Recommendation 15, p.7-8

Is it means that it will be enough to have group programme rather than individual one?

If yes, what with some specific solution which are only possible in one particular country?

This kind of solution could be very dangerous for the tightness of AML system.

3) par. 23 - FIU: Recommendation 26, p.9-10

This issue is very important because some FIUs still have problems with functioning and cooperation within country. The aspects of information security, confidentiality, operational independence, undue influence are crucial for the appropriate conducting of financial intelligence unit activity.

4) par. 25 - International cooperation: Recommendation 40, p.10

Could you explain more precisely this issue?

5) par. 29 - Risk-based approach in supervision, p. 11

It will be additional task for control institutions and supervisors. They need very good coordination of their activity.

Maybe one of the solution could be close cooperation, in particular during process of planning. The result could be preparation of joint control plans.

6) par. 30 - Further consideration of PEPs, p. 11

I really support this new approach but the real problem is that in many country there is no "domestic PEPs".

Ofcourse in the regulation only, because they are present in day-by-day life. The FATF need to work hardly to solve this problem.

Best regards,

Robert Tupa

AML Expert

(former Head of Polish FIU)

Poland

**Response to FATF consultation paper:  
Review of the Standards – Preparation for the 4<sup>th</sup> Round of Mutual Evaluations:  
Second public consultation**

**September 2011**

**Introduction**

The Task Force on Financial Integrity and Economic Development (the Task Force) is an international coalition of civil society organizations, national governments and international organizations dedicated to curtailing illicit capital flight as a means of supporting and sustaining economic development in low-income countries.

This submission is in response to the Financial Action Task Force's (FATF) consultation, "The Review of Standards – Preparation for the 4<sup>th</sup> Round of Mutual Evaluations: Second public consultation." It follows on from the previous round of consultation, including the private sector meeting held in November 2010, which three Task Force members attended: Global Financial Integrity, Global Witness and Transparency International.

We are pleased that this consultation is being conducted in a public forum and appreciate FATF's inclusion of civil society representatives in the consultation meeting held in November and look forward to attending the next consultation meeting. We will be happy to respond to any questions you may have about this submission.

**Section 1: Beneficial ownership**

One of the biggest problems with the existing anti-money laundering (AML) system is that financial institutions, designated non-financial businesses and professions (DNFBPs), law enforcement and other interested parties, find it difficult – and in some cases impossible – to identify the beneficial owner/beneficiary of legal persons and arrangements. In almost every case of money laundering or financial crime that we have investigated or encountered, a company, trust or similar structure was used as part of the layering process.

Therefore, we are pleased to see that FATF has recognised the low level of compliance with Recommendations 5, 33 and 34. In our view, the problem is twofold: institutions covered by the AML requirements (covered institutions) are not doing enough to identify the beneficial owner of a customer before accepting them; and there is far too little beneficial ownership information available to covered institutions or in the public domain.

We believe it needs to be made much more explicit that covered institutions must determine the beneficial owner(s) of their customers and assess that their funds are derived from legitimate sources. If they cannot do so, they should not accept the business. In addition, more needs to be done to ensure that company and trust beneficial ownership and control information is accessible in a timely, accurate and transparent manner. Registries of the beneficial owner/beneficiary of legal and corporate structures available to government authorities and the public should be the end goal, but without removing the

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ultimate responsibility on covered institutions to do effective due diligence and to turn down suspect funds. A number of the proposals in the consultation document represent useful steps towards this, although there is still some way to go.

### **Section 1.1: Recommendation 5**

Central to the preventative measures against money laundering is the requirement for covered institutions to identify their customers. This is essential for covered institutions to build an accurate profile of who they are doing business with. If they are unable to identify their customers, they are unable to effectively evaluate their money laundering risk.

We are pleased that FATF has given more detail on the steps that covered institutions will be expected to take to satisfy Recommendation 5. In particular it is useful that FATF has spelled out that covered institutions should identify the senior management of a corporate customer, as well as obtain the memorandum of association and address of the registered office or main place of business. With respect to the addresses, however, a registered office address may simply be a post office box in the jurisdiction where the company has been formed, which may be serviced by a corporate service company. It would be more useful to require that covered institutions obtain the address of the main place of business and, where a company does not have a physical location, the address of its registered office. Where a company is only able to provide the address of a registered office, the customer and the account should be assigned a higher risk profile.

However, we are concerned by the proposal that covered institutions will be able to identify the senior management of complex corporate structures in lieu of the beneficial owner.

Complex structures are always set up with a specific purpose – usually tax minimisation, or joint ventures between companies in different jurisdictions – and therefore someone within the company should be able to explain the ownership chain. If the vehicle being set up is for the purpose of a joint venture, then one set or other of the lawyers on either side of the deal should be able to explain their side of the structure. If the structure cannot be explained, an immediate red flag should be raised, since it increases the likelihood that somebody has a reason to hide their identity. The covered institution should not accept the customer if it cannot get an adequate explanation for why such complexity is needed.

We appreciate that there are certain types of companies for which beneficial ownership is widely dispersed and the risk of money laundering is low, such as public companies, state owned companies and regulated investment firms. For companies such as these, it makes sense to identify senior management, as proposed.<sup>1</sup> However, we believe that there is a finite variety of types of entities for which senior management can be identified instead of beneficial ownership, and that FATF should provide guidance on this subject as opposed to simply creating an “if all else fails” type of default mechanism which does not actually generate beneficial ownership information.

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<sup>1</sup> It is worth acknowledging that the shareholder registries of listed companies are often obscure, given the prevalence of owning shares through intermediaries or nominees.

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It is essential that FATF maintain its existing requirement that if a covered institution cannot identify the customer or identify the beneficial owner or obtain information on the purpose of the business relationship, the covered institution should not open the account or should terminate the relationship.

We also recommend that FATF remove the term ‘reasonable measures’ from the second bullet point under para 8. As elaborated in our submission to the first half of the consultation, there is a risk that this term allows an easy escape from the duty to identify and verify. It is an open invitation to those who set up corporate structures to create complexity to baffle covered institutions such as banks and require them to go beyond measures some may consider ‘reasonable’ in order to verify the identity of a natural person.

In response to this concern, we also recommend that as a key part of their verification of their customer, covered institutions should be required to make a judgement on the reasonableness of the beneficial ownership information provided to them. For example, in many cases money launderers use a nominee, such as a lawyer or a company service provider, to stand in as the beneficial owner. Covered institutions should ask whether it makes sense for the stated beneficial owner, given where they live, their age and their occupation, to be the actual owner of the assets in question. We have seen examples in which, for example, two twenty-five year olds from a small town in Cyprus are purportedly the beneficial owners of hundreds of millions of dollars, when they were clearly acting as nominees. This is why verification of source of funds is so important, which should also be particularly highlighted in the Recommendation.

In order to improve compliance with Recommendation 5, the Recommendation and guidance must directly address the shortcomings that have been identified both from regulatory reviews, such as the recent UK Financial Services Authority thematic review into high risk customers, as well as asset repatriation and similar law enforcement investigations.<sup>2</sup> A robust amendment along the lines described above is warranted and should be adopted.

We are also concerned that in some jurisdictions, beneficial ownership has been defined as above a certain percentage of ownership (for example in the EU Anti-Money Laundering Directive). In our view, this misrepresents the nature of beneficial ownership, which is about which natural person or persons in practice exercise(s) actual control over a legal structure or benefits from it. Reducing this understanding of beneficial ownership to a simple percentage of ownership provides money launderers with a guide to how to avoid AML checks: they simply have to structure company ownership so that no shareholding passes the threshold. We have been told that in many cases a bank cannot find any ownership share of a company above 25% (the EU standard) and therefore list no beneficial owner as part of the customer due diligence (CDD) process. And yet *somebody* is benefitting from the company’s existence.

The proposal on the requirements for CDD in relationship to legal arrangements is more straightforward. Again however, the term ‘reasonable measures’ should be removed, for the same reasons as above. In our view the identification and verification of the beneficiary/controller of a legal arrangement should be an absolute requirement.

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<sup>2</sup> The Financial Services Authority, *Banks’ management of high money-laundering risk situations: How banks deal with high-risk customers (including politically exposed persons), correspondent banking relationships and wire transfer*, June 2011, [http://www.fsa.gov.uk/pubs/other/aml\\_final\\_report.pdf](http://www.fsa.gov.uk/pubs/other/aml_final_report.pdf).



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## Section 1.2: Recommendation 33 – Legal Persons

The abilities of private companies to evade tax liabilities and disguise ownership for the purpose of money laundering has been well recognised by FATF and the OECD and does not need rehearsing here. At present it is easy for money launderers to abuse legal persons because of the difficulty of obtaining beneficial ownership information. The current systems worldwide fail to ensure that there is adequate, accurate or timely information available, despite the fact that this is clearly the requirement under Recommendation 33. As a result, we can only conclude that additional, more prescriptive, guidance is necessary in order for Recommendation 33 to be sufficiently fulfilled. We welcome FATF's proposal for an interpretative note to improve this situation. We are also glad to hear that work on Recommendation 33 is continuing, since the solutions currently proposed are an intermediate step towards the ultimate goal.

Legal persons are the creation of the state and therefore we strongly believe that the onus should be on government authorities to collect, verify and publish beneficial ownership information.

Good AML/CFT practice includes verification procedures to detect the use of fictitious identities by individuals. Yet government-funded and government-run company registration agencies are allowed to create multiple corporate identities for unknown individuals without any process of identification or verification, or any ongoing due diligence. This is a significant loophole.

The current system places a heavy burden on covered institutions to identify the beneficial ownership of their clients, while permitting jurisdictions to restrict the amount of information available in the public domain. This problem has been highlighted in the responses from a number of industry bodies to the previous round of consultation (for example the Law Society and the European Banking Federation).

Essentially we are proposing that Recommendation 33 be extended to require countries to maintain national incorporation and registration agencies for companies, and subject them to the AML/CFT requirements of identification and verification of beneficial ownership. In practice, this means that people associated with incorporating companies – the directors, shareholders, agents and beneficial owners – should be subjected to risk-based identification procedures and suspicion reporting.

A common argument against doing this is that companies (and trusts) come within the reach of AML/CFT laws when they acquire services from financial institutions, and, in some jurisdictions, lawyers, accountants and real estate agents. There are several reasons why this level of indirect applicability is insufficient:

- there are risks in relying on single points of detection (effectively, financial institutions) given that no system is 100% perfect;
- an individual financial institution does not have the entire financial relationship with a customer and so has a fragmented view of its activity; spreading AML/CFT obligations to those with different views improves detection and management of risk; and
- there are additional significant benefits of transparency of beneficial ownership for tax authorities.

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Our specific recommendations are therefore as follows:

- Legal persons should be obliged to hold information about their own beneficial ownership, including documentary proof. This is a logical first step, as the company itself is best placed to understand its ownership structure. Nominees, including corporate service providers, should not be regarded as beneficial owners.
- This beneficial ownership information, along with the documentary proof, should then be submitted to a government authority, and in most cases this will be a registry of companies. This authority should collect and verify beneficial ownership information.
- Nominee shareholders can only be used if the name of the beneficial owner is also recorded and in the public domain. Corporate officers, shareholders and directors who act in accordance with the instructions of a third party should be obliged to disclose this fact, and disclose who they are acting on behalf of, on the public record.
- Penalties, including banning orders prohibiting control, ownership or management of corporate vehicles for periods of time, should be imposed on those who control and own corporate vehicles who do not keep these details up to date. Directors – including nominees – should be held personally liable for failure to keep beneficial ownership information up to date, and for supplying false beneficial ownership information.
- FATF Recommendation 12 requires trust and company service providers to do customer due diligence and keep records according to Recs 5, 6 and 8-11. While compliance with these standards could be offered as a defence, trust and company service providers acting as nominee shareholders or directors should be able to be held liable for acts of money laundering by the company they represent. Currently, providing nominee corporate services is a lucrative business because consequences do not attach to nominees in respect of the activities of the corporate vehicle.
- Beneficial ownership information should at the very least be available to competent authorities in the jurisdiction where the legal person is registered, as well as competent authorities in any jurisdiction where the legal person operates. In addition, covered institutions should be able to automatically access beneficial ownership information about potential or existing customers.
- We recommend that beneficial ownership information should be in the public domain. This would be the best way to reduce the risk that legal persons could be abused for money laundering.
- No changes to this requirement should have an impact on the requirements on covered institutions under Recommendation 5. The ultimate responsibility when accepting funds must remain on covered institutions to do effective due diligence not just to identify their customer (which is what registries would help with) – but to verify their identity and source of funds, and assess whether the funds are reasonable for the beneficiary and business in question.

In specific response to FATF's proposals, taking them in order:

*First bullet point:* The basic proposals that FATF is considering have been set out in a way that is not entirely clear to us, but the basic choice seems to be between (a) companies keeping their own beneficial information and, by a variety of potential mechanisms, making it available; or (b) leaving it to competent authorities to access the information by a similarly varied potential list of means. In neither case is it made clear which, if any, of the mechanisms is preferred, nor whether making information available through these mechanisms represents a minimum requirement.

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We are not convinced that this is a substantive improvement on the current state of affairs, in which a variety of mechanisms are available, including one with quite a low bar (relying on competent authorities/law enforcement to obtain the relevant information) – and which has resulted, as FATF notes, in significantly low levels of compliance with Recommendation 33.

*Second bullet point:* It is useful that registries of companies should include a minimum level of information, including a list of directors, but we are disappointed that FATF has not, at the very least, recommended that corporate registries include legal ownership, i.e. a list of shareholders. An additional change would also significantly improve this suggestion: require that jurisdictions have their company registry information available publicly, preferably accessible via the internet.

*Third bullet point:* We welcome FATF's proposals to prevent the misuse of bearer shares. As FATF has frequently recognised, bearer shares are easily abused by money launderers to disguise their ownership of a legal person, and any assets controlled by such a company. We query the need to provide the alternatives described in phrases (c) and (d). Both of these options permit bearer shares to exist, but in a manner in which it is unclear whether, in the case of (c), bearer shares not held as described would still be valid and, in the case of (d) whether the company record would be the legal proof of ownership or the bearer shares would be. In the interest of legal certainty, either prohibiting bearer shares or requiring them to be registered is appropriate. There is no valid commercial reason why bearer shares need to exist and this, combined with the money laundering risks that they pose, is a rational basis for recommending that they be prohibited.

*Fourth bullet point:* FATF's proposal on nominees is an interesting solution to a widespread problem. Nominee services provided by DNFBNs and others can be used to disguise ownership or control of a legal person. It is unclear which 'registry' FATF intends when it says in point (a) that nominee shareholders should "disclose the identity of their nominator ... to any relevant registry." This proposal would be more effective if it was mandatory that this information be disclosed to company registries, and, as set out above, if company registry information was available online in every jurisdiction.

The proposed exemption for companies listed on a stock exchange and state-owned enterprises is a sensible one, as discussed with respect to Recommendation 5. However, exempting all institutions currently subject to AML/CFT regulation is problematic. Non-publically listed financial institutions and DNFBNs can, and have been, used as money laundering conduits or fronts. Ownership is often disguised or can be difficult to determine, for example where a beneficial owner is a politically exposed person (PEP).<sup>3</sup> In addition, it potentially conflicts with FATF's existing Recommendations on correspondent banking, which require covered institutions to "gather sufficient information about a respondent institution to understand fully the nature of the respondent's business" (rec. 7). Presumably part of this process involves understanding the ownership structure of the correspondent institution. (In some FATF jurisdictions this is already a legal requirement under certain circumstances, for example in the United States.) This is another reason that guidance in this area, as opposed to blanket exclusions, would better serve the purpose.

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<sup>3</sup> See for example FATF, 'Laundering the proceeds of corruption', July 2011, para. 94-96

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### Section 1.3: Recommendation 34 – legal arrangements

As has been acknowledged on numerous occasions by FATF, the OECD and the World Bank, trusts and other legal arrangements are frequently used by money launderers to hide their identity and distance themselves from the proceeds of crime. The most recent peer reviews carried out under the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes stated that one of the most common deficiencies in the states under review was "the lack of available ownership information as regards trusts and bearer shares".<sup>4</sup>

Unlike with respect to companies, there is currently no requirement for such legal structures to register with government agencies and there is therefore much less information in the public domain about them. In most jurisdictions this even extends to their very existence.

All these factors make trusts, foundations, and other such structures, perfect vehicles for disguising the origin and destination of funds as well as who exercises control over, and benefits from, funds controlled by the trust.

The Task Force recommends that this lack of transparency be addressed in the form of a new general requirement for trusts to be registered with the relevant authorities. As part of that process, the trust should provide the same information that FATF is proposing that covered institutions collect of their trust customers: the name(s) of the settlor, the trustees, the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control or ownership). We believe that trustees, as the legal guardian of trusts, are best placed to provide this information, and that in the interests of transparency, this information should be in the public domain. If this is not possible, then at the very least trust information needs to be available to the relevant authorities in every jurisdiction where the settlors, beneficiaries, and trustees are located and where the bank accounts to which they relate are held. . As with corporate beneficial ownership information, this information should at the minimum be available to financial institutions to assist in their due diligence requirement.

The Task Force is pleased to see that FATF has examined, and is continuing to examine, how legal arrangements operate across national boundaries. We welcome the proposal that competent authorities should have access to control and beneficiary information for all trusts "with a nexus to their country (*i.e.* where trusts are managed, trust assets are located, or where trustees live in the country)".<sup>5</sup> Another indication of nexus should be the jurisdiction in which the beneficiary is located.

According to the OECD a number of countries already require trusts to provide at least the name of the settlor and beneficiary of the trust to a governmental authority, including Argentina, Canada, France, Mexico, South Africa, the UK and the US. In some of these jurisdictions this information is provided for tax purposes.<sup>6</sup>

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<sup>4</sup> OECD press release, 'Tax: Jurisdictions move towards full tax transparency', 12 September 2011

<sup>5</sup> FATF, 'The Review of the Standards – Preparation for the 4<sup>th</sup> Round of Mutual Evaluation: Second Public Consultation', June 2011, p. 7.

<sup>6</sup> OECD, Tax Co-operation 2010: Towards a Level Playing Field - Assessment by the Global Forum *on Transparency and Exchange of Information*, 18 October 2010

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### ***Special Beneficial Ownership Considerations with Respect to Tax Transparency***

As discussed in our response to the first round of consultations, we are entirely supportive of the proposal to include tax evasion as a predicate offense for a money laundering charge. We also refer to the work being done by the OECD with respect to beneficial ownership in the area of tax information exchange. If fiscal (tax) offenses are considered money laundering offenses for FATF purposes, then the required information gathering and information maintenance procedures about beneficial ownership for tax purposes will have a substantial positive effect on the information gathering and maintenance procedures about beneficial ownership in general. We recommend that the FATF secretariat work with the OECD secretariat on this issue to ensure that recommendations and guidance developed by the two bodies is not only complementary, but actively further the goals of each organization. For example, trustees could be required to provide information to the relevant authorities relating to all capital and income disbursements made to beneficiaries of trusts for which they are responsible for the purposes of tax information exchange with the national authorities of the countries where those beneficiaries are ordinarily resident for tax purposes. This suggestion addresses both tax evasion with respect to money laundering while also furthering the goals of the OECD with respect to tax information exchange.

#### **Section 2: Data protection and privacy: Recommendation 4**

We welcome FATF's recognition that data privacy concerns can impede AML/CFT measures, and the proposal to incorporate this issue into Recommendation 4. Advice from FATF in an interpretative note on how countries can better coordinate their standards on data privacy and AML to avoid conflicts would be very welcome.

#### **Section 3: Group-wide compliance programmes: Recommendation 15**

We welcome the proposal that large covered institutions have a group-wide multi-national AML programme that allows compliance officers access to the customer information that they need in order to carry out CDD.

It is important to recognise that bank secrecy, which Recommendation 4 is intended to tackle, remains a significant impediment to group-wide compliance programmes. It also provides the perfect excuse for financial institutions to arbitrage differences in national due diligence requirements/enforcement, and to avoid implementing the highest standards across their group.

There are additional reasons, we believe, why group-wide AML/CFT programmes are not happening.

- Data protection and bank secrecy laws are preventing the sharing of AML-related information within multinational financial institutions.
- From conversations with industry insiders we believe that compliance officers are often unwilling to rely on the CDD performed by colleagues in other departments or countries, due to concerns about the quality of the checks carried out.
- Business units within major financial institutions often operate in silos, preventing the necessary exchange of information. This is exacerbated by the fact that financial institutions rarely have a board-level executive with direct responsibility for co-ordinating AML policy and practice across the group.
- Financial institutions are often not effectively collecting information about the activity of a customer across the group, or even within a single institution. For example, the recent UK

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Financial Services Authority report into how British banks are handling high risk customers revealed that a third of institutions “were unable to access relevant information or provide [the FSA] with complete sets of CDD files.” Even more worryingly the FSA reported that “in a small number of banks, the [Money Laundering Reporting Officer] was unable to retrieve relevant information about the bank’s high-risk customers.”<sup>7</sup>

Intra-group CDD cannot work unless:

- (i) a financial institution:
  - (a) is permitted by law to, and
  - (b) agrees to,supply information across international lines, and
- (ii) the quality of due diligence carried out by different members of a group is of a sufficient standard, and
- (iii) both the local branch and the entity responsible for the compliance programme can be held liable for failures in the AML regime, meaning effectively that liability is not encapsulated in one legal entity.

For a more detailed analysis please see our submission to the previous consultation.

#### **Section 4: Special Recommendation VII: wire transfers**

We welcome the proposal to include more information, including beneficiaries, on wire transfers. The identity of the recipient of the funds (the beneficiary) is a crucial component of the risk profile of any transaction, and the effectiveness of global sanctions programmes rests on the issue of beneficiary information.

For a more detailed analysis please see our submission to the previous consultation.

#### **Section 7: International cooperation: Recommendation 40**

At present international cooperation on money laundering issues can be frustratingly slow, with numerous legal and procedural issues. Authorities frequently seem to lack the inclination or will to share information or cooperate with their counterparts in different jurisdictions.

The proposals in the current consultation are welcome. However, they do not seem to be very different from the existing standard which currently requires the exchange of information to be permitted without unduly restrictive conditions, and already suggests that “cooperation with foreign authorities other than counterparts could occur directly or indirectly”.

What is needed is for FATF to ensure the effective implementation of the international cooperation requirements. Jurisdictions should be required to publish information on the number of requests for cross-border legal assistance that they have received, and the number that they have been able to fulfil. FATF should work together with The World Bank, the UN and the IMF with respect to the information exchange mechanisms being explored pursuant to the International Anti-Corruption Hunters’ Alliance

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<sup>7</sup> The FSA, *Banks’ management of high money-laundering risk situations*, p. 29.  
[http://www.fsa.gov.uk/pubs/other/aml\\_final\\_report.pdf](http://www.fsa.gov.uk/pubs/other/aml_final_report.pdf)

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and determine whether systems of information sharing/exchange being discussed may be co-opted or adapted to suit cross-border coordination on AML matters.

It should be noted that there are jurisdictions that do currently go beyond the minimum standard on international cooperation, by proactively providing information, guidance and encouragement to requesting authorities. This should be encouraged.

### **Section 8: Adequate/inadequate implementation of the FATF Recommendations**

We welcome the proposal in para 27 to revise the due diligence measures that covered institutions are expected to take in relation to countries, and transactions/customers from them, which do not adequately apply the FATF Recommendations. It is important that financial institutions be required to assess country risk as a whole, rather than only on the basis of compliance with the Recommendations.

Additionally, it is welcome that FATF is expanding the set of actions which countries can implement as countermeasures, as set out in para 28. Guidance on which actions might be appropriate under which types of circumstances would be helpful.

Whether financial institutions rely purely on whether a country applies the FATF Recommendations, as at present, or combines a broader concept of country risk with application of the FATF Recommendations, as proposed, the issue remains that FATF's compliance ratings contained in mutual evaluations must take enforcement into account if they are to be useful to financial institutions in assessing country risk. The word 'apply' is very broad, and encompasses both having the laws in place and their enforcement.

The international community, led by FATF, has been incredibly effective at ensuring that the vast majority of jurisdictions in the world, including all of the major financial centres, have AML laws in place. However, there now needs to be a corresponding effort, throughout the 4<sup>th</sup> round of mutual evaluations, to ensure that those laws are effectively implemented and enforced.

The Task Force is deeply concerned that national-level regulators and covered institutions are not doing enough to properly implement the AML CDD regime.

For example, the recent FSA report into how UK banks manage high money-laundering risk situations found catastrophic failings in how financial institutions are dealing with PEP customers, and raised serious questions about the implementation of the correspondent banking regulations. According to the report, failings included:

- Over half the banks visited failed to apply meaningful enhanced due diligence (EDD) measures in higher risk situations.
- Some banks appeared unwilling to turn away, or exit, very profitable business relationships when there appeared to be an unacceptable risk of handling the proceeds of crime. Around a third of banks, including the private banking arms of some major banking groups, appeared willing to accept very high levels of money-laundering risk if the immediate reputational and regulatory risk was acceptable.
- Three quarters of the banks in the sample failed to take adequate measures to establish the legitimacy of the source of wealth and source of funds to be used in the business relationship.



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- At more than a quarter of banks visited, relationship managers appeared to be too close to the customer to take an objective view of the business relationship and many were primarily rewarded on the basis of profit and new business, regardless of their AML performance.
  - Some banks conducted good quality AML due diligence and monitoring of correspondent relationships, while others, particularly some smaller banks, conducted little and, in some cases, none.

One of the most disturbing revelations was that at a few banks' senior management and/or compliance officers challenged the whole point of the AML regime or the need to identify PEPs, despite the fact that AML due diligence is a legal requirement.<sup>8</sup> Following the FSA's report, at least five banks have been placed into enforcement– the formal process of investigation for compliance failures.<sup>9</sup>

These findings echo those of the reports that Global Witness has published over the last two years detailing case studies of banks in major financial centres doing business with corrupt senior officials from Nigeria, Angola, Turkmenistan, Liberia, Equatorial Guinea and the Republic of Congo.<sup>10</sup>

The FSA has recently announced a new, more intensive, approach to AML supervision, consisting of "deep dives" where the supervisor examines in detail how banks, in particular the biggest banks, carry out CDD in practice. This intrusive approach is in contrast to previous practice where the regulator simply assessed a firm's system and controls, without carrying out regular spot checks on real client files.<sup>11</sup> The role of banks in many other jurisdictions outside the UK in fuelling the financial crisis suggests that the FSA is unlikely to have been alone in pursuing this approach for so long.

Based on the research of our member organizations, their published case studies and their frequent conversations with bankers, whistleblowers and law enforcement officials, the Task Force can see no reason to assume that the situation in other financial centres would be any different from what the FSA found in the UK. For this reason, we urge FATF members to conduct a similar regulatory review of the banks in their jurisdiction. Task Force member Global Witness has already written to all FATF members making this recommendation.

These reviews should form part of a broader assessment by FATF, during its forthcoming Fourth Round of mutual evaluations, into the effectiveness of the implementation of its standards. Such an assessment needs to start with a clear methodology and include an analysis of how both covered institutions and regulators are applying the FATF Recommendations.

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<sup>8</sup> The FSA, *Banks' management of high money-laundering risk situations*, pp. 4-5.

<sup>9</sup> *The Economist*, 'Undeclared beneficial ownership: Licence to loot', 17 September 2011

<sup>10</sup> See Global Witness, *Undue Diligence: How banks do business with corrupt regimes*, March 2009; Global Witness, *Secret Life of a Shopaholic: How an African dictator's playboy son went on a multi-million dollar shopping spree in the U.S.* November 2009; Global Witness, *International Thief Thief: How British banks are complicit in Nigerian corruption*, October 2010, all available for download at [www.globalwitness.org/campaigns/banks](http://www.globalwitness.org/campaigns/banks).

<sup>11</sup> FSA, 'Financial Crime Newsletter', September 2011, [http://www.fsa.gov.uk/pubs/newsletters/fc\\_newsletter15.pdf](http://www.fsa.gov.uk/pubs/newsletters/fc_newsletter15.pdf)



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## **Section 9: Further Consideration of Politically Exposed Persons**

The Task Force welcomes the extension of the definition of a PEP to persons who carry out prominent functions for international organisations. While making this extension, FATF should also consider including people with signatory powers in government bodies that receive international (e.g. development aid and climate change mitigation) funds.

We also welcome the clarification that covered institutions will continue to have to carry out enhanced due diligence on the family members and associates of foreign PEPs, and on a risk based approach for family members and associates of domestic PEPs. Further detail on this point is available in our previous submission.

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**For further information or clarification please contact Robert Palmer or Heather Lowe.**

**This submission represents the views of the member organizations of the Coordinating Committee of the Task Force on Financial Integrity and Economic Development:**

- Global Witness
- Global Financial Integrity
- Tax Justice Network
- Transparency International
- Tax Research LLP
- Christian Aid
- European Network on Debt and Development

I provide anti-money laundering training and advice in the UK, Guernsey, Jersey, the Isle of Man, Gibraltar, Ireland and the Cayman Islands, and so I am frequently giving advice to Money Laundering Reporting Officers on the 40+9 Recommendations, what they mean, and how to interpret the evaluations that are measured against the FATF methodology.

With regard to your second public consultation, this is my response.

### 1. Beneficial ownership

I think that companies should be responsible for holding information about their beneficial owners, and that this information should be available to law enforcement agencies (with appropriate safeguards), for instance via a register of companies.

The minimum such information that should be held is: the company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers and a list of directors.

I think that the disparity between company registries worldwide is a problem for those seeking to conduct due diligence enquiries. Some registries are simple record-keepers – you can tell them anything you want and they simply accept it for their records without verifying it at all. Others conduct basic verification checks, and others do more in-depth checking. And yet they are all called “company registries” – and so the mere appearance of a company on such a register may give a greater degree of comfort than it should.

### 2. Data protection and privacy

I agree with your suggestion – that “the authorities responsible for AML/CFT and those responsible for data protection should have effective mechanisms in place to enable them to cooperate and coordinate” – but I fear that this is much easier said than done.

One area of conflict that you do not mention is that of the storage of Suspicious Activity Reports on client files. If a client uses data protection legislation to gain access to his file, should he be shown any SAR on that file? If he is shown it, that will be tipping off under AML legislation. If he is not shown it, that may be a contravention of data protection legislation. This basic conflict should be resolved as a matter of urgency, by automatically exempting SARs from the data access provisions of data protection legislation.

### 3. Group-wide compliance programmes

No comment.

### 4. Wire transfers (SR VII)

No comment.

### 5. Targeted financial sanctions

Agreed – the proposals regarding terrorist financing sanctions seem sensible, and they should certainly be extended to proliferation financing sanctions.

### 6. FIU

No comment.

### 7. International co-operation (Rec 40)

No comment – I am not sure what “modalities” are.

#### 8. Other issues

I agree that the risk-based approach when applied to a country should take note of all factors, and not just its level of compliance with the Recommendations. I think it wise to use the term “enhanced due diligence” (rather than “special attention”) as this term is now in common currency in the compliance community.

I like the list of additional potential counter-measures. However, I would suggest that you put them in some sort of order – perhaps those which really must be applied, and then others which could be applied, in order of priority. This will guard against countries simply picking and choosing the ones which will have the least impact on their relationship with the jurisdiction on which they should be imposing more damaging countermeasures.

With the risk-based approach for supervision, I am in agreement as long it does not mean that some supervisees are designated so low risk as to require no ongoing supervision at all. As long as there is a basic level of (still quite stringent) supervision done on every FI and DNFBP, I think that decisions about how much further to go could safely be done on a risk-based basis.

I am confused by your distinction between domestic PEPs and foreign PEPs. Under the legislation that I know (UK, Guernsey, Jersey, Isle of Man, Gibraltar, Cayman Islands and Ireland), a domestic PEP is not a PEP at all. And so treating “individuals who have been entrusted with prominent functions by an international organisation” the same as domestic PEPs means applying no special due diligence to them at all. (Of course a firm can itself recognise the concept of the domestic PEP, but there is no legislative standard for this.) Personally I think that domestic PEPs should be included in the legislation, but they are not.

I agree that enhanced due diligence should be applied to family members and close associates of (foreign) PEPs – as already required by the legislation I mentioned above.

If you would like me to clarify or expand on any of my comments, please let me know – I would be delighted to help.

Best wishes

*Susan*

Susan Grossey

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## REVUE DES RECOMMANDATIONS DU GAFI

*(The review of the standards- Preparation for the 4th round of mutual evaluation, second public consultation, june 2011)*

*Contribution de Transparence International France*

**Le diagnostic du GAFI** : nous nous limiterons dans cette contribution à ce qui concerne le « beneficial ownership ». Le diagnostic du GAFI, c'est le nôtre. Le GAFI constate que les recommandations 5 (R.5), 33 (R.33) et 34 (R.34), qui en elles-mêmes couvrent bien le champ nécessaire, ne sont pas appliquées. C'est la faute d'une part des banques, qui ne font pas leur travail d'identification avec le soin nécessaire (R.5), d'autre part des autorités nationales qui ne donnent pas aux banques tous les moyens de réaliser cette identification (R.33 et 34).

**La R.5** : Elle vise à préciser les informations que les banques doivent rassembler, d'une part sur les sociétés, d'autre part sur les trusts. Seule faille dans le dispositif : concernant le « beneficial owner » - pour les sociétés comme pour les trusts -, la banque doit "prendre les mesures raisonnables...". (C'est ici que les banquiers disent ne pas pouvoir aller jusqu'au bout de la filière dans les schémas complexes).

Nous considérons que cette expression devrait disparaître. Sinon, c'est comme si on n'avait rien dit. Quitte à la remplacer par une exigence plus forte, comme de justifier que la banque a été trompée par une fraude qu'elle ne pouvait "raisonnablement" pas déceler. Si c'était seulement une chaîne d'écrans trop longue à remonter, autrement dit un schéma trop complexe, la R.5 donne déjà la réponse : il faut refuser le client.

**La R.33** : L'intention des auteurs de la consultation consiste seulement à préciser les obligations que l'Etat doit mettre à la charge de ses banques. Ce n'est pas selon nous l'objectif principal de la R.33 : Le rôle de l'Etat devrait être en premier lieu de donner à ses banques les instruments nécessaires, en termes de stockage de données et en termes d'obligations de fourniture de données, pour qu'elles soient en mesure de se conformer à la R.5. Autrement dit, concrètement, organiser des registres des sociétés dans lesquels on ne puisse pas se cacher derrière des prête-noms ou des trustees.

Un autre rôle serait de tenir un registre national des comptes bancaires, du type FICOBA.

Nous soulignons ici la spécificité de la notion de « nominee » (et de « legal owner »), car c'est elle qui complique radicalement l'exploitation des données du registre des sociétés. D'où l'utilité de faire remarquer que ça n'existe pas dans les droits civilistes. L'abus des « nominees » fait l'objet d'un paragraphe spécial (*"preventing the misuse of nominee shareholders..."*). Mais on ne voit pas bien comment il pourrait y avoir un « legitimate use » des nominees quand il s'agit de fournir dans un registre l'identité des actionnaires? Le

nominee a une utilité, comme le mandataire, pour éviter à l'actionnaire de se déplacer pour une simple formalité. Mais au-delà, il devient un écran propice à la fraude. Il est donc impératif que le "nominee" dise pour qui il agit, et que l'identité de son mandant figure dans tous les registres où il figure lui-même. Les deux options a) et b) du texte du GAFI sont donc inadéquates.

**La R.34** : Sur les trusts, le texte du GAFI comporte des pistes que nous saluons :

- Il énonce que les éléments d'identification du bénéficiaire devraient être les mêmes pour les trusts que pour les sociétés, ce qui met le trust au rang d'une structure dont on doit connaître les bénéficiaires. Or pour les sociétés, on a des registres nationaux, et il serait normal qu'il en existe de la même manière pour les trusts.
- Il prévoit l'obligation pour les trustees de détenir l'information sur l'identité des protagonistes (settlor, trustee et bénéficiaire).
- Il mentionne le registre des trusts comme l'une des options permettant l'identification des bénéficiaires.
- Il prévoit d'obliger les trustees à révéler dans toute opération la qualité en laquelle ils agissent.

Le défaut du texte annule malheureusement les avantages des pistes que l'on vient d'énumérer : c'est la timidité avec laquelle il avance ses propositions : les diligences à imposer aux banques *"pourraient comporter les éléments suivants : ..."*.

Dès le départ, il n'y a aucune prise de position pour dire par exemple qu'il faut en adopter au moins une, ni laquelle a la préférence des auteurs. Et même au sein du paragraphe qui évoque le registre des trusts, on trouve 2 autres options, en parfaite contradiction avec celle d'un registre, et qui sont la détention de l'information par une banque ou un professionnel. On voit bien que ces 2 options n'atteignent aucun des objectifs d'accessibilité recherchés. Si cette alternative devait rester ouverte, on peut dire que la proposition du GAFI n'aura servi à rien.

Le GAFI consacre beaucoup de réflexions aux situations multi-nationales : il s'agit d'un débat de spécialistes, dans lequel il nous paraît inutile de nous perdre. Il paraît plus efficace de donner directement les grandes lignes de la solution.

Ce que nous proposons, c'est que dès lors qu'un trustee demande à la banque d'ouvrir un compte, il dise qu'il n'est que le trustee, qu'il donne les références (ou un extrait) du registre où le trust est enregistré, et une description sommaire de la structure légale si elle est complexe. Il faut en outre que le registre en question soit accessible aux autorités des pays où le trust a été constitué, à celles des pays où il existe des comptes bancaires ou des actifs, et enfin à celles du pays de résidence du bénéficiaire. Le tout sous la responsabilité du trustee, qui peut être pénale s'il a sciemment donné des indications fausses ou incomplètes. Il ne s'agit pas de demander que le registre soit accessible au public.

les trusts familiaux ( ceux par exemple qui sont constitués pour favoriser un incapable) sont une réalité courante, et qui ne concerne en rien le blanchiment. Il conviendra de déterminer les trusts qui ne justifient pas le recours aux mesures d'enregistrement : trusts familiaux, trusts qui ne concernent qu'un seul pays (y compris en termes de détention d'actifs). Dans ce cas, le risque de blanchiment est limité et moins nocif. Des limites de montant d'actifs pourraient également exister, sauf si le trust concerne non plus la détention d'un actif mais un service à rendre, comme l'administration d'entités pour le compte de tiers (Northern Rock).

**Pour conclure**, nous partageons dans leur ensemble les réponses qui vous sont données par Global Witness et les organisations co-signataires de leur document (dont ils nous ont aimablement communiqué le projet)

Jacques Terray  
Transparence International France

# USA\*ENGAGE

September 14, 2011

Mr. John Carlson  
Principal Administrator  
FATF Secretariat  
Annexe Franqueville 238  
2, rue André Pascal  
75016 Paris  
France

Reference: Comments to Consultation Paper—The Review of the Standards—Preparation for the 4th Round of Mutual Evaluations—Second Public Consultation

Dear Mr. Carlson:

USA\*ENGAGE and The National Foreign Trade Council collectively represent numerous financial institutions and U.S. manufacturers and exporters. On behalf of our members, several of whom export humanitarian goods to persons in Iran (or otherwise process related transactions) pursuant to licenses granted by Treasury's Office of Foreign Assets Control ("OFAC") under the Trade Sanctions Reform and Export Enhancement Act of 2000, ("TSRA") program or other OFAC sanctions program, we respectfully submit the following comments to the Financial Actions Task Force (FATF) June 2011 *Consultation Paper: The Review of the Standards – Preparation for the 4<sup>th</sup> Round of Mutual Evaluation*.

First and foremost, we recommend engaging in a meaningful dialogue with stakeholders before issuing revisions to the Standards. The Consultation Paper explains that the FATF intends to "consider its proposed revisions to the Standards, and the contributions to the consultation process, in the months after September, and will provide substantive feedback on its response to both rounds of consultation when the revised Standards are adopted in February 2012." It seems clear that the "substantive feedback" is offered after the FATF already has made its decision and not before there is an opportunity to evaluate and, where appropriate, revise the Standards consistent with the recommendations of the stakeholders. After all, it is the stakeholders that will be required to implement the Standards – and it is the Stakeholders who are in the best position to identify potential difficulties and inefficiencies in the current proposed revisions.

On behalf of our Members, we provide comments, from the exporters and financial institutions perspective, of paragraphs within the Consultation Paper.

## **Background**

The revised Forty Recommendations are designed to assist Member States in protecting the international financial system from threats posed by money laundering and terrorist financing. The Recommendations, when combined with the Eight Special Recommendations on Terrorist

Financing provide an enhanced, comprehensive and consistent framework of measures for combating money laundering and terrorist financing.

Also consistent with global financial security is humanitarian-based trade – a concept present in United Nations Security Council Resolutions calling for the imposition of sanctions on threats to global security. In recent years, it appears that the focus on protecting the financial structure from abuse has outweighed the equally important focus on ensuring humanitarian assistance to those in need and we recommend that the FATF expressly acknowledge the parallel track.

In recent years, we have witnessed a growing trend among financial institutions refusing to process humanitarian and otherwise licensed transactions involving targets of United Nations, European Union and domestic sanctions – even where the relevant sanctions regime explicitly calls for such accommodations.<sup>1</sup> To the end, we provide the following comments to the Consultation Paper Paragraphs 17, 20 and 21:

#### **Special Recommendation VII (Wire Transfers) Paragraph 17**

Special Recommendation VII was developed with the objective of preventing terrorists and other criminals from having unfettered access to wire transfers for moving their funds and for detecting such misuse when it occurs. Specifically, it aims to ensure that basic information on the originator of wire transfers is immediately available. We agree that the goals of this Special Recommendation are essential in protecting the international financial system from abuse. We recommend, however, that the Recommendation also explicitly acknowledge the role that humanitarian licenses play in promoting international financial security. As a result, where the FATF promotes the transparency of originator and beneficiary information on wire transfers, we also suggest that: (1) wire transfers should include references to relevant licenses for humanitarian transactions and (2) that financial institutions should be encouraged to process those transactions.

#### **Targeted financial sanctions in the terrorist financing and proliferation contexts.**

Paragraph 20 fails to recognize exceptions or exemptions that may be available under local law. For example, where the U.S. Department of the Treasury (“Treasury Department”) institutes a designation pursuant to a United Nations Security Council Resolution (“UNSCR”), it is prohibited from regulating the flow of information and informational materials between a U.S. Person and the target of the sanctions. Treasury Department regulations also typically license (specifically or generally) U.S. Persons to provide certain legal services and targets of the sanctions are generally eligible for humanitarian licenses (such as living and expenses medical treatment).

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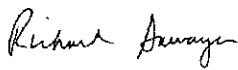
<sup>1</sup> For example, Article 10 of the EU Council Decision of July 26, 2010, expressly states that the transfer of funds relating to the export of foodstuffs, healthcare, medical equipment or other humanitarian services shall not be subject to delay. The U.S. Government promotes licensing of humanitarian transactions through general or specific license available through regulations promulgated by the Department of the Treasury’s Office of Foreign Assets Control.



Because the UNSCRs are not generally self-implementing, local jurisdictions must implement the freeze or block pursuant to relevant local law. To do so in the United States, the Treasury Department, in consultation with the Departments of Justice and State (and others), designates persons who meet the local law criteria for designation; there is not a mirror image overlap between the United Nations Al-Qaeda list and those designated pursuant to Executive Order 13224. Special Recommendation III should acknowledge that, to the extent possible, persons should freeze without delay those designated pursuant to a UNSCR.

Paragraph 21 poses challenges within the United States if the intent is to mandate that a government authority maintain periodic audit or regulatory authority over Designated Non-Financial Business and Professions (“DNFBPs”) and financial institutions. Rather than mandating that particular sectors be subject to a government audit function – a proposition that could result in additional governmental costs and may undermine efficient review of risk-based targets of investigations -- the same goal may be met if Paragraph 21 instead provides that financial institutions and DNFBPs (along with others subject to local sanctions laws and regulations) should be subject to fines if they fail to comply with relevant legislation, rules, or regulations governing the obligations under SRIII.

Respectfully submitted,



Richard N. Sawaya  
Director, USA\* Engage



William A. Reinsch  
Co-Chair, USA\*Engage  
President, National Foreign Trade Council