



August 1, 2018

The Honorable Marshall Billingslea
Assistant Secretary for Terrorist Financing
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Mr. Billingslea:

RE: Issues for Consideration in the Global Framework for Anti-Money Laundering and Countering the Financing of Terrorism

I would like to take this opportunity to congratulate you on your recent appointment as President of the Financial Action Task Force (the “FATF”). I know you will play a critical role in helping to safeguard global finance against illicit use by rogue nations, terrorist facilitators, money launderers, and other security threats. I wish you much success in your new role.

The Institute of International Finance (the “IIF” or the “Institute”) appreciates the opportunity to continue to provide input to the FATF as it works to address many of the key issues facing the global financial community today. As a permanent member of the FATF Private Sector Consultative Forum (“PSCF”), the IIF has long supported the goals of the FATF in promoting effective implementation of measures for combating money laundering, terrorist financing, and other related threats to the integrity of the international financial system.

The Institute has been working closely with our members and the public sector to evaluate areas where the efficient work of that system to fight financial crime may be impeded or where certain issues could lead to unintended consequences. This has produced discussions and recommendations specifically around de-risking in correspondent banking and the importance of information sharing for financial crime related purposes. It has also initiated a discourse on the wider components of a well-functioning anti-money laundering and counter-terrorist financing (“AML” and “CFT”) infrastructure.

As we enter the year of the United States presidency of the FATF, we note the close alignment of the private and public sector goals to counter the financing of terrorism and proliferation, improve transparency and the availability of beneficial ownership information, address de-risking, respond to the increasing use of virtual currencies/crypto-assets for money laundering and terrorist financing, and enhance the understanding and use of Financial Technology (“FinTech”) and Regulatory Technology (“RegTech”) solutions in AML/CFT. On the Reg Tech point in particular, our members are increasingly using sophisticated tools to manage financial crime risk – with technology and data analytics at the heart of these solutions.

In light of these areas of focus, we would like to offer our thoughts on enhancements to the AML/CFT regime, alongside some suggestions on the overall workings of the FATF, which we believe would improve the effectiveness of the global fight against financial crime and the ultimate outcomes of the FATF workstreams. We hope to be able to discuss these issues with you in person at your convenience.

We also understand that consideration will be given to a FATF Ministerial meeting on the margins of the spring 2019 International Monetary Fund/World Bank meetings in Washington, D.C. We would be pleased to also discuss assisting with a formal event around the same time with senior representatives of our membership and your delegations to discuss key priorities, as you deem appropriate.

We look forward to working with you and your colleagues across the FATF jurisdictions and to hearing if it would be possible for us to meet on these issues. If you have any questions in the interim, please contact me or my colleague Matthew Ekberg (mekberg@iif.com).

Very truly yours,

A handwritten signature in black ink, appearing to read "Timothy D. Keane". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Issues for Consideration – July 2018

The current AML/CFT framework is not as effective as it should be. The amount of money laundered globally each year is estimated at 2% to 5% of global GDP, or \$800 billion USD to \$2 trillion USD.¹ This illicit finance goes to support, *inter alia*, global terrorism, nuclear proliferation, criminal gangs, and cyber-attacks. Though billions have been invested in the effort to tackle this problem, more needs to be done. A combination of regulatory reforms and the deployment of new technologies could significantly improve efforts of governments and the financial industry to counter threats to the integrity of the international financial system.

Specifically, a review by the FATF would benefit the AML/CFT infrastructure in six key areas: 1. a continued focus on domestic and cross-border information sharing; 2. promotion of cross-border public/private partnerships; 3. improvements to regimes for the exchange of beneficial ownership information; 4. increased effectiveness for the practical application of FATF Guidance; 5. enhancements to the use of innovation and RegTech (while also addressing risks arising from technology such as those associated with virtual/cryptocurrencies); and 6. increased transparency and private sector engagement by the FATF.

1. Continue to improve domestic and cross-border information sharing with a specific focus on addressing threats from terrorism and proliferation finance

Request: Recent FATF Recommendation changes for information sharing should be implemented as soon as practicable at the domestic level and should form part of the methodology around FATF country assessments. The FATF should also continue to prioritize ensuring that secrecy and privacy laws, and tipping-off or similar provisions, do not inhibit the exchange of relevant information, including suspicious activity reports (“SARs”) and associated underlying information, across borders between entities in different group enterprises and between enterprises and governments, in both directions, for managing financial crime risk.

Background: The proper management of risk in AML/CFT efforts can be improved by better information sharing, both domestically and internationally. Such exchange is important to well-functioning AML and CFT policies which fulfill the goal of protecting global finance from criminal incursion. In the context of the current agenda of the FATF, information sharing is critical to address specific threats that arise from terrorism and proliferation finance. Without adequate insights by banks, law enforcement, and intelligence agencies into the funding of these activities, efforts to stop terrorists and rogue states from inflicting further damage globally will be inhibited.

To overcome this, further efforts are needed to address challenges to operative sharing of AML/CFT information – including mitigating such issues as inconsistent legal frameworks for data protection, management of SAR-type information, privacy, and bank secrecy - across different jurisdictions.²

¹ United Nations Office on Drugs and Crime (“UNDOC”): <https://www.unodc.org/unodc/en/money-laundering/globalization.html>

² In February 2017, the IIF published a survey of its members on the legal and regulatory barriers that exist to effective information sharing on financial crime related matters. The survey included 28 individual financial institutions covering information concerning 92 countries across Europe, North America, Asia, Africa, Latin America and the Middle East. At the macro level, the survey found that the vast majority of banks identified restrictions on the ability to share information concerning financial crime related matters as an impediment to effective risk management, and that this issue is indeed global in nature. We have also found that some countries are moving in the direction of restricting information exchange even further, which is why urgent, globally coordinated action is critical. As part of the survey, we also provided recommendations to the FATF on how to improve the information sharing architecture globally. The report and those recommendations can be found here: <https://www.iif.com/publication/regulatory-report/iif-financial-crime-information-sharing-report>

We applaud the FATF for the work it has undertaken thus far on this critical issue. Under the Argentinian presidency, important strides were made in offering both Guidance and updating the FATF Recommendations (the “Recommendations”)³ in this area. In November 2017, the FATF adopted revisions to the Recommendations to clarify the FATF’s requirements on sharing of information and the methodology to assess compliance with the Recommendations. These revisions are helpful in clarifying how assessors and advisors should determine the extent of sharing of information at the group-wide level, including with branches and subsidiaries, and whether or not sufficient safeguards are in place to ensure confidentiality and prevent tipping-off.⁴ The FATF also published important formal Guidance on information sharing which sets out the requirements of the FATF Recommendations in this context.⁵

In February 2018, the FATF also adopted revisions to Recommendation 2 on national cooperation and coordination. The amendments expanded the Recommendation to include information sharing between competent authorities, and emphasized that cooperation should include coordination with the relevant authorities to ensure the compatibility of AML/CFT requirements with Data Protection and Privacy (“DPP”) secrecy rules and other similar provisions (*e.g.* data security / localization).⁶ We agree with the FATF that this change will help improve the compatibility of AML/CFT and DPP rules and will assist in facilitating exchanges of information within the private sector.⁷

The FATF should rigorously review the national adoption of these changes to the Recommendations through the FATF Mutual Evaluation process. The utility of any Recommendation change is only as good as its practical application in national law. A clear and operative means of ensuring FATF member states review and adapt/clarify their national laws and regulations to improve information sharing should be an essential outcome. We also believe benchmarking the adoption of the FATF Guidance on information sharing should be prioritized. Understanding how FATF jurisdictions are applying the Guidance and how effective that Guidance is for improving the environment for information exchange is vital.

In addition, while we agree the above changes are helpful, we would encourage the FATF to continue to prioritize this issue as part of its 2018/2019 agenda in terms of going further to facilitate information exchange, particularly as it relates to combatting the financing of the proliferation of weapons of mass destruction. Specifically, work should focus on ensuring that secrecy and privacy laws, and tipping-off or similar provisions, do not inhibit the exchange of relevant information, including SARs and associated underlying information, across borders between entities in different group enterprises and between enterprises and governments, in both directions, for managing financial crime risk.

We believe this enhanced information sharing should form part of the any work stream by the FATF under the U.S. presidency to identify gaps in the FATF Recommendations related to proliferation and terrorism finance and the options to address them. Further changes to the Recommendations that reinforce the

We would also note that a continuing exercise on mapping legal gateways and impediments for information sharing should form part of future work by the FATF, in conjunction with the private sector, and the IIF would be pleased to continue working with the FATF on that effort.

³ FATF, *the FATF Recommendations*, 2012

⁴ FATF, *Outcomes Joint FATF/GAFILAT Plenary, 1-3 November 2017*

⁵ FATF, *Guidance - Private Sector Information Sharing*, November 2017

⁶ FATF, *Outcomes FATF Plenary, 21-23 February 2018*

⁷ We note that in relation to the importance of transparency by the FATF, publication of the actual wording changes to the Recommendations in this area should be more clearly articulated on the FATF website. Currently, we do not believe they have been adequately publicized in their entirety by the FATF.

importance of institutionalizing global coordination and information exchange mechanisms in the fight against terrorist financing should be undertaken.

2. Promote cross-border public/private partnerships

Request: The FATF should proactively support the creation of domestic/multilateral public-private partnerships through review of legal/regulatory barriers to information sharing (as noted above) and by review of the utility of public/private partnerships through enhanced, measurable and enforceable guidance on information exchange for national Financial Intelligence Units (“FIUs”), banks, and law enforcement that will improve the exchange of both strategic and tactical information.

Background: We believe the public sector has an inherent responsibility to develop better lines of communication with the private sector, whereby the private sector receives regular feedback on information shared via FIUs and related law enforcement bodies, alleviating ambiguity in regard to objectives and processes that will help enhance the effectiveness of outcomes for both sides. Currently it is too much of a one-way-street between financial institutions and FIUs. After Suspicious Transaction Reports (“STR”) are filed there is generally no feedback by the FIU or other government entity in the process. While we are cognizant of the sensitivities around investigations of potential money laundering cases by the FIU and the risk of potential tipping-off, if a FIU more proactively and specifically highlights which typologies of ML/TF issues it prioritizes within a given time-span, the industry will be able to focus its efforts on filing more meaningful STRs. In turn, investigative time for the FIU could be rededicated to high priority cases.

The creation of the UK Joint Money Laundering Intelligence Taskforce (“JMLIT”), for example, provides an important opportunity to address the information asymmetry which currently exists between law enforcement and the private sector and for information to be shared openly in the spirit of working together to identify criminals and seize criminal assets. Similar initiatives are underway or beginning in other jurisdictions and, in particular, the IIF has partnered with Europol in the creation of the Europol Financial Intelligence Public Private Partnership (“EFIPPP”), the first cross-border financial intelligence sharing partnership. These are all vital steps towards an environment in which financial criminals are unable to use the financial services sector to launder the proceeds of crime or provide terrorist funding.

However, in order to enable more interaction between banks, FIUs and law enforcement generally, we believe that FATF standards should reflect that governments should carry more responsibility in that respect. As such, the FATF should assess how it can contribute to the improvement of the quality of information shared between the public and private sectors, the quantity of that information, and its accessibility domestically and internationally. This improvement can be facilitated by addressing legal/regulatory barriers to information sharing (as noted above) and by review of the utility of public/private partnerships through enhanced, measurable, and enforceable guidance for national FIUs, banks, and law enforcement, whilst encouraging greater cooperation between supranational authorities and national supervisory bodies.

3. Enhance regimes for the exchange of beneficial ownership information

Request: To address gaps in beneficial ownership information on a global basis, independent, public, and reliable beneficial ownership registries should be encouraged by the FATF and backed by governments as a reliable source of due diligence information.

Background: Identifying the true beneficial owner or individual exercising control in a business relationship is critical for both the public and the private sector in the fight against international financial crime and access to reliable, verified, and accessible beneficial ownership information remains a priority for our members. Where a robust platform for accessing information on underlying control of linked

entities does not exist or is impaired by laws and regulations which cause silos in information exchange, systemic weakness can be created on a global basis. A lack of knowledge regarding beneficial ownership allows criminals, money launderers, and terrorist financiers to obscure their identities from law enforcement. Without access to such information to assist them with their investigations in a consistent, cross-border way, a critical gap exists in the current AML/CFT regime.

While we applaud the FATF for their work in this particular area, we note that in a recent FATF report to the G-20, 40 of 44 countries reviewed under the Mutual Evaluation process need to make fundamental or major improvements in their AML and CFT systems to prevent the misuse of legal persons and arrangements and ensure availability of beneficial ownership information.⁸

An important point that has not been fully addressed on a global basis is the issue of upon whom the burden of responsibility lies to identify beneficial ownership. Much of the focus historically has been on financial institutions to identify and verify this. There should, however, be an increased emphasis on requiring the legal entities themselves to be more forthcoming in a verifiable, public way. Beneficial ownership registers are being developed in some jurisdictions and would help alleviate many of the vulnerabilities in the current regime. These independent, public, and reliable registries should be encouraged and backed by governments as a reliable source of due diligence information. We believe a more targeted assessment of the need for consistent implementation of, and enforcement of accurate participation in, such registers should continue to form part of the core agenda of the FATF.

4. Support greater regulatory clarity and consistency in AML/CFT standards through improved effectiveness of FATF Guidance

Request: A mechanism akin to the Mutual Evaluation process should be put in place to make FATF Guidance more effective, measurable, consistent, and enforceable in FATF member state jurisdictions.

Background: Ambiguities exist in international AML/CFT regulations, leaving significant room for interpretation and leading to fragmentation among jurisdictions with conflicting sets of requirements. For example, some jurisdictions do not specify which crimes can serve as predicates for money laundering prosecutions. Agreement and uniformity on customer due diligence practices in AML/CFT is also lacking, and there are still uncertainties in some areas as to the validity and applicability of “know-your-customer’s customer” (“KYCC”) obligations on banks and the possible liabilities arising from noncompliance with such requirements.⁹ This can continue to exacerbate issues for “de-risking” in the international financial system, a situation which can have significant adverse consequences for the goals of the G-20 in increasing financial inclusion.

The FATF and the Basel Committee on Banking Supervision (“BCBS”) have taken steps to provide additional guidance on some of these issues – including KYCC – in the context of the correspondent banking market.¹⁰ However, as noted by the Financial Stability Board (“FSB”)¹¹, the new FATF and revised BCBS guidance should be followed up by statements at the national level by regulators to clarify expectations domestically so that they are appropriately reflected in supervisory practices and banks’ risk management platforms.

⁸ FATF, *Report to G20 Finance Ministers and Central Bank Governors, March 2018 and July 2018*

⁹ The issue of KYCC has been addressed through FATF Guidance, however, as noted below adoption and understanding of the Guidance is not uniform globally: FATF Guidance, *Correspondent Banking Services*, October 2016

¹⁰ IBID and BCBS, *Sound management of risks related to money laundering and financing of terrorism: revisions to correspondent banking annex - final document*, June 2017

¹¹ FSB action plan to assess and address the decline in correspondent banking: Progress report to G20 Summit of July 2017, P. 2.

FATF Guidance on established recommendations or principles can only go so far in providing the regulatory certainty needed by both banks and national authorities. Still, it must be applied in good faith across member state jurisdictions in order for it to be fully useful. Guidance is generally non-binding and can sometimes even be invalid due to contradictory rules in effect in certain jurisdictions. It will be incumbent on national authorities to clarify regulatory expectations as to its ultimate effect. This can lead to disparate interpretations which could ultimately harm the efficacy of solutions to the issues being addressed. A means of ensuring FATF Guidance is adopted in a fulsome and transparent fashion across jurisdictions is ultimately needed, otherwise there is a real risk the status quo will be maintained.

We note the FATF recently undertook a survey of its member states and the private sector on the adoption of the FATF Guidance on Correspondent Banking.¹² This exercise can be extremely helpful in understanding how Guidance is applied, how it has helped achieve AML/CFT objectives and what strategies are employed in implementing Guidance across jurisdictions.¹³ However, it must be followed up as part of ongoing review and dialogue – akin to the Mutual Evaluation process – with member states that may be lagging behind in adoption.

Lastly, there is at times a continuing focus by domestic supervisory bank examiners on a “tick the box” approach to managing implemented FATF Guidance. This can drive financial institutions to adopt processes that respond to such examination practices, rather than finding the best way to identify and report real suspicious activity. We would suggest that the FATF consider guidance that refocuses efforts away from examination-only compliance towards the provision of more actionable data, raising STR thresholds and redefining requirements to focus on high risk transactions, not just monetary levels.

5. Enhance the use of innovation and RegTech while addressing risk appropriately

Request: The FATF should enhance its leadership at a global level to promote efficiency in compliance with AML/CFT requirements through new technology and innovation, while at the same time addressing risk related to some new technological entrants such as cryptocurrencies.

Background: New technologies have dramatically bolstered financial institutions’ (“FI”) AML efforts, and also hold promise for effective deployment at FIUs.¹⁴ Through their ability for self-learning and analyzing large amounts of complex data, machine learning and artificial intelligence are improving monitoring and analysis of suspicious activity on FIs’ client accounts and payment systems. For example, “false positives” generated by monitoring systems have begun to decrease with this technology, while it also detects more complex laundering patterns. In time, security improvements from distributed ledger applications, cryptography, and hashing algorithms could improve the ability to share information efficiently and securely among FIs and FIUs, while retaining optimal information integrity and privacy.

In general, for effective deployment in AML, it is key that supervisors work closely with FIs to support innovation and gain an understanding of new technologies while monitoring any potential operational risks. Historical STR information, either released by FIUs as an anonymized public data set, or in the form

¹² We note that in relation to the importance of transparency by the FATF, it would be helpful for the results of these surveys to be published and shared widely with the private sector and relevant stakeholders.

¹³ A country to country comparison can also be carried out, comparing countries with high adoption rates compared with countries having difficulty in implementing the Guidance. The strategies adopted by these countries can be shared with other countries.

¹⁴ IIF, *Deploying regtech against financial crime*, March 27, 2017. <https://www.iif.com/publication/research-note/deploying-regtech-against-financial-crime>

of feedback on STR filings from individual firms, would greatly benefit the training of algorithms that will be even more powerful in money laundering detection.¹⁵

Further work and leadership at a global level to foster new technologies and review regulatory impediments to innovation will greatly assist in efforts to fight financial crime. The FATF should encourage the process for innovation in financial regulatory technology that assists in compliance with AML/CFT regulations. To do so, it should promote regulatory responses that are clear, actionable, and consistent across jurisdictions. At the same time, regulations which may impede innovation for fighting financial crime, such as information sharing barriers or a lack of ability to rely on centralized Know Your Customer (“KYC”) utilities¹⁶ for example, should be reevaluated at both the domestic level and in concert with foreign counterparts (and centralized through FATF and other relevant bodies including the BCBS and the Committee on Payments and Market Infrastructures). The regulatory environment must keep pace with technological change, as this will help move from the current structure of AML/CFT compliance to a more dynamic intelligence-led financial crime risk management model. Attention should also be given to the fact that not all countries are at the same stage in terms of technological advancement. A focus on continuing to support emerging markets in their innovation goals should be prioritized.

We furthermore believe the FATF should work to examine whether the FATF Recommendations on customer due diligence and reliance permit the acceptance of, and reliance on, digital identification. We are pleased the U.S. presidency has asked the FATF to prioritize Guidance in this area and the private sector would be grateful to assist in this endeavor.¹⁷

Lastly, we believe the FATF should also address risks in the system that could arise from certain technological entrants. Specifically, we are pleased the FATF is undertaking further work to investigate issues related to virtual currencies/crypto-assets to assist law enforcement in light of growing risks.¹⁸ This should continue to be done in coordination with the FSB and regulatory authorities around the world. The industry would welcome taking a constructive role in the FATF review of guidance and standards to determine if changes are necessary to clarify their application to virtual currencies/crypto-assets, as we believe a more consistent regulatory approach is needed in this area.

6. Improve FATF transparency and private sector engagement

Request: Cooperation between the FATF and the private sector is critical to the fight against financial crime. The FATF should be commended for their work on this dialogue to date. We believe, however, that targeted changes to improve public/private interaction would strengthen the global regime for AML/CFT.

Background: The G-20 has prioritized strengthening the FATF as a core component of the global financial architecture in the fight against cross-border financial crime. The IIF is fully supportive of the FATF agenda and values playing a constructive role in advancing its goals. The industry welcomes the opportunity to provide input on that agenda where appropriate and, to that end, we believe greater institutionalized engagement by the FATF with the private sector would be invaluable in the fight against financial crime.

¹⁵ For a full list of regulatory recommendations for the effective deployment of new technology in AML, see IIF, *Deploying regtech against financial crime* (above). We also note that the IIF will shortly be publishing an industry survey on the use of Machine Learning for AML and we would be pleased to present those results of that survey to the FATF in due course.

¹⁶ Effective use of KYC utilities in particular would be helpful to alleviate information sharing barriers. For example, criminals can spread activity across institutions to hide that activity and a way to track this is to have access to the activity across firms – this could be done in a centralized utility format.

¹⁷ FATF, *Objectives for FATF 2018/2019*, July 2018

¹⁸ IBID and FATF, *Report to G20 Finance Ministers and Central Bank Governors*, July 2018

For example, before new FATF Guidance is published, or amendments to the FATF Recommendations considered, we believe the FATF should proactively consult with private sector stakeholders for feedback on the proposed changes in order to fully and adequately assess the impact on the financial system as a whole.¹⁹ Enshrining this solicitation of stakeholder feedback in the FATF processes would help to improve the deliberations between member states on ultimate outcomes.

The PSCF should also be enhanced. At the moment, there is limited opportunity for the private sector to provide thorough feedback on the FATF agenda through this once-a-year forum where the agenda and attendance is sometimes broad and where discussions can be time constrained. A reorganization of the PSCF to provide time for more direct stakeholder engagement on specific issues in smaller sessions would help.

However, a more central contribution to the public/private dialogue would be the organization of regular roundtables with the private sector on issues relevant to the FATF agenda where private sector suggestions are then taken back to Plenary for discussion. We commend the FATF for beginning this type of engagement recently on information sharing and through the new Heads of FIU forum at Plenary. We would also suggest these efforts be expanded as topics arise on which FATF Guidance or other types of policy papers are contemplated throughout the year. Consideration should also be given to specific engagement on a regional basis between the FATF, the private sector, and regional supervisory bodies. This would be extremely helpful in the context of emerging markets, where specific needs on dialogue may be different than in other jurisdictions.

Lastly, we would encourage the FATF to increase general transparency regarding its work. Publication of the outcomes of surveys related to the adoption of FATF Guidance, for example, would assist in better understanding the efficacy of the Guidance globally. We also believe that once reports or the FATF Guidance/Recommendation changes are finalized, the FATF should have a strategy to distribute these updates through private sector bodies to ensure broader impact. Online publication will still provide maximum reach, however additional awareness of new publications needs to be widely reported. While not traditionally done, a short webinar hosted by the FATF on the key issues in new reports, or even the outcomes of the FATF plenary sessions, would also help to increase awareness and understanding.

¹⁹ We commend the FATF for issuing consultations on Guidance Papers for the Securities and Insurance industries in light of discussions at the June 2018 FATF Plenary session. We would also note, however, that for such consultations to garner greater feedback from the private sector, the timing on soliciting comments should be expanded in line with the general practices of other international standard setting bodies to a minimum of 60 days.