



ICSA

INTERNATIONAL COUNCIL of SECURITIES ASSOCIATIONS

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Frank Swedlove
President
Financial Action Task Force
2, rue André Pascal
75775 Paris Cedex 16
France

Dear Mr. Swedlove,

On behalf of all ICSA members, we would like to thank you for accepting the invitation to speak at ICSA's upcoming AGM in Toronto.¹ We look forward to hearing more about the work that FATF has been carrying out under your leadership and, specifically, FATF's evolving relationship with the private sector.

When we met with you in New York late last year you asked us to write to you if we had any proposals that we believed FATF should address in order to make AML regulation more effective and efficient. We have given your request due consideration and would like to take this opportunity to identify some areas where we believe that FATF could, in conjunction with the private sector, focus its work in the future. We hope that it might be possible for you to address some of these issues when you meet with ICSA members on May 14th.

As you are aware, the members of ICSA's Working Group on AML have been active participants in the WGEI's Electronic Advisory Group (EAG). We have appreciated the opportunity to participate in this important forum and look forward to the response of the WGEI to the guidance

¹ The members of the International Council of Securities Associations (ICSA) represent and/or regulate the overwhelming majority of the world's equity and fixed income markets. ICSA's objectives are: (1) to encourage the sound growth of the international securities markets by promoting harmonization in the procedures and regulation of those markets; and (2) to promote mutual understanding and the exchange of information among ICSA members.

document that has been prepared by the EAG. We also look forward to the response of FATF members at the June Plenary when, we understand, the finalized guidance may be presented.

We are aware that FATF members have not yet approved the proposed high-level principles for the risk-based approach to AML/CFT. However, assuming that those principles will be approved, we believe that FATF should begin to consider two related issues:

- a. Developing good practices for implementing the risk-based approach to AML/CFT in order to promote consistency across jurisdictions. This is important since there will undoubtedly be substantial differences between jurisdictions regarding the implementation of the high-level principles for the risk-based approach to AML/CFT, once those principles are formally approved by FATF members. In some cases these differences could be so significant as to negate the gains in efficiency and effectiveness that would otherwise be achieved through the implementation of a risk-based approach to AML/CFT.
- b. Providing practical instruction to regulators and others in the risk-based approach to AML/CFT in order to promote consistent practices between jurisdictions. This is important since regulators in many jurisdictions do not have experience implementing a risk-based approach to AML/CFT. Practical, hands-on training in the risk-based approach will help to establish a common basis for the supervision of risk-based systems between jurisdictions. In this area FATF could draw on the experience and facilities of the private sector, specifically those financial intermediaries active in the international capital market and other market participants that already have considerable experience implementing the risk-based approach to AML/CFT.

Along with the very important work that the EAG has been doing on the risk-based approach to AML, there are a number of other AML-related issues that create difficulties for firms active in the international capital market and which we believe FATF may wish to examine going forward. These issues, many of which were discussed during our meeting late last year in New York, include the following:

1. Firms' inability to rely on the AML/CFT policies and procedures of other financial intermediaries, even where the firms are affiliated with one another and/or are located in well regulated and appropriately supervised environments. This issue is important since few jurisdictions allow financial intermediaries to rely on CDD conducted by other financial intermediaries, particularly when those other intermediaries are located in another country. As a consequence, financial intermediaries are faced with a considerable duplication of effort. Similarly, it is now common for customers, whether at their own instigation or because of arrangements between financial institutions, to have relationships with multiple financial institutions providing different services that in total meet the customer's needs. Examples are introducing/carrying arrangements and prime and executing brokers. To address this issue, FATF could develop principles and good practices that would allow financial intermediaries to mitigate their risk when they rely on other firms for CDD, although each firm would still have the ultimate responsibility for their AML/CFT practices. These principles and good practices could include, for example, examining relationships or transactions involving one customer and multiple financial institutions to determine whether CDD should apply equally to the financial institutions involved.

2. Inefficiencies arising from data privacy restrictions. This issue is important since data privacy laws frequently inhibit the development of effective communications between financial intermediaries, which in turn is critical for effective AML/CFT practices. For example, data privacy restrictions can prevent financial intermediaries from sharing information with their foreign-based affiliates, parent companies and subsidiaries. Data privacy restrictions may also prevent financial intermediaries from establishing global standards and administrative processes and hinder the transmission of information relevant to identifying possible money laundering activity, particularly when it crosses borders. In order to address this issue, FATF could work with the private sector to: (1) identify where and how data privacy laws hinder the development and implementation of effective AML/CFT systems; and (2) recommend specific exceptions to data privacy laws that would allow financial intermediaries to share information with one another whenever there was a well documented suspicion that money laundering was occurring.

3. The need for enhanced information flows from governments and other public sector bodies in order to assist the private sector's AML/CFT procedures. This issue is important since the

industry's ability to identify suspicious activity would benefit significantly from greater access to information already available to governments, such as information about known havens for money laundering and any identified trends or transactions in money laundering and the financing of terrorism. In effect, governments can help the industry to focus on the areas that present the greatest risk through a more meaningful sharing of information with the industry. From the industry's point of view areas of interest include feedback on STRs; information on money laundering and terrorist financing trends; corporate registries including information on directors, officers and beneficial owners; and the identification of politically exposed persons. In order to address this issue, FATF could work with the private sector to develop standards and best practices regarding the types of information that should be provided by governments and other public sector bodies to financial intermediaries in order to enhance their AML/CFT efforts.

In closing, we would like to thank you once again for having taken the time to meet with private sector representatives at the end of last year and for agreeing to speak with ICSA members at their 2007 AGM. We look forward to speaking with you at that time.

Sincerely,



Larry Boyce, Co-Chairman
ICSA Working Group on AML
and Vice-President, Sales Compliance
and Registration
IDA



Alan Sorcher, Co-Chairman
ICSA Working Group on AML
and Associate General Counsel
SIFMA

cc: Jonathan Carlson, Interim Executive Secretary, FAFT