

July 31, 2017

Mr. Santiago Otamendi  
President  
Financial Action Task Force (FATF)  
2, rue André-Pascal  
75775 Paris Cedex 16  
France



**RE: Public Consultation on the Draft Guidance for Private Sector Information Sharing**

Dear Mr. Otamendi:

The Institute of International Finance (the “IIF” or the “Institute”) appreciates the opportunity to provide input to the Financial Action Taskforce (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 its members and the public sector to evaluate areas where the efficient work to fight financial crime may be impeded or where certain issues could lead to unintended consequences. This has initiated discourse on the wider components of a well-functioning anti-money laundering and countering the financing of terrorism (“AML” and “CFT”) infrastructure. One of the cornerstones of this framework is effective information sharing, both within the private sector and between the private and public sectors.

We are pleased this issue has been well recognized by the FATF and that it has formed an integral part of the organization’s agenda, leading to the recently released consultation on the Draft Guidance for Private Sector Information Sharing (the “Draft Guidance”). We agree with the FATF’s assessment that specific challenges to effective sharing of AML/CFT information - including such issues as inconsistent legal frameworks for data protection, management of Suspicious Transaction Report (“STR”)-type information, privacy and bank secrecy across different jurisdictions - are essential to be overcome in order to better ensure stability and security in global finance.<sup>1</sup>

While we are broadly supportive of the direction of the Draft Guidance, we believe that it does not go far enough to address potential barriers to information sharing which may impinge upon the effectiveness of the system. Specifically, the FATF should use its leadership role to provide greater regulatory clarity and certainty in how information can be shared – both domestically and internationally - to prevent illicit activity. A crucial component of this should be a meaningful update to the FATF Recommendations (the “Recommendations”)<sup>2</sup>. Guidance regarding the Recommendations can only go so far. As the FATF Recommendations offer a comprehensive and consistent framework of measures which countries should implement in order to combat money laundering and terrorist financing, the IIF believes that the Recommendations would benefit from a new, specific Recommendation on information sharing.

Failing that, more targeted amendments to the current Recommendations and improved, actionable final guidance is needed to create the conditions for effective information exchange. A clear and operative

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<sup>1</sup> It is noteworthy that similar issues arising from impediments to information exchange are being encountered in other areas, notably cybersecurity, anti-fraud action, tax, and Over the Counter (“OTC”) derivatives reform. As a result, it may be useful for the FATF to coordinate with other work streams in the official sector to make sure data-sharing issues are addressed consistently and without stove-piping that would produce incomplete or inconsistent relief for different purposes.

<sup>2</sup> FATF, *The FATF Recommendations: International Standards on Combatting Money Laundering and the Financing of Terrorism and Proliferation*; February 2012.

means of ensuring FATF member states review and adapt or clarify their national laws and regulations to improve information sharing should form a critical outcome of this exercise.

We are grateful for the opportunity to offer our suggestions herein on the Draft Guidance. We stand ready to answer any questions you may have and to assist further as needed in your ongoing work, including through the organization of meetings with IIF members to discuss our feedback in more detail. If you have any questions or comments, please contact me or Matthew Ekberg at [mekberg@iif.com](mailto:mekberg@iif.com).

Very truly yours,

A handwritten signature in black ink, appearing to read 'A. Portilla', with a large, stylized initial 'A' at the beginning.

Andres Portilla  
Managing Director  
Regulatory Affairs

## 1. Background on information sharing issues

An effective regime for combatting financial crime on an international basis is of paramount importance to the safety and soundness of the global financial system. The industry believes, however, that proper management of risk in AML/CFT efforts can be improved by better information sharing, both domestically and internationally.<sup>3</sup> Such exchange is critical to well-functioning AML and CFT policies which fulfill the goal of protecting global finance from criminal incursion. The FATF expects countries to have engagement and exchange between the regulated sector and public authorities. However, to facilitate this, urgent work is needed to overcome challenges to operative sharing of AML/CFT information and discussion of the FATF's Draft Guidance provides a welcome opportunity for development of solutions.

*A globally recognized issue.* Increasingly, the effectiveness of information exchange has become one of the major and recurring public policy questions for those involved in combatting financial crime. The G-7 recently stated that they "...are committed to enhance information sharing, domestically and internationally, among relevant authorities and strengthen cooperation with the private sector."<sup>4</sup> The 2017 G20 Communiqué stated "As an important tool in our fight against corruption, tax evasion, terrorist financing and money laundering, we will advance the effective implementation of the international standards on transparency and beneficial ownership of legal persons and legal arrangements, including the availability of information in the domestic and cross border context."<sup>5</sup>

As part of the ongoing global debate on "de-risking"<sup>6</sup>, the Committee on Payments and Market Infrastructures ("CPMI") has acknowledged that if banks in a correspondent banking relationship cannot provide additional information on customers and specific transactions due to legal and regulatory restrictions on information exchange, correspondent banks may have no alternative but to block or reject certain transactions. This may in some cases lead to the termination of some correspondent banking relationships.<sup>7</sup> The Financial Stability Board ("FSB") recently echoed this point as part of its analysis of the de-risking trend by saying that better information sharing can support more effective due diligence in correspondent banking.<sup>8</sup>

*The Mundus Example.* The issues for operative data exchange are not theoretical in nature. In May 2016, the IIF laid out these issues by building a case study in the of name of Mundus Bank ("Mundus"), a fictitious representation of a major global banking and financial services organization. The Mundus example outlined the significant real-life barriers to risk assessment, information sharing and collaboration facing industry, governments and international bodies.<sup>9</sup> Specifically, the case study made clear there is a significant lack of global visibility for banks and law enforcement on illicit activity in the system, a lack of bank-to-bank data sharing mechanisms and barriers to bank/law enforcement collaboration.

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<sup>3</sup> As noted in footnote 2, it may be useful for the FATF to coordinate with other work streams in the official sector to make sure data-sharing issues are addressed consistently and without stove-piping that would produce incomplete or inconsistent relief for different purposes.

<sup>4</sup> COMMUNIQUÉ, G7 Finance Ministers and Central Banks' Governors Meeting ,Bari, Italy, May 12-13, 2017, Paragraph 6.

<sup>5</sup> G-20 Leaders' Declaration, Hamburg, 7/8 July 2017, p. 8.

<sup>6</sup> The term "de-risking" has become common shorthand for referring to any instances in which banks have adopted increasingly stringent financial crime-related policies to reduce their exposure to potential money laundering, terrorist financing, corruption or sanctions risk. More specifically, it relates to the strategies adopted by banks to reduce or eliminate their risk exposure. The term tends to be used particularly where multiple businesses in a given category or country are affected.

<sup>7</sup> CPMI, *Correspondent Banking*, July 2016, pp. 27-28.

<sup>8</sup> FSB action plan to assess and address the decline in correspondent banking Progress report to G20 Summit of July 2017, pp. 18-19.

<sup>9</sup> IIF, *Letter to the FATF on facilitating effective sharing of AML/CFT information*, May 25, 2016: <https://www.iif.com/publication/regulatory-comment-letter/iif-submits-letter-effective-information-sharing-amlcft>

*The IIF Information Sharing Survey.* In order to provide a body of evidence regarding the Mundus assessment of the global situation for information exchange, the Institute, following consultation with the FATF, undertook to survey its member institutions to validate the points set out by Mundus.<sup>10</sup> This was done with the specific aim of identifying legal and regulatory impediments where they exist and to develop a cross-jurisdictional evidence base on obstacles to the availability of financial crime related information. The survey elicited responses from 28 individual financial institutions covering information concerning 92 countries across Europe, North America, South America, Asia, Africa and the Middle East. The findings represented feedback from banks in all the major financial centers of the world and, as such, it was a strong indicator of views from across the international financial system on how banks see barriers to information exchange. 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.

It was noted from the results that the majority of developed jurisdictions have data protection, data privacy and banking secrecy laws which may restrict disclosure of both corporate level data (*i.e.* business data or non-personally identifiable information) and individual data (*i.e.* “personal data” or “personally identifiable information”). Several institutions provided responses with reference to their internal policies which restrict information sharing. While this is not surprising, it calls into question whether a form of information sharing may be possible in law in a specific jurisdiction, but that banks’ judgments behind such policies may reflect ambiguities or questions about legal requirements or risks, whether domestically or when there are multi-jurisdictional implications.

Institutions believed that there are tangible solutions which could be introduced to overcome the current restrictions on the level of information sharing in the jurisdictions in which they operate. Solutions included, *inter alia*, national legislative or regulatory improvements in the ability to share information and more global consistency in the application of rules impacting information exchange.

While the IIF survey provided the initial evidence base for this issue, ongoing monitoring, including a regular global review of the potential impact of data protection, data privacy and bank secrecy laws and the interaction and consistency between AML/CFT requirements and data privacy issues, will be of critical importance. In the near term, however, the FATF has a significant opportunity through review<sup>11</sup>, development and expansion of the work around the Draft Guidance to initiate coordination at the international level on tangible, globally consistent changes to the impediments found in the survey.

## **2. Key issues in the Draft Guidance**

The IIF strongly agrees with the thrust of the commentary in the Draft Guidance on information sharing. Providing greater clarity on this topic more broadly within the framework for data exchange within financial groups, between financial institutions which are not part of the same group and in the context of suspicious accounts and transactions is very much welcomed by the industry. However, guidance on established recommendations or principles can only go so far in providing the regulatory certainty needed by both banks and national jurisdictions on how information can be shared cross-border and domestically.

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<sup>10</sup> IIF, *Financial Crime Information Sharing Survey Report*, February 2017. A summary copy can be found here: [https://www.iif.com/system/files/iif\\_information\\_sharing\\_survey\\_final\\_2017.02.09.pdf](https://www.iif.com/system/files/iif_information_sharing_survey_final_2017.02.09.pdf)

<sup>11</sup> As part of the review of actionable next steps on this topic, we encourage the FATF to engage in dialogue with the private sector to discuss submissions on the consultation in order to craft the best possible outcome for this issue at the FATF November 2017 Plenary meeting. Such meetings could be coordinated by the IIF, the Wolfsberg Group and other appropriate bodies.

Both the FATF and the Basel Committee on Banking Supervision (“BCBS”) recently provided guidance to the private and public sectors on correspondent banking.<sup>12</sup> While helpful in many ways to alleviate questions for banks in how to operate within that business line, it is important to note that the guidance did not necessarily go far enough in clarifying regulatory expectations, particularly at the national level. The FSB raised this point by noting that:

*“The new FATF and revised BCBS guidance should be followed up by statements at the national level by national regulators to clarify expectations at the national level, so that they are appropriately reflected in supervisory practices and banks’ risk management practices.”<sup>13</sup>*

As the Draft Guidance on information sharing is meant to be non-binding, it will be incumbent on national authorities - in the same vein as the correspondent banking guidance - to clarify regulatory expectations as to its ultimate effect. This can lead to disparate interpretations of the final guidance which could ultimately harm the efficacy of the process in reducing information sharing barriers. Additionally, in few areas does the Draft Guidance truly address what we believe to be the crucial element of this issue. Without changes, or clarifications, regarding national laws and regulations identified in the IIF survey, barriers to effective data exchange for the purposes of fighting financial crime will still exist to be exploited by terrorists and criminals.

The IIF continues to believe the best way of addressing this issue would be for specific amendment to the FATF Recommendations. References to information sharing in the current Recommendations (in particular, Recommendations 9, 18, 20 and 21) lack cohesion. A single, specific new Recommendation should encompass the following principles:

- Countries should ensure that information-exchange restrictions and privacy laws, including tipping-off provisions, do not inhibit the exchange of information such as STRs and associated underlying information across borders, between entities in the same group enterprise; between entities in different group enterprises; and between entities in group enterprises and government, in both directions; for the purpose of managing financial crime and terrorist financing risk.
- Countries should ensure that adequate legal protections are in place to facilitate the sharing of information as described above.
- Countries should ensure that, where an entity is required to report a suspicion based, in whole or part, upon information gathered from outside its own group enterprise and/or from other jurisdictions that the applicable laws do not prevent the inclusion of that information in reports to be filed.
- Countries should ensure that, where an entity is required to report a suspicion which relates to activity across a number of group enterprises and/or a number of jurisdictions, that the applicable laws facilitate the filing of identical reports in each relevant jurisdiction.

The principles outlined in the new FATF Recommendation should be applied, or clarified, in national law through the FATF Mutual Evaluation Process, whereby effectiveness and technical compliance with the Recommendation can be assessed.

Failing a single Recommendation change, the FATF should consider more targeted amendment to specific Recommendations concerning information sharing coupled with a vigorous means of ensuring the final information sharing guidance truly allows for effective changes in the global capacity to share data and prevent financial crime. This should be done through a proactive review of national laws and regulations, in dialogue with the private sector. Any final guidance should also be much clearer in terms of allocated responsibilities for parties subject to the guidance and should outline clear deliverables for the public sector in order to avoid ambiguity.<sup>14</sup>

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<sup>12</sup> FATF Guidance, *Correspondent Banking Services*, October 2016 and BCBS, *Sound management of risks related to money laundering and financing of terrorism: revisions to correspondent banking annex - final document*, June 2017.

<sup>13</sup> FSB action plan to assess and address the decline in correspondent banking. Progress report to G20 Summit of July 2017, p. 2.

<sup>14</sup> Please see Section c of this letter for further commentary on levels of responsibility in the Draft Guidance.

We also believe the scope of review by the FATF on information sharing should be expanded. The Draft Guidance focuses heavily on enterprise-wide information sharing, though we understand the final guidance will reflect suggestions on sharing information between entities not part of the same group. This is welcome, however, the FATF should also focus attention on public-private information sharing. We appreciate the acknowledgement that this will be addressed via subsequent work streams<sup>15</sup> but we would encourage swift review of this issue in parallel to the matters being discussed herein, along with review of issues preventing public sector authorities to exchange information among themselves.<sup>16</sup> Ultimately, enterprise-wide, bank-to-bank, bank-to-government and government-to-government information sharing are inextricably linked in the fight against financial crime and should be considered in a holistic fashion by the FATF.

#### **a. Legal constraints**

The IIF agrees with the assessment of the Draft Guidance that legal constraints emanate from different legal frameworks that may inhibit availability, access, sharing and processing of information for AML/CFT purposes. In particular, the patchwork of data protection, data privacy and bank secrecy laws across jurisdictions, and a lack of a clear understanding of what is allowed to be shared in the context of national law, can create challenges.

The IIF survey pointed to the application and interpretation of data protection laws in this regard. As recognized by the Draft Guidance, this is a vital component of the discussion. The industry would like to emphasize that we understand that in some cases what may be seen by the financial community as a barrier to information sharing may be viewed as important for legitimate privacy or security reasons. We do not believe, however, that the goal of information sharing by financial institutions for the purposes of detecting and preventing financial crime and the safeguarding of proper privacy protections are mutually exclusive. Indeed, there is a need for a fresh look at data protection, data privacy and bank secrecy to examine how such protections can act as legitimate safeguards to customers, while also enabling certain information sharing to protect the integrity of the financial system.<sup>17</sup>

Paragraph 59 of the Draft Guidance makes clear that it is incumbent on national authorities responsible for AML/CFT and data protection to recognize the important public policy goals each seeks to advance and protect. A vital part of this is the FATF's conclusion that AML/CFT and data protection authorities in national jurisdictions should acknowledge derogations in law when necessary to prevent conflicts and provide clear and consistent guidance to the private sector in this regard.<sup>18</sup>

Although this assessment is correct, nonetheless it would not be sufficient for the supervisory and data protection authorities to intervene at a purely national level to issue interpretations for banks on how different regulatory requirements should be met. A consistent, global solution must be found to ensure a level playing field on expectations set by the FATF to avoid contradictory interpretations in different jurisdictions which would continue to impede cross-border information sharing.

As such, the potential for conflict between the goals of AML/CFT regimes and the application of laws that may restrict information flow in the areas described in Paragraph 12<sup>19</sup> of the Draft Guidance would be more effectively overcome by a new, single FATF Recommendation on information sharing, as outlined above. Failing a single Recommendation change, further consideration should be given to

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<sup>15</sup> Draft Guidance, para 13, p. 30.

<sup>16</sup> We offer the thoughts of the IIF on improvements to public/private information sharing in section f of this letter.

<sup>17</sup> The IIF is committed to assisting the FATF in the examination of how information exchange can be facilitated with careful attention toward safeguarding the personal data of customers. As such, we will shortly be preparing additional analysis to review the enabling of information sharing within current data protection regimes and identifying where such frameworks may need appropriate adjustment.

<sup>18</sup> Draft Guidance, para 59.

<sup>19</sup> Draft Guidance, para 12 : Barriers to group-wide information sharing, processing of personal data, transfer of data to third countries, beneficial ownership information, PEP information, and right of anonymity.

amending the current standards. In particular, FATF Recommendation 9 should ensure countries' financial institution secrecy laws, data protection and data privacy laws or related legislation or regulations (such as the handling of STRs), do not inhibit implementation of the FATF Recommendations. This, coupled with dialogue between AML/CFT and data protection authorities, dialogue between the public and private sector and careful review of national laws/regulations through the FATF Mutual Evaluation process (to ensure effective, technical compliance with the FATF Recommendations) would significantly aid in developing a more balanced and effective relationship between data protection laws and the AML/CFT framework.

In addition, we believe the Draft Guidance does not sufficiently consider the fact that bank secrecy laws can be, in addition to data protection laws in many countries, extremely restrictive. As noted from the IIF survey, such laws can inhibit information sharing without customer consent. Banking secrecy can sometimes not be invalidated by "legitimate interest" or security concerns, depending on national legislation. Therefore a conflict not only exists between the data protection and data privacy law and the AML/CFT regulations, but also between banking secrecy and AML/CFT regulations in many countries. The FATF should address this point through the suggestions herein on Recommendation changes and through more effective and globally implementable guidance on review/clarification of national laws.

#### **b. Operational challenges**

The IIF agrees with the commentary in Paragraph 17 of the Draft Guidance that a lack of communication by public sector authorities to the private sector can also impede or discourage information sharing. We concur with the assessment and suggestion that the public sector should clearly express regulatory expectations on the public/private exchange of information. This would crucially include an enhanced "feedback loop", whereby the public sector would provide more consistent and more fully explained reactions to the information on suspicious activities provided by the private sector. Developing better lines of communication where the private sector received feedback on thematic cases or information on targeted areas of focus would help alleviate the ambiguity on the objectives and processes put in place by national authorities, and enhance confidence on both sides.<sup>20</sup>

Additionally, information flow from financial institutions to national crime agencies can often go in only one direction; there should be more sharing of information on what other financial institutions are seeing. Typically, financial institutions are only able to view the transactions that occur within the bank but are unable to see the wider picture of related transaction flows. Again, this issue goes back to the evaluation of regulatory or legal barriers for such exchange.

#### **c. Information sharing within financial groups**

Sharing information in the group-wide context is a critical element for managing money laundering and terrorist financing ("ML/TF") risk. Section C of the Draft Guidance accurately states that the ability of banks to share within the enterprise allows for greater global risk assessment, the consistent application of controls, and the application of a common approach by financial conglomerates having multiple businesses. However, notwithstanding the need for a full FATF Recommendation change for information sharing, the following points should be considered to enhance inadequacies in the Draft Guidance for sharing information within the financial group:

*"Banking Group" Definition.* Paragraph 22 of the Draft Guidance references the BCBS Core Principles definition of "Banking Group".<sup>21</sup> Many jurisdictions fail to recognize this reasonable and comprehensive definition, putting some financial institutions at a disadvantage whereby the requirement for group-wide review is interpreted under a more narrowly defined term for

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<sup>20</sup> The issues relating to public/private partnerships are expanded upon in section f of this letter.

<sup>21</sup> "...on a consolidated basis, the holding company, the bank and its offices, subsidiaries, affiliates and joint ventures, both domestic and foreign." Basel Core Principles for Banking Supervision, September 2012.

“Banking Group”. A more consistent application of the BCBS definition of “Banking Group” across the FATF member states would be helpful.<sup>22</sup>

*Type of information shared.* The Draft Guidance is correct in the view that sharing of relevant information by group entities, including subsidiaries and branches, with the head office allows group compliance to put in place comprehensive risk management processes. However, the sharing of information listed under Paragraph 26<sup>23</sup> is contingent on the ability of banks to share that information intra-group, across jurisdictions. Though sufficient safeguards on the sharing of such information are important, the Draft Guidance still does not address the domestic legal and regulatory barriers that banks may encounter on consolidation of such information at the Group level. This point is particularly true of any expectation for consolidated global screening and transaction monitoring under Paragraph 27, which may be impinged again by barriers for cross-border data exchange.

*Status of sharing with affiliates.* While Paragraph 30 of the FATF guidance does discuss the sharing of information with affiliates, we suggest greater clarification is needed - both through the Draft Guidance and through the FATF evaluation of national laws - that banks can share information with affiliates specifically as it relates to suspicious transactions/customers.<sup>24</sup>

*Host country controls.* Under Paragraph 34, it is rightly stated that local operations of global firms need to be in line with local laws and regulation. However, if the host country does not permit information sharing for the enterprise to properly assess risk, this may lead to a financial institution closing down its operations with the host country given the threat of undetected money-laundering or non-compliance that may emanate.<sup>25</sup> This again could lead to loss of coverage for critical business lines, particularly in emerging markets (which may exacerbate the de-risking phenomenon). The methods of review listed under Paragraph 35 to assess consistent application of controls can be useful to allay this issue, so long as the information that forms part of the assessment can be adequately and legally shared in a group-wide context.

*STR sharing.* We agree with the assessment under Paragraph 41 that the process for sharing information relating to a suspicion of terrorist financing should not cause a delay in the timely submission of a STR in the host jurisdiction. However, as correctly pointed out in Paragraph 42, the inability to lawfully share this information may lead to inconsistent application of group-wide compliance and we believe this could cause damaging systemic effects in understanding significant terrorist and criminal threats on a global basis. As such, we are concerned that the concept of imputed knowledge by a bank of a transaction where there is no ability to share STRs or relevant information may be implied by the Draft Guidance. This should be clarified in the context of current information sharing legal/regulatory barriers.

The 2011 Egmont Group paper on enterprise-wide STR sharing<sup>26</sup> called for jurisdictions to coordinate action on a cross-border basis. The Draft Guidance, however, merely restates this

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<sup>22</sup> In addition, we would note that the term “joint venture” referenced from the Basel definition of “Banking Group” is not defined by the Basel Core Principles or the Draft Guidance. Ambiguity around this term may lead to confusion regarding how information is shared when a commercial enterprise is undertaken jointly by two or more parties that otherwise retain their distinct identities. Greater clarity from the FATF on its meaning for the purposes of this Draft Guidance would be useful to avoid uncertainty in interpretation.

<sup>23</sup> Though it is noted that all the exemplificative information listed in the table under Paragraph 26 may not be available or needed in every case, it is important for banks to be able to share any relevant data present within a Group. As such, we believe the table of information listed under Paragraph 26 should explicitly be considered a non-exhaustive list.

<sup>24</sup> This is particularly relevant for this consultation, as Paragraph 40 does not mention affiliates: “*Sharing of information on transactions which are indicative of suspicion, and any internal analysis or examination conducted by branches and subsidiaries with group compliance, can promote effective implementation of group-wide compliance programs*”.

<sup>25</sup> As noted above by the CPML, without proper information exchange to facilitate effective risk management, correspondent banks may have no alternative but to block or reject certain transactions. This may in some cases lead to the termination of some correspondent banking relationships because proper risk management cannot be effectively applied: CPML, *Correspondent Banking*, July 2016, pp. 27-28.

<sup>26</sup> Egmont Group, White Paper, *Enterprise-wide STR sharing: issues and approaches*, February 2011



goal without facilitating a method of action. We believe this is a missed opportunity for the FATF and it should be part of efforts to clarify this type of exchange through FATF-led member state coordination on how national laws/regulations may be adjusted/clarified to provide for the appropriate level of information sharing.

Paragraphs 43 to 45 also correctly assess the issues pertaining to tipping-off and STR confidentiality and further work in the area of information sharing must be cognizant of complexities involved in such exchange of information.<sup>27</sup> We do believe, however, that the ability to share the STR itself will provide the fuller picture of the illicit activity in question, and sharing the STR and the underlying information related to the STR activity need not be mutually exclusive. That being said, for the recommendations of Paragraph 48 to be effective, the FATF will need a consistent means of ensuring applicable member states adjust/clarify their own laws and regulations – and institute a dialogue with their counterpart jurisdictions – to allow for the principles of group-wide exchange outlined to be put in place.

*Level of responsibility.* Overall, we believe that Paragraphs 47-51 incorrectly puts too high an onus on financial institutions to internally address information sharing challenges while not properly recognizing the role of the public sector in resolving the legal and regulatory barriers in place at a jurisdictional level. For example, the Draft Guidance would require banks to determine the scope of the information sharing to be established - considering the legislation of the respective recipient country - and put in place proper safeguards on exchange.<sup>28</sup> Banks are doing this already and it is not effective by itself in fulfilling the goals of the FATF outlined in this consultative exercise.

The Draft Guidance, though non-binding, generally applies to a wide variety of constituencies. The role of the private sector is outlined, however there is ample room for improvement in elucidating tangible deliverables for the public sector. There should be much clearer delineation of the responsibilities of the public sector (both at the FATF level and at national level) in implementing the principles in the Draft Guidance and ensuring global coordination on removal of barriers to data exchange where they impede effective financial crime risk management.

#### **d. Information sharing between financial institutions not part of the same group**

Though the Draft Guidance does not provide specifics on which to comment in relation to information sharing between banks, we welcome the acknowledgement that this will form part of the final guidance, as information sharing between banks today is either non-existent or very limited

The IIF information sharing survey found significant impediments to this type of exchange. The vast majority of banks in the survey reported they could not share suspicious activity information with another bank in the same country. Where it was seen as permissible, certain local safe-harbor provisions assisted in overcoming this barrier, subject to the limitations on how these provisions can be used.

The majority of surveyed financial institutions indicated that information could not be shared with banks in a different country. Those who indicated they could (or possibly could) exchange such information generally caveated their response with parameters such as obtaining the consent from the client or verifying an exemption available under data protection and bank secrecy laws. Sharing the underlying STR bank-to-bank generated a similarly negative response.

As noted for enterprise-wide information sharing, inconsistencies in legal regimes across jurisdictions is a fundamental issue that must also be overcome in bank-to-bank sharing. A FATF Recommendation change - mandating that countries implement policies that information-exchange restrictions and privacy laws, including tipping-off provisions, do not inhibit the exchange of information such as STRs

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<sup>27</sup> Under paragraph 47, for example, we believe it would be important for the FATF to acknowledge that in certain jurisdictions there is no ability to share any information once a STR is filed.

<sup>28</sup> Draft Guidance, para 50.

and associated underlying information between entities in different group enterprises - is the primary step to effective change. This, coupled with review of compliance with the standard via the FATF Mutual Evaluation process, is critical.

Throughout the other areas of this Draft Guidance, it would appear the direction taken by the FATF is to identify the issues for information sharing without fully addressing the fundamental, underlying problem of legal and regulatory barriers in place in constituent jurisdictions. The cross-border element of bank-to-bank information sharing presents a particularly vexing problem in this regard. Enhancements to local safe-harbor provisions may assist in some areas, however, a consistent approach is needed to review and amend or clarify laws which impede the process for meaningful information exchange. This should be the focus of a top-down exercise by the FATF starting with the FATF Recommendations. Without this, there is a real risk the status quo will be maintained.

#### **e. Information sharing in the context of suspicious accounts and transactions**

As specified in the Draft Guidance, the FATF Recommendations do not require the domestic legal framework of FATF member countries to allow for the sharing of suspicious transaction information between banks. Sharing of such information, nevertheless, helps with better targeted risk management and assists in building a comprehensive global picture of illicit flows that support decision making by financial institutions.

The FATF, however, merely points out these benefits and presents examples of practices in place via the Annex to the Draft Guidance. While we agree that the establishment of safe-harbor provisions for this type of exchange in a domestic and cross-border context are valuable, there is an important role for the FATF to play in further encouraging the establishment of these mechanisms. Specifically, an update to the FATF Recommendations to stipulate allowance for such information sharing (including the STR and its underlying information) would be the most effective means of implementation. Failing that, the Draft Guidance should go further in ensuring the effectiveness of domestic review of laws and regulations which impede such exchange in order to adjust/clarify such standards and bring them into technical compliance with the principles of the FATF for combatting financial crime. There should also be a mechanism in place whereby dialogue with the private sector (and between jurisdictions) can be instituted to rectify ambiguity in national standards and enhance safe-harbor provisions where they exist.<sup>29</sup>

#### **f. Public/Private partnerships**

As noted, we appreciate the acknowledgement that public/private partnerships will be addressed via subsequent FATF work streams<sup>30</sup> but we would encourage swift review of this issue in parallel to the matters being discussed in this consultation. We believe there is an inherent responsibility of the public sector to develop better lines of communication with the private sector, whereby the private sector receives regular feedback on information shared via Financial Intelligence Units (“FIU”) 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 STRs 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 pro-actively 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.

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<sup>29</sup> Dialogue or direct clarification via the final guidance would, for example, also assist in answering questions regarding, *inter alia*, the application of safe harbor provisions, the involvement of the disclosing bank in active investigations, and the relationship between correspondent and respondent banks in terms of information sharing.

<sup>30</sup> Draft Guidance, para 13, p. 30

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<sup>31</sup> and these are 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 through changes to the FATF Recommendations to address legal/regulatory barriers to information sharing (as noted herein) and by review of the utility of public/private partnerships through enhanced, measurable and enforceable guidance for national FIUs, banks and law enforcement.<sup>32</sup>

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<sup>31</sup> Notably in the US, Australia, Canada, Singapore and Hong Kong.

<sup>32</sup> The FATF has established a forum for the Heads of FIUs for exchange of views between themselves and, to an extent, the private sector. This forum should be encouraged to proactively work for global solutions on how best to encourage quality in STR reporting and enhance feedback between the public and private sectors on the quantity of reports being filed.