



# **Financial Action Task Force Recommendations: Relevance & Application within Public & Private Sector Contexts**

**Q&A Transcript**

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*Female:*

Very much, Henry. I actually made a little list of questions. How many? Seven, eight, something like that. Seven. Thinking that we could use this to jumpstart the discussion. But why don't we hear from you all first? And if we haven't covered any questions from you and from folks online, we can revert to this list, and please let us know where you're from before you ask your question and speak clearly so that folks online can hear you.

*Male:*

Sure. This is Mike Ingram with Ernst and Young. First of all, thanks for the talk. It was certainly very interesting. Two questions come to mind. One, with the risk assessment, one of the things I'm curious about, one is distinguishing between the risk assessment that you talked about as kind of the first core area in the peer review and is there a set methodology for the risk assessment? How does the risk assessment work? And does the FATF group even provide TA in some areas to countries who want to do a risk assessment? I'm kind of curious about that.

The second question, which kind of goes more to the financial inclusion point, I kind of have my own perspective on this, but I'm curious what yours is. I felt like one of the criticisms I hear, when people, in the mobile community, start talking about regulation, is, with the advent of mobile payments or mobile financial services in developing countries, we're talking about more transparent transactions than in the past and, typically, very small transactions.

And so kind of the default position is this is less risky than previously, yet I don't think that's a perfectly true statement, and so I'm curious for you to elaborate on that.

*Male:*

Those are great questions, and I'm delighted to start with those questions. The issue of the risk assessment methodology, the direct answer is the FATF is working on a methodology that I expect is going to be a starting point.

I think that we're going to be learning, in the initial stages of this, how a country conducts a risk assessment potentially in the absence of all relevant data. When all of the inputs are qualitative or are a matter of distillate anecdotes, how do you come up with a risk assessment that is going to pass muster in a peer

review process when you say, you know, what you just described. A mobile payments initiative that's used as a financial inclusion tool, we think it's low risk.

Therefore, we decided that we don't need customer advocational recordkeeping or what have you, and as a starting point, you might say that, "Well, you know, there's a theoretical basis for that assessment or that assertion. What did you do, in practical terms, to ensure that it would be low risk?" You know, that's kind of the way that conversation is going to go.

What has been less successful in the past – and we've had these conversations in FATF – are countries that say, "Well, we don't have a targeted financial sanctions program. No, we're not in compliance with the U.N. Security Council. We don't have tools in place against terrorism because we have no terrorists in our country. We have no terrorists here. There's been no evidence of terrorist activity, and we're just sure that there's no terrorist financing that moves through our country. So not my problem."

That's not an acceptable answer, and we would expect a little more thoroughness and due diligence and certainly an effort to ensure that, if it's true today, that it continues to be true in the future, that there aren't terrorist financiers in that country. So we don't have a methodology today.

I will say that, from time to time, the FATF has done what they refer to as typology reports which are multinational reports that identify particular areas of threat or concern, and these have covered the – just the universe of money laundering methods, terrorist financing methods, all manner of financial criminal activity. And the idea is to identify the methodology, the modes of activity associated with that, whether the FATF recommendations adequately apply, where there may be gaps and examples of how other countries have addressed the particular concern with their regulations.

The FATF did do a report in 2008, I believe, providing some suggestions as to how you would do a risk assessment. It was pretty much all over the map but gave some good ideas, and I think that's going to be the basis for distilling that

down into a, I think, a handier document that will be useful for all member countries.

So that was a very long way of saying that's a great question, and we haven't gotten the answer to it yet. But that's something that we're going to be working on.

The other question, with respect to mobile payments and is it necessarily low risk, you know, it's interesting. There are four elements of the customer due diligence recommendation. The first is identify the customer and verify that identification. Second is determine the beneficial owner of the account. Number three, what's the nature and purpose of the account? Number four, monitor the account.

Well, if you've got a limited purpose account with a cap on the amount that can ever be spent, a limit on the number of transactions or value of the transactions, and you have this account that's sort of predefined as low risk because it's been set up that way. That really calls into question the extent to which you really need to verify an individual's identity.

Is there really a question as to how the – whether this account can be misused. If you've set up these parameters in such a way, the potential for misuse is pretty slim. I think you could argue that, you know, you just take the name. I mean, if somebody comes in and says, "I want a mobile payments account. My name is Emery." All right. No ID required. Emery becomes the name on the account.

I don't really care who the beneficial on the account. I know you're never going to have more money in this account than anybody is ever going to really be concerned about. So we're going to skip that. Nature and purpose of the account, I, as the service provider, I'm defining the nature and the purpose of the account because I'm limiting how it can be used. So we're going to skip that.

The only thing that becomes absolutely of paramount importance is monitoring because, if Emery somehow opens a dozen of these accounts and starts moving a dozen transactions in tandem, what, individually were low and insignificant transfers, multiplied by a dozen, becomes significant. And that's something that we would hope to be able to identify through careful monitoring.

So that's a scenario where, yes, ostensibly, that should be a low risk account relationship, but it could potentially be misused. So monitoring becomes very, very important. Let me just explain that we're sort of in a transition mode particularly within the financial inclusion realm with the introduction of these new payment methods because they do straddle two traditional areas of financial services.

And it sort of is somewhat off putting for most financial regulators, supervisory authorities and the financial action taskforce because, once upon a time, there used to be financial services that existed simply to provide transactions. Western Union, you send a wire. You buy a money order. You exchange currency. It's a one off transaction. There's no ongoing relationship. Or you open a bank account where there's unlimited opportunity to put as much money in as you want, take as much money out as you want and send it anywhere you want to send it. So two very stark differences in a risk perspective.

We've melded that together with the introduction of new payment methods that have potentially a limited purpose, but, also, an account relationship. And so we're sort of finding our way in the regulatory environment with respect to those new payment methods. I hope that answers your questions.

*Male:*

A tangentially related question, I'm Paul Davis with Pagma Corporation. Many of us have probably worked and lived in countries that have, one in the same time, seemed to have established pretty rigorous financial intelligence units or anti money laundering units that seem to have pretty much the standard kind of array of protections in terms of reporting, for account opening and maintenance in terms of the size of transactions over which you had have rather complex reporting requirements back to the center.

And yet, at the same time, had reputations as being, you know, kind of havens of money laundering, and they're having a lot of money laundering activity, let's saying, going on within them. And it seems, at times, that the – that these formal controls being in place didn't seem to translate at least from the way economists' point of view in the really tight control over – effective control over money laundering activity. At least there was a lot of anecdotal information about abuses going on, let's say.

Are there – as an expert in this area, are there – when you see that kind of situation, do you look typically for a couple of loopholes that are being abused or that are not being tracked carefully enough? Are there a couple of areas that one typically looks at behind the formal restrictions? Are they technical in nature or is it simply primarily an issue of lack of enforcement or corruption and – and I know that's a broad question.

Do those issues – do those kind of core loopholes, that one might typically look at, how are they affected by financial inclusion trends or do you see them – are you concerned about them being affected by financial inclusion trends and are you focused on one or more of those kinds of loopholes having to be more intensively analyzed, perhaps, kind of responses to them or strategies to deal with them fine-tuned in response to financial inclusion trends that are going on now?

*Male:*

That's a great, great question, and it's daunting because we've discovered something that's counterintuitive in that, ironically, the larger the economy, the more sophisticated the country, the richer the country, often, the more it's a magnet for illicit proceeds.

I think every corrupt leader in the world has money in the United States. Why not? I mean we're the most stable country in the world. If you wanted to hide your money, whether it's from illicit or – you know, legal or illegal sources, why wouldn't you put some money in the U.S.? And I think that goes for other stable, well governed countries. They tend to be a magnet for illicit proceeds. So, establishing effective anti money laundering, counterterrorist financing policy and procedures and regimes doesn't make you immune to illicit proceeds.

It actually may make the volume of funds that try to come into your country greater.

And that raises the very real question, from an economist's perspective – I'm not an economist, but sometimes, I pretend to be one – that in any free market economy, doesn't it stand to reason that there's always going to be some background level of financial crime? I mean it's absurd to assume that we're going to eliminate financial crime. There's going to be some level there, and trying to determine what's appropriate or at what stage you're not creating opportunities to pervert the system or creating opportunities for corrupt leadership or to destroy the financial infrastructure.

You know, in the wake of 9/11, we focused tremendous efforts on martialing resources against terrorism and terrorist financing intended to move resources away from white collared crimes, sort of garden variety white collared crime. And the number of investigations and arrests dropped way down, and as we really got a good handle on the terrorist universe and really established our counterterrorism capabilities and became more comfortable and more effective and efficient in that area.

We started to ramp up resources on white collared crime, and you started to see corruption cases and securities cases going way, way up. So there's always going to be sort of limited resources, and we're not going to be able to do everything simultaneously. It's always going to be sort of this ebb and flow in terms of how we focus our resources and what tends to be the priority of the moment. That shouldn't.

That said – and I think that that's, frankly, a reality of free market economies and limited resources. We – the hope, in countries doing risk assessments and being able to prioritize threats, is to rationalize how we allocate those resources. That's the goal, and we're not very good at it at the moment.

So we do tend to see scenarios exactly as you described. You can have a functioning FIU and financial institutions doing the reporting, but maybe the law enforcement community isn't as effective or maybe they're focusing their

resources elsewhere and they've taken their eye off the drug trafficking ball for a certain period of time. There's always going to be an ebb and flow there.

One of the things that is very relevant, the whole risk assessment scenario and we need to do better as a country and I think all the countries do, is giving information back to the private sector. All of those suspicious transaction reports don't necessarily translate into financial investigations. Now, law enforcement, we get tens of thousands, hundreds of thousands of suspicious transaction reports in the United States, and they invariably are useful when an investigation is open and when there's a prosecution.

That information is always useful, but there are a lot of reports that don't necessarily get channeled into the law enforcement process that should be systematically reviewed and analyzed for trends and patterns of activity that then can go back to the private and public sectors to say, "We're seeing this. Perhaps we need to make some adjustments into what we expect or how we focus our law enforcement energies." And that's something we need to do a better job with, and I think that's going to feed into the risk assessment process.

It's an ongoing process, and we certainly haven't nailed it yet.

*Female:*

I have a question from webinar. It is from Robert Mines who is joining us from IFAD UN. Financial inclusion, especially in rural areas, is central to our work in developing countries. The impact to private sector response to AML concerns reputational risks for banks especially is an important concern as was underscored recently with the \_\_\_\_ Bank Somalia Case.

As Somalia received up to 50 percent of GDP in remittance, the Somalia diaspora doesn't have the choice not to send money home, and the bank that it is essential, from the FIU point of view, to formalize the money \_\_\_\_ flows. How do you see ensuring access to vital financial services in sensitive areas?

*Male:*

It's a great question because, invariably, there are going to be reputational risks concerns. We have situations in which the embassies of certain countries have

trouble getting bank accounts in Washington. Their missions in New York to the U.N. have trouble getting bank accounts because the banks don't want to be associated with those countries, and that can be challenging for us.

I think the Somali remittance scenario is similar where there's a humanitarian need, and we want to help facilitate those humanitarian flows. But at the same time, there are concerns about funds being diverted to terrorists and financial institutions not wanting to be associated with that potential.

There are two sides to that issue. One side is that where the private sector is concerned from a reputational standpoint of being associated with a country or an individual or a circumstance, they have good reason for those concerns, and frankly, we encourage them to do their own risk assessments and to avoid putting themselves in a position where they're opening themselves up to a high risk scenario that's going to raise their cost and potentially jeopardize their business especially if they can't charge for it and implement adequate safeguards and procedures to cover their risks and cover their costs.

If that doesn't make sense to them, from a business perspective, we want the private sector to walk away from those scenarios. What we're finding in – particularly in the Somali remittance context. It's not as simple as funds going from the United States to Somalia. There really aren't recipients – receiving financial institutions in Somalia. Typically, those funds go to the UAE or elsewhere, and cash is brought into Somalia.

So it's not necessarily a matter of somebody walking into a bank saying, "I want to remit funds to Somalia. You know, I want to send X number of dollars," and the bank saying, "I'm not touching Somalia." That isn't exactly what's happening. I think it may have happened in the Franklin Bank scenario, but we do know that funds are – remittances are reaching Somalia but not going directly. They're going through UAE and elsewhere.

We're watching that situation very carefully. We're working with the State Department on that, but we're seeing the fund continuing to flow. So that seems to be okay for the moment.

Similarly, when we get calls from embassies and missions saying, “I can’t get a bank to take my account.” We’re somewhat conflicted on that because the private sector is doing exactly what the private sector is supposed to be doing. While, at the same time, we recognize that there are ways to mitigate the risks, and we’ve tried to provide sort of templates for model embassy banking accounts and what they would – what services it would involve.

And we’ve come up with sort of model contracts and this sort of thing to try to help the private sector assess the risk and manage it effectively. So far, those embassies and missions that have had problems have found ways to manage their payroll and their expenses, and we haven’t really run up against a scenario where we’ve had a country that simply couldn’t function in the United States anymore because of lack of access to the financial system.

But I think this is going to be a growing concern, you know, whether it’s an embassy or a mission or Somali remitters. I think that, frankly, as more and more people become aware of the FATF recommendations, U.N. Security Council resolutions, as people become more sensitized to this issue, I think we are going to see financial institutions walk away from certain high risk customers or countries, and you know, frankly, that’s not a bad thing.

*Male:*

Hi. I’m Michael Edwards from the World Council Credit Unions, and my question for you is that, in shaping the risk assessment methodology, to what degree are you considering the regulatory burdens on small financial institutions? And my question for this is twofold.

I mean you’ve spoken about financial inclusion, and FATF did a very good paper, last summer, on financial inclusion. You’ve also spoken to, you know, which types of accounts and transactions are perceived as lower risk, but it’s not anti money laundering per se on small financial institutions in the U.S. and overseas. You know, you can have more than half of all staff time devoted to compliance for anti money laundering plus consumer protection plus supervisory credential regulation. So that’s one part of it.

But, also, it seems to me that, if you – you can find an easy to comply with regime for a small credit union or SACA or what have you, you're more likely to get meaningful information from them and then improve the whole anti money laundering shield, as you will. So is that a consideration?

*Male:*

Yeah, yeah. It is, and it raises a really interesting point because I – we domestically in the United States, the FATF internationally have tended to think of the risk based approach, ultimate flexibility, you assess your risks based on your customers, your products, the geographic regions in which you have correspondent account, this sort of thing.

Again, from an intellectual perspective, that makes total sense, and the smaller the financial institution, the more limited the footprint, the more limited the various products and services that they offer, if they don't do any international business, very easy to reach the conclusion that their risk profile is virtually nil and to sort of scale their AML policies and procedures accordingly.

But you also touched on a great point that we hear consistently. We think we're doing the private sector a favor when we say, "Risk based approach, you figure it out," and they come back with, "That's an expensive and time consuming effort. Just tell us what you want us to do. Just make it – don't make it risk based. Make it rules based. Make it, you know, just make it very explicit. We can tell our board of directors that we're minimizing the cost for AML compliance because we know exactly what we have to do, and we've found a way to do it at the cheapest possible price." That's what they want. Makes perfect sense to me.

I mean I understand that, but we, frankly, haven't figured out how to address this from a rules based perspective so that it's one size fits all to give the private sector the comfort in being able to say, "We've got – we're complying at the lowest possible cost." It's tough to do that when you're dealing with a risk based approach, and yet, that does seem to be the most logical way to approach it particularly for very small financial institutions that really ought to be able to determine what the risks are given a limited geographic footprint, limited customer profile, limited services. That's pretty easy.

I mean, when you're a global or a regional financial institution, that does provide some cross border business and is dealing with commercial interests that you don't – may not really understand exactly what line of business they're in then your risks, you know, go up exponentially.

But there's always going to be this tension between risk and rule based. Rule based means lower costs. Risk based, ideally, means a fairer regime. Thank you.

Yeah, go ahead.

*Female:*

Hi. My name is Morgan McClenekeny. I'm with the Private Capital Group for Africa at USAID. My question is more related to my concern which is sub-Saharan Africa. The most recent report of the high risk, non-cooperative jurisdictions included four countries from sub-Saharan Africa, and my question is related to kind of what are your parameters and metrics for determining these countries are high risk? How do you work with encouraging or aiding these countries to perform well?

I saw that a couple of countries – I think they were in Latin America – had actually graduated or had made adequate or significant progress, what determines making that progress and then, also, what approaches are used for aiding them because I imagine that as in your example, countries that would say, "No, there is no crime here," versus countries that are just blatantly nonresponsive would be all categorized as high risk, but how do you kind of subdivide those and make it clear that those differences are there?

*Male:*

Thank you for that question. It's something that I should have addressed in my opening remarks, and I appreciate you bringing me back to that. And you also reminded me that I didn't answer all of the questions I received earlier with respect to does the FATF provide technical assistance, and it's relevant to your question.

There are two ways in which countries are referred to a working group within the FATF that's referred to as the International Cooperation Review Group. There's an objective analysis based on those core and key recommendations, and there are four rating categories.

There's fully compliant, largely compliant, partially compliant and noncompliant. Depending on the number of core and key recommendations that a country is found to be noncompliant or partially compliant, they hit the – sort of an objective tripwire and go into that ICRG process.

Also, if countries have had difficulty with their neighbors in terms of criminality on the border or criminality within their jurisdiction and funds being welcomed in their neighbor's country, the country not being cooperative with law enforcement or civil investigations, in a scenario like that, a country can be referred to the ICRG.

And, typically, what will happen is the – there is a permanent professional staff that will do an initial investigation based on the objective information available, and much of that pertains to whether there are laws in place that criminalize money laundering and terrorist financing. That's always a starting place. Does the country in question have adequate laws that would make it feasible for them to take action, civil or criminal, against illegal activity?

So, as I say, that's a pretty objective analysis as to whether the laws exist. Is there a functioning police presence? Are they authorized to investigate financial crimes? Do they have subpoena authority? Is there a functioning supervisory authority in the country? Do they meet Basel standards for prudential supervision?

That initial analysis is really very objective, and if the result is, no, there are broad deficiencies here, and there needs to be some remedial work, then what will typically happen is the FATF style regional body will be brought in. I haven't mentioned the FATF style regional bodies previously, and let me explain just very quickly.

The FATF, by design, is not a global membership organization. The intent was to have, as the members' countries that either are these significant – represent the dominate economy within their regions or are countries that have the wherewithal and the capacity to meet the FATF recommendations so that we have global representation but not universal representation where membership is, I think, about 33 countries with the Gulf Cooperation Council and the Middle East and the European Commission.

And there is global representation there. There are rich and poor countries, but to get buy in and participation from the rest of the world, there are regional subgroups that follow the FATF recommendations. And the leadership of those subgroups are members of the FATF. So they participate in all of the decision making, but there are nine regional bodies around the world that are referred to as FATF style regional bodies.

And the intent was that, within a given region, it may not be appropriate to compare a handful of developing countries with the United States or with Great Britain or Japan or China, and the – what the FSRBs were able to do is that they have a smaller peer group, a regional peer group so that countries are expecting of one another the same level of commitment and performance and capability. And because we're dealing with a common language and a common region, there are common cultural expectations and opportunities and potentially limitations as well so that the peer group sort of understands what that region's capabilities and limitations are. And when countries, either through an objective analysis or through a referral, find themselves being deficient, the FATF style regional body is brought in to provide, if not the direct hands on technical assistance, at least the mentoring to initially develop an action plan.

And sometimes, the FATF style regional bodies, with their professional staffs, can do sort of an arm's length distance technical assistance. Sometimes, it may be necessary to bring in the private sector of a development agency associated with another country, or I know the IMF provides technical assistance and support of compliance with the FATF as well. So there are public and private sources of technical assistance. The FATF directly is not one.

And once the FATF style regional body, in partnership with the country, develops the action plan to – and this action plan prioritizes the specific recommendations in which the country is out of compliance. And there's initially, I think, about a year in which the country is expected to start demonstrating some commitment. If after that time, there isn't sufficient progress, the FATF president writes a letter typically to the finance minister or justice minister with the help of getting some high level commitment or recognition that, yes, we know we're deficient in our compliance. Yes, we are committed. Yes, we are aware of the action plan. This sort of acknowledgement that they know where they stand and are willing to commit on paper to some commitment to the action plan and a timeline.

Frankly, at that stage, time is everything. There needs to be some demonstrated progress, and unfortunately, I think, in countries that still have this mindset that money is fungible and if the predicate crime isn't existing on shore, safeguarding the financial system from money laundering or terrorist financing isn't going to be a priority. We're going to worry about infrastructure, education or health or something else, and we'll push all this other stuff aside.

What the FATF tries to emphasize is that you can't be a reliable trading partner. You can't be a competent and reliable geographic neighbor unless you have this basic infrastructure in place in terms of criminalizing money laundering and terrorist financing and having the authorities necessary to bring civil and criminal action. It just isn't sufficient for you to put that so low on your priority list that you make absolutely no progress on your action plan so that, over time, when a country allows years to go by and has done nothing, then they ultimately can reach a point at which the FATF calls for countermeasures against the country. Up until that time, there is a public list of countries that are going through this process.

And the only thing that FATF says, in that context, is it's an objective fact that the country is deficient in these areas. So, if you're going to be doing business with that country, take that into consideration. You know, you might do a little extra due diligence. Not – don't do business with them. Just take it into consideration.

If you reach the point where you've done nothing for such a period of time that you become the candidate for countermeasures, countermeasures, in the FATF lexicon, means you need to start taking steps, member countries of the world, to block your trade with this country, block your financial dealings with them.

I don't want to be prescriptive here because there really isn't a prescriptive language within the FATF countermeasures is free to each country to define. One of the recommendations is that you do have some legal capacity to comply when the FATF calls for countermeasures. So exactly what that means, in a given context with a specific country, is going to vary. It's not going to be one size fits all. It's not going to be like a U.N. Security Council resolution that says, "Shut off trade." That's not going to be the case. So it will vary, country by country, as to what they do and what's appropriate depending on that – you know, the relationship.

*Female:* Can you put six up on the screen?

*Male:* Why don't you ask this and I will answer it?

*Female:* The question. All right. Okay. So here's the question. It's sort of long and really small letters. Much of the current FATF guidance relates to institutions which are regulated by financial and other supervisory bodies within the respective national contexts, and in the case of financial institutions, by overarching global standards such as Basel.

How are the current FATF guidelines applied to institutions such as non-bank financial institutions or tel-com entities, for that matter, which are not linked directly to such regulatory regimes. In the latter context, how might compliance with the international enforcement policies and procedures be comprised?

And so I give an example. So it – for example, if an ongoing investigation in country X requires access to financial and other records from a non-bank financial entity in country Y but there is no reporting requirement that requires giving access to such information, as there might be from one requesting from a

regulated financial entity, that the participation of these non-bank financial institutions, in such a scenario, pose unique challenges to the optimal application of FATF guidance, and if so, how might these challenges be addressed and obviated?

*Male:*

Great question. There are a couple of aspects to that. The FATF is very clever in not subdividing obligations based on the depository institutions and certain product lines, and they don't get granule on that respect. The FATF recommendations refer only to financial institutions, and the definition of financial institutions is incredibly broad.

On the one hand, that's made it very easy that all of the recommendations apply to basically anybody conducting a financial business. They don't even refer to account versus non-account based relationships. The term of \_\_\_\_, with the FATF recommendations, is a reference to establishing business relations.

When you establish business relations, there's an obligation to identify the customer and verify the identification as opposed to conducting a one off transaction. So, as I noted earlier, this is an area that, unfortunately, is becoming very, very blurry with the rise of new payment methods that allow for account like relationships that really aren't traditional banking relationships.

And, right now, the FATF recommendations don't really speak to those scenarios explicitly, but the expectation is the risk based approach will address them. We're in the process now of writing guidance that pertains to prepaid cards, mobile payment services, online payment service arrangements and how the specific aspects of those technologies and the financial relationship associated with them could be interpreted given the risk based approach within the FATF framework.

So that sort of answers the first half of the question that the recommendations don't get very granular in terms of specific products or services or technologies. We're going to address that with guidance and apply the risk based approach and get there that way.

It is a very interesting point in terms of international cooperation among particular entities, whether it's law enforcement or civil authority, that doesn't really have a corresponding service provider in the other country. I know our Securities and Exchange Commission runs into this problem all the time. The SEC does not find similarly situated securities regulators with similar enforcement capacity, and when they're pursuing a securities investigation and they want cooperation from an offshore law enforcement agency, the law enforcement agency looks at them and says, "Well, you're not really a law enforcement agency. You're a securities regulator. We don't really typically share information with you."

And when they reach out to their securities counterpart, they say, "Well, you're – we don't do investigations like you're doing investigations. So we don't really have the information you're looking for" And it can be time consuming and difficult. This is one area in which financial intelligence units can become sort of the one size fits all go between, and that's what typically happens.

The nice thing is that there really is no one size fits all even for financial intelligence units. Some are part of the judiciary and are run by prosecutors. Some are part of the law enforcement community. Some have their own existence independent of the law enforcement community, and that's the way ours operates in the United States. The reason for that is that, as I mentioned earlier, when a financial institution file a suspicious transaction report, they don't want to the law enforcement community to read that as an indication of criminality. It's just something looked a little weird. Don't get over – don't overdo it, and it's good to have a go between, an intermediary there who can sort of interpret that for the law enforcement communities.

So and in some developing countries, that simply don't have the resources, the capacity to steal law enforcement or prosecutorial resources or even to create a separate entity, will house the FIU and the central bank and use the same people who are involved with financial supervision to carry out the functions of the financial intelligence unit.

So, in those circumstances, like what our SEC sometimes finds, if they don't have a good counterpart overseas, they'll go to the FIU, and they'll say, "I'm working this case. This is the information I need. Please reach out to this country. Talk to whoever you need to talk to, whoever has the information, figure out where it is and get it for me." And that becomes the FIU's job and that – and they reach out to their FIU counterpart and try to bridge that gap and make that happen.

You know, this whole issue of international cooperation is still a huge, huge problem because, as you can well imagine, for every country in the world, the United States included, you're going to be focusing the lion share of your time and your resources and your attention on domestic activities although you obviously want cooperation from international counterpoints. So you have to give cooperation, but that process is not speedy and not often efficient.

And as criminal cases increasingly involve other countries, it's a process that we really have to work at improving. I don't know that that's necessarily going to be within the FATF framework although we've tried to do what we can. It's ultimately going to be something that I think justice ministries have to step up and try to accomplish.

*Female:* Any more question? Otherwise, I have more. Okay. Good.

*Male:* Been waiting patiently. Thank you very much for being here today. My name is Aaron Hutman. I'm with Pillsbury, Winthrop, Shaw, Pitman, and I have two questions. First is a broad pattern question, something I've been watching since the 2003 recommendations.

And that is the coming together of different traditional areas of compliance and enforcement. Money laundering, terrorist financing now focus on nonproliferation and, of course, politically exposed persons which brings in corruption. So, within the U.S. framework, this would be OFAC, the nuclear regulatory agencies. For money laundering, of course, FinCEN and then the Justice Department and SEC for corruption.

And so, within the FATF context, bringing together all these different focuses, I'm wondering what you see as the broad pattern, what are the outcome for U.S. policy going forward? Give just one example with the focus on PEPs on domestic politicians or politically exposed persons aboard, how that might affect, for example, the ability to prosecute or enforce or just bring to the light FCPA cases.

And then the second broad question is everyone's curious. You have these new recommendations. All this is going on. What are the big focus items for the U.S. government going forward? What can the private community, the legal community expect in terms of what your big steps are going to be following these recommendations. I think the FinCEN director recently said there was going to be an advanced notice on proposed rulemaking on beneficial ownership and certain customer due diligence aspects. Everyone's curious. What can we expect? What are the big hits?

*Male:*

That's a great question. My goodness and you've been following the FATF since 2003. Wow. It's an important question, and as the questioner correctly noted one new addition to the revised recommendations is an explicit acknowledgement of the need to have a regime in place to implement the U.N. Security Council resolution specifically targeted financial sanctions that address proliferation finance with regard to weapons of mass destruction. That's a new area.

As I said at the outset, we started with money laundering. We added terrorist financing. Now, correctly, we're into nonproliferation. I think the simple answer to that aspect of the question is that the expansion of the recommendations to address proliferation pertain explicitly to the U.N. Security Council resolution, and that's a follow on to the U.N. Security Council resolutions that pertain to terrorism and terrorist financing.

The one thing that the FATF has – that has been a hallmark of the FATF that I think, you know, when you talk about trends and what's the pattern, the pattern is that, because of the peer review process within the FATF that the

FATF is known for, it gives us a unique capacity to put some teeth to the U.N. Security Council resolutions.

The U.N. and the U.N. Security Council, although their decisions apply to all countries of the world, the U.N. Security Council doesn't have an enforcement mechanism. There isn't a peer review process associated with that. So it allows the FATF to partner, in a sense, with the U.N. Security Council resolution and incorporate those obligations that pertain to targeted financial sanctions that get to criminal finance that really is squarely in our mandate.

You know, I wouldn't say that this is mandate creep, but it is squarely within our mandate. But it does allow the FATF to use its infrastructure and peer review process to enforce those U.N. Security Council resolutions. So that, I think, explains where we're going with proliferation. I don't know that there's sort of another aspect of criminality.

You referred to politically exposed persons. The inclusion of domestic PEPs in the revised standards was an acknowledgement of the UNCAC, the U.N. Convention Against Corruption. And here, again, it establishes a somewhat of a partnership within the U.N. and the U.N. Security Council.

One of the recommendations of the 40 list a number of relevant U.N. conventions or treaties that pertain to countering money laundering, terrorist financing and the like, and now, we've added the U.N. Convention Against Corruption. That convention refers to domestic politically exposed persons. So there was a need to incorporate that into the standards simply to be consistent with the UNCAC. So that – we're just sort of tying up loose ends, in effect, in that respect.

So that explains how we got to domestic PEPs, and it's interesting because we do make a very clear distinction in the revised standards. Foreign politically exposed person have always been identified as a high risk customer. The idea is that, if you've got a foreign head of state or a minister, a family member, a high ranking foreign military figure who opens an account in your country – not their home country, a foreign country – and starts putting a lot of money in it, that's a

red flag that you're potentially looking at kleptocracy or official corruption. And you should have systems – monitoring systems and review systems in place to treat that individual as a high risk customer.

Now we're telling our domestic financial institutions that, for domestic purposes, you need to take a risk based approach to domestic political figures. So if you – whether it's a local mayor or a governor or a congressman or a senator, that individual may or may not be of high risk for bribery as a recipient of bribes, and it's just something that the financial institution needs to be aware of and needs to make an assessment as to whether they modify their monitoring and their account review procedures to determine whether this person is potentially conducting financial transactions that seem not in – not to comport with the profile that had been established.

So we're making a clear distinction between foreign political figures, always high risk domestic political figures, risk based approach, just being consistent with the U.N. Convention Against Corruption.

I'm glad you raised the question about beneficial ownership because it allows me to talk a little bit about the U.S. deficiencies. I think often, particularly in a financial inclusion context, there's an assumption that the FATF rights rules for the rich countries that we can all comply with and that the poor countries are struggling and are burdened with high costs and difficulty in compliance.

Nothing can be further for the truth. You know, the United States has a lot of trouble complying with certain of the FATF recommendations, and one of the core and key recommendations that pertain to customer due diligence, and that's the issue of beneficial ownership. One of the things that makes the U.S. somewhat unique is that we've got 50 authorities that register legal entities in this country. That's not something that the federal government does. That's the state government function. We have 50 states. So they each have their own registration policies and procedures that are managed by each individual secretary of state which makes it a little bit tough for us to impose an obligation to identify the beneficial owner of a legal entity at the point of registration.

We have attempted to get legislation passed. There is a bill that's pending that Senator Levin introduced I'm not sure whether that's going to move forward, but we are making an effort, at the federal level, to address that because it – we did fall short in that regard and as I said, it's not that we necessarily fall in lock step and do everything the FATF tells us to do, but we've recognized, through our own law enforcement efforts, that we increasingly see legal entities being used as fronts for money laundering schemes. And law enforcement often has a lot of trouble figuring out who is behind that legal entity particularly if the money moves offshore.

So we are trying to establish an obligation both at the point a legal entity is formed and when a legal entity seeks to open a bank account to collect beneficial ownership information. It is challenging. It's tough to define the terms to have to establish the due diligence criteria, but there's clearly a need for it. So we're working to do that.

I mentioned, you know, talking about our deficiencies, when a country is deficient in one of the core key recommendations, it has to report back to the FATF. I mean we aren't in the ICRG process, but we do have to report back to the FATF if, every year on our progress to make amends and to address this beneficial ownership issue, frankly, that's not the only deficiency that we have with regard to customer due diligence, but it's probably going to be the toughest for us to address.

Some of the others are things that we get at from a risk based approach, and I think that the FATF may ultimately meet us down the road on how we assess the risks and how we address them in that regard.

Another area of the recommendations that aren't core and key but we fail miserably pertains – and this gets back to one of Maria's questions earlier with regard to nonfinancial institutions. There is a category in the FATF referred to as designated nonfinancial businesses and professionals. And this gets to lawyers, accountants, real estates agents.

*Female:*

Casinos.

*Male:*

Casinos. We're good on casinos. Not so good on lawyer, accountants, real estate agents and the like, and within the FATF universe, the exact same obligations that pertain to banks are intended to pertain or to be applied to these DNFBPs. So the questioner I think had in mind, "Are we going to require lawyers to identify and verify their customers, get beneficial ownership information on the customer, file suspicious transaction reports when a customer or client seems to be involved in some nefarious business?"

That is what the FATF recommendations require, and certain countries of the world are following suit and are imposing those obligations on attorneys, on accountants, on real estate agents and other professionals. What we're working on right now is an outreach effort, though the American Bar Association, to leverage, to the extent that we possibly can, the internal, ethical review and continuing legal education and the internal review and enforcement process that each of the state bars and the ABA nationally imposes. We want to try to get as much mileage as we can within that framework.

We're doing the same thing with accountants. We're doing the same thing with real estate agents, and, you know, frankly, I think that's a no lose proposition to the extent that we can get some kind of AML, CFT training incorporated into the standard law school curriculum, if we can incorporate it into every state's bar exam, if it could be incorporated into every – the ethical standards that every attorney is expected to adhere to.

And, frankly, one of the things that we're working with DOJ on right now is that, when they have a case in which they find that an attorney or a real estate agent was somehow or another involved as either a willful ignorance or in other ways in helping to facilitate the criminal activity but doesn't rise to the level of being a – you know, an indicted subject, we want them to make a referral to the relevant state bar or other ethical body, whatever the profession may be, for them to do an independent investigation and, potentially, to take their own action within the professional organization against that individual so that they don't simply walk away because their criminality didn't rise to the standard of a criminal prosecution.

So I want to, you know, reemphasize that we are deficient. We're not compliant on the recommendations that pertain to attorneys, accountants, real estate agents in imposing the customer due diligence and suspicious transaction reporting requirements. We don't do it in the United States, and it is a continuing obligation with FATF and will continue to be more \_\_\_ down on it.

We're going to do our best to try to disclose that gap as effectively as we can with the means that we have available. Hopefully that answers your question.

*Female:* Thank you so much. I was just reminded we have only a few minutes left. So maybe one more question before we finish up.

*Female:* Do we have any questions from the online participants?

*Female:* No.

*Female:* Want to pick one from here? Okay. I will ask one. Do you see a role for developing countries which may not be FATF members or associate members in influencing the current and future direction of global FATF guidelines and implementation policy, and if so, what might that role look like?

*Male:* That's a terrific question to end on because every country in the world should be a member of the FATF or a FATF style regional body, and frankly, it's sort of considered a black mark if you aren't a member.

The – I – we – there's been a proliferation of FATF style regional \_\_\_\_. I think we just added two more. So there are – there's a sufficient regional body everywhere in the world so that no country should be excluded, and if a country is excluded and wants to be a member, we will always help them find membership in an FSRB. So that should never be a problem.

*Female:*

Okay. Well, thank you very much. Thank you so much for coming today. The upcoming seminar on EPS is going to be on March 30<sup>th</sup> here. So please stay tuned and visit Microlink's landing page to learn more and speak to the speakers after the seminar. Thank you for coming. Thank you.

*Female:*

Thanks.

*[End of Audio]*