Jonathan M. Winer

Globalizing Transparency:
Implementing a Financial Sector White List

Fafo AIS Policy Brief May 2003

Fafo

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Preface

Factional military power is regularly deployed to take advantage of natural resources and other forms of wealth, both licit and illicit. In parts of Central and West Africa, the Andean region of South America, the Balkans, and Central and South East Asia, the economic interests of combatants and their political-military allies have sustained some of the most brutal wars in recent memory.

The viability of these market-based military operations is made possible in part by the easy movement of money. When an estimated 2.5 million people die during four years of war-related famine, disease and violence in the Democratic Republic of Congo, it is in part because the global financial system is not equipped to prevent the revenues from asset stripping or the looting of natural resources from being moved offshore. In fact, the transience of money is a key component of the incentive to loot.

The effective targeting of economic resources can help to end conflict. Sanctions on illegal logging in Cambodia facilitated the collapse Khmer Rouge. Slobodan Milosevic was weakened and eventually overthrown after the funds he used to service his patronage networks were pursued and eventually put beyond reach. The end of the Angolan war was hastened in part by restricting UNITA's ability to market diamonds.

Yet, these successes stand in stark contrast to a general international failure to deal effectively with the financial dimensions of war. As described by Jonathan Winer in *Illicit Finance and Global Conflict* (Fafo report 380, 2002), the precursor to the present study, it is the financial sector's failure to separate licit and illicit financial flows that lies at the heart of the problem:

Repeatedly, political conflict and major political destabilizing activity, including grand corruption, narcotics trafficking, arms smuggling, and civil war have been facilitated and sustained by illicit finance networks embedded in the world's licit financial services infrastructure.

The increasing integration of global finance has lowered transaction costs for business, and at the same time that integration has made it more difficult to track and capture the finances that help sustain the world's worst threats to human security. Funds generated by - or destined for - terrorists, criminals, corrupt corporate and public officials, warlords and despots, require the infrastructure provided by global finance. Illicit finance draws on the infrastructure of global private financial institutions to help sustain a range of security threats, from corruption and state failure to international crime, terrorism and war economies. Private banks operating globally provide the pipelines through which such illicit funds travel.

As a result, the governance of global financial services has become a top priority security concern. Recent attempts to segregate licit and illicit financial activity have focused on increasing transparency and accountability in an effort to combat money laundering. Until now, those efforts have sought to coordinate the activities of some state authorities and banks themselves in order to strengthen regulatory oversight, to encourage best practices by banks, and to facilitate law enforcement capacities. These efforts have made significant progress in recent years and have spread into several regions.

A white list of private financial institutions would help make this effort truly global. It would make it possible for governments, multilateral institutions, multinational businesses, and NGOs to determine which institutions were meeting internationally agreed standards of transparency in all jurisdictions in which they operate.

In *Globalizing Transparency*, Jonathan Winer builds on the most significant recent work undertaken in the private and public sectors to describe a white list mechanism that amounts to an incentive-based regime to deal with the most dangerous aspects of financial arbitrage. The white list mechanism builds on existing international institutional frameworks that governments and banks have set-up to address money laundering and related phenomena and offers an incentive for banks to implement existing standards across their operations globally.

There is no global regulation of financial services. This present state of affairs represents a significant security risk, a major potential source of brand risk for private international financial institutions, and a glaring gap in global governance. In *Illicit Finance and Global Conflict* (Fafo report 320, 2002), Jonathan Winer described in detail how illicit finance plays a pivotal role in sustaining and prolonging instability and insecurity around the world. The moral and political imperatives that drive contemporary government and market decision-making about the links between security and finance are unlikely to fade soon, particularly in the context of on-going security and economic crises. The white list proposal provides governments and the financial sector a way of working together to combat illicit finance, and way to do so voluntarily sooner rather than coercively later.

I am grateful to Jonathan Winer for his commitment to the project and his excellent work on this issue. I am grateful also to the Government of Norway, which has provided financial support for the *Economies of Conflict* project, and to those government officials and NGO campaigners whose input has helped shape our work.

Mark Taylor
Deputy Managing Director, Fafo AIS
Series Editor, *Economies of Conflict*

1. Introduction

The largest financial institutions of the world operate in dozens of jurisdictions. Even smaller financial institutions are networked in practically all jurisdictions. This networking has remained largely viable even when countries face international sanctions. The largest international financial institutions remain the most important nodes in the world's financial services infrastructure. Historically, these institutions and those competing with them have taken advantage of the substantial regulatory and enforcement arbitrage afforded by the differences in government laws and capacities to launder the illicit proceeds of the world, and thereby to facilitate the circumvention of national laws.

The opportunities for arbitrage arise for several reasons. Some jurisdictions have weaker laws and regulations than other jurisdictions. These weaknesses have arisen in part as a consequence of efforts by some jurisdictions to exploit bank secrecy and/or tax competition as a means to attract foreign funds, by others to facilitate corruption by high-level officials, and by still others as a result of tradition or history. Other jurisdictions have had adequate laws on the books, but limited capacity in practice to enforce them. Still others have had adequate capacity to enforce laws, but have failed to apply them to all relevant sectors.

Recent initiatives have sought to counter this problem. These include blacklists created by the Financial Action Task Force (FATF) in its identification of "non-cooperative countries and jurisdictions" (NCCTs) and by the Organization for Economic Cooperation and Development (OECD) in its identification of jurisdictions engaged in actions deemed unfair tax competition.

Activity to harmonize international financial regulation in a manner that would combat money laundering, terrorist finance, and other abuses of the international financial services sector substantially intensified during 2001 and 2002. The pioneering white list mechanism, the Wolfsberg Group, made up of twelve of the largest international banks and the anti-corruption organization, Transparency International (TI), substantially broadened its initial "Global Anti-Money Laundering Guidelines For Private Banking" to include guidelines to prohibit terrorist finance and to combat abuses of correspondent banking relationships. The U.S. and the EU each enacted legislation that would collectively require banks licensed in those jurisdictions to adopt substantially stronger and more comprehensive know-your-customer obligations to avoid the laundering of the proceeds of corruption or crime or funds for terrorist finance.[1] The International Monetary Fund (IMF) and the World Bank,

[1] The "USA-PATRIOT Act," (Public Law No: 107–56), enacted October 26, 2001, requires all U.S. based financial institutions to impose a broad range of anti-money laundering measures, including conducting due diligence on correspondent accounts held by non-US banks, and heightened due diligence on accounts involving political figures and those associated with them and on private banking accounts. (continued)

in cooperation with the FATF, undertook new initiatives that would include money laundering in technical assistance, regulatory monitoring, and development programs, together taking on both the responsibility for facilitating the evaluation of money laundering vulnerabilities in developing countries, and for assisting in the development of measures to combat such vulnerabilities. The United Nations demonstrated its ability to mandate global financial regulatory and enforcement action with its adoption of UN Resolution 1373, requiring all member states to freeze the funds of designated terrorist groups and persons, and to report back to the UN the results of their efforts to enforce the resolution. In the process, the UN established a blacklist of embargoed organizations and persons.

Norway has supported the a number of policy research efforts to develop policy options related to illicit finance and armed conflict, most notably the *Economies of Conflict* research project which published the study in which the suggestion for a global financial white list first appeared.[2] In response to a request to develop this idea further, this paper attempts to lay out in some detail the practical mechanisms that could be used to develop, create, and implement a white list. It provides suggestions by which existing frameworks, principles and mechanisms could be used as the foundation for a white list initiative.

(...cont.) The measures cover not only banks, but securities firms, hedge funds, insurance companies, loan and finance companies, mutual funds, credit card operators, and money services businesses, including alternative remittance services such as hawaladars. The 2nd EU Money Laundering Directive, enacted 20 Nov 2001, requires each EU member state to pass implementing legislation no later than July 2002 to enhance know-your-customer requirements by applying them to accountants, auditors, and under a range of circumstances, lawyers and other financial professionals, as a means to preclude money laundering and terrorist finance.

[2] Jonathan M. Winer, *Illicit Finance and Global Conflict* (Fafo report 380, 2002).

2. A Global Financial White List

To date, financial transparency has not been a criterion for the selection of one financial institution over another to be the holder, processor, or handler of the funds of governments, development organizations, international financial organizations, or the United Nations. An international bank that is involved in numerous money laundering scandals or terrorist finance has had approximately the same chance of obtaining a lucrative source of government resources as has an international bank applying the highest standards of transparency and anti-money laundering policies and procedures. National governments, multilateral organisations, foundations, charities, pension funds, labour unions and NGOs control enormous resources that they deposit in financial institutions and collectively carry out transactions that provide extensive business to many such institutions. These major participants in international policy and politics share many reasons for wanting the world's financial institutions to be resistant to money laundering and terrorist finance. Collectively, they are in a position to use their market power to create incentives for financial institutions to adopt principles, policies and procedures that would facilitate that goal.

A white list would harness that market power to promote institutional implementation of widely recognized principles of transparency and good governance. Private sector financial institutions would agree to adhere to the principles of the white list, and to develop internal policies and procedures to implement those principles in all of their operations, on a global basis. Each financial institution participating in the white list would be rewarded with preferential treatment by international organizations, governments, foundations, charities, other non-governmental organizations, and others choosing to make inclusion in the white list a condition of their depositing funds with that institution. As a result, financial institutions not participating in the white list would find themselves at a potential competitive disadvantage at risk of losing substantial pools of deposits and customer relationships, and over time, the commercial relationships and transactions arising from those deposits and customer relationships.

A white list could transcend the gaps afforded by regulatory arbitrage by applying global standards on a constant basis across all the accounts, transactions and dealings of the participating institutions, regardless of the jurisdiction of any particular government. Such a list would thus build upon the extensive existing political and legal framework that has been established by governments, self-regulatory organizations, and the private sector. Those instruments, guidelines and mechanisms would also help to identify the principal stakeholders who might participate in the development and implementation of a white list.

An initiative to create a white list for financial institutions would necessarily need to build upon the range of activities already underway, complementing them and extending them

without duplicating them or conflicting with them. To be most useful, a white list would take advantage of the capacities of the most competent and experienced institutions, in both the public and private sectors, in order to compensate for the limitations of public and private counterparts with lesser capacities to on their own combat money laundering and terrorist finance. Where a widespread international consensus has been reached on principles and policies, the white list would be a mechanism to enhance implementation of both on a global basis, including in locations or sectors where state capacity is limited and private sector regulation minimal.

To make a white list system work, the United Nations might use the recommendations previously adopted by the FATF, OECD and Wolfsberg Group and ask financial institutions to agree to adopt them on a global basis throughout their institutions.[3] Participating financial institutions could further agree to be assessed by a multinational team of experts who would make reports on the implementation of the principles by those institutions they assess. An institution that has agreed to an assessment, and passed it, would be credentialed and rewarded with a preference for selection in processing the funds controlled by the UN and by other international organizations. Other, non-white listed institutions would not be denied the opportunity to handle the funds of international organizations. However, they might well be limited to handling such funds in areas where there is no white list institution available.

To insure the integrity of the system, the white list would need to be updated regularly, with periodic inspections and reviews of participating institutions. Each white listed institution would be required to agree to maintain its know-your-customer and other anti-money laundering policies and procedures regardless of whether it was located in a well-regulated jurisdiction, or one with a lax regime or limited enforcement capacity. It would accept the principle of having others conduct period external assessments of its compliance with the standards, and the publication of comprehensive reports, describing how it had met the standards. To ensure fairness and the opportunity to improve anti-money laundering programs over time, white listed institutions would be given a period for correction following each evaluation before being at risk of losing white-list status. Other institutions, not white listed, would be given the ability to sign-up to the white list at any time by providing a public specification of their methods of complying with the standards, and agreement to submit to an outside assessment at the earliest convenience of the multilateral experts group.

[3] As will be discussed below, the political impetus for a white list could simultaneously be pressed through a number of other mechanisms and institutions, including for example the G-7/G-8, the Council of Europe, the European Union, the Organization of American States, the Asia Pacific Economic Council (APEC), the Global Anti-Corruption Forum, the Organization for Security and Cooperation in Europe (OSCE), the Egmont Group, and the FATF, with simultaneous support secured from the World Customs Organization (WCO), from relevant self-regulatory organizations such as the Basel Group of Bank Supervisors (BGBS), the International Organization of Securities Commission (IOSCO), the Offshore Group of Bank Supervisors (OGBS), the International Association of Insurance Supervisors (IAIS), by the major regional international financial institutions and by umbrella organizations of religious and non governmental organizations.

To achieve the goal of universality, participants in the white list process would include a wide range of stakeholders, including but not limited to national governments, international organizations, associations of regulators, self-regulatory organizations, non-governmental organizations, and charitable and religious groups, in addition to representatives from the relevant elements of the international financial services sector, including banks, brokerage firms, insurance companies, hedge funds, money services businesses, and Islamic banks. Regular meetings of representatives of the stakeholders would be required on at least an annual or biannual basis. These meetings could in turn be supplemented with experts groups or sectoral meetings to press forward with initiatives focused on particular problems, whose recommendations would then be brought back for consideration by the full body.

Existing organizations devoted to combating money laundering and promoting financial transparency, both public and private, have tended to operate by consensus, adopting standards and taking action on the basis of neutral principles operating largely on the basis of technical assessments rather than on the basis of geopolitical agendas. The FATF, for example, was able to press ahead with a process of threatening to impose sanctions on non-conforming jurisdictions – including members of the organization, such as Austria and Turkey — while retaining a consensus-oriented approach. Similarly, the private sector Wolfsberg Group has been able to adopt three increasingly ambitious sets of standards over a period of less than 24 months. UN Resolution 1373 obliged member states to take extraordinary measures against terrorist finance in response to the extraordinary terrorist attacks of September 11, 2001. Who might be credentialed as delegates to an organization designing a white list need not be a contentious process: such an organization could be made of representatives of existing institutional stakeholders.[4] Given the precedents, a voluntary white list adopted by a coalition of the willing should neither be a utopian undertaking, nor one that necessitates substantial delays prior to implementation.

[4] As participation in a white list is voluntary, without the force of law, its utility and effectiveness would depend on the legitimacy and political support it was seen to have. Thus the selection of "voting delegates" should include sufficient representatives of the major stakeholders, public and private, to accomplish this result. To avoid lengthy discussions over governance and process, the procedures used successfully to date by the FATF might be one appropriate model, with membership consisting of representatives of governments and associate memberships including representatives of the other stakeholders. As a result, while governments would be politically and institutionally responsible for the white list, satisfying major elements of other stakeholders would be essential in practice for its success.

3. Existing Initiatives

There are three initiatives currently involved in combating money laundering that may be useful examples for possible structures for the administration, secretariat and process of a white list. They are the FATF, representing governments; the Wolfsberg Group, representing large international banks; and the Basel Group of Bank Supervisors, a standard-setting organization representing central banks in their capacity as financial regulators and supervisors. Each has demonstrated strengths and limitations that may be worth consideration in applying their models to the implementation of a white list.

The FATF Model. The FATF has proved capable of integrating policies representing the interests of a large number of countries and observers, of developing and maintaining standards, of conducting mutual assessments of participants, and of issuing sanctions for noncompliance and proposing corrective activities. It has accomplished these missions with a secretariat that for many years was limited to just three persons based at the OECD in Paris, and relying on small, voluntary contributions from members. The FATF, which received direction from the G-7 heads of state and Finance Ministers, was required to achieve consensus from each member of the OECD in developing its recommendations and programs. Its presidency has rotated on an annual basis from country to country, including fourteen nations as of this year, under informal rules with no constitution or formal framework. It describes its framework as follows:

The Financial Action Task Force on Money Laundering (FATF) is an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering. The Task Force is therefore a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms to combat money laundering.

The FATF monitors members' progress in implementing anti-money laundering measures, reviews money laundering techniques and counter-measures, and promotes the adoption and implementation of anti-money laundering measures globally. In performing these activities, the FATF collaborates with other international bodies involved in combating money laundering.

The FATF does not have a tightly defined constitution or an unlimited life span. The Task Force conducts regular reviews of its mission every five years. The FATF has been in existence since 1989, and it has been agreed that it should continue its work until 2004. It will only continue to exist and to perform its function after this date provided the member governments agree that this is necessary.[5]

[5] http://www1.oecd.org/fatf/AboutFATF_en.htm#Presidency.

To carry out these tasks, the FATF has had to in effect delegate responsibility for the most resource-intensive elements of its mandate. Mutual assessments have conducted by technical experts from member countries. As the FATF has expanded its mandate to include jurisdictions outside of the FATF, such assessments have increasingly been made by regional FATF-style bodies, rather than by the FATF itself. Similarly, the technical assistance needed by countries to come into compliance with FATF standards has been carried out on an ad hoc basis by the Council of Europe, by the European Union, by the UNDCCP, and prospectively, by the IMF and World Bank, rather than by the FATF itself.

The Wolfsberg Group Model. The Wolfsberg Group was a self-selected coalition of similar institutions – eleven of the world's largest banks, each headquartered in a major financial center. The Wolfsberg Group relied on just two outside experts, one from Transparency International, the other a founder of the Egmont Group with experience in international financial enforcement. The Wolfsberg Group concentrated on carrying out only one mission, that of setting standards that each of its members would commit to adopt and implement globally. It did not seek to develop an enforcement mechanism, criteria for membership (apart from agreement to abide by its principles), a membership process, self- or mutual evaluations, monitoring, technical assistance or training, or sanctions in the event of non-compliance. As a result, by setting aside these related missions, the Wolfsberg Group was able in a period of just two years to adopt three significant sets of principles which if fully implemented would make their institutions far less vulnerable to use by those seeking to launder illicit or terrorist funds.

Like the FATF, the Wolfsberg Group has operated informally and on a technocratic, rather than political, basis. It has focused on those features of banking that are essential to reducing risks to the participating institutions of being unwittingly used by launderers or terrorists, while at the same time binding these institutions closer to governments by facilitating information flows to and from the institutions and the governments in cases of suspected abuse. Like the FATF, the Wolfsberg Group has sought to lead by example. Unlike the FATF, it has not sought to make its norms universal, except to the extent that market and political forces reward the reduced risks of loss at those institutions that implemented the Wolfsberg Group standards.

The BCBS Model. The Basel Committee on Banking Supervision (BCBS), based at the Bureau for International Settlements in Switzerland, is essentially a standard-setting body created by the world's major central banks in 1974. It describes its framework as follows:

> Countries are represented by their central bank and also by the authority with formal responsibility for the prudential supervision of banking business where this is not the central bank. The Committee does not possess any formal supranational supervisory authority, and its conclusions do not, and were never intended to, have legal force. Rather, it formulates broad supervisory standards and guidelines and recommends statements of best practice in the expectation that individual authorities will take steps to implement them through detailed arrangements - statutory or otherwise - which are best suited to their own national systems. In this way, the Committee encourages convergence towards common

approaches and common standards without attempting detailed harmonization of member countries' supervisory techniques.

The Committee reports to the central bank Governors of the Group of Ten countries and seeks the Governors' endorsement for its major initiatives. In addition, however, since the Committee contains representatives from institutions which are not central banks, the decisions it takes carry the commitment of many national authorities outside the central banking fraternity. These decisions cover a very wide range of financial issues. One important objective of the Committee's work has been to close gaps in international supervisory coverage in pursuit of two basic principles: that no foreign banking establishment should escape supervision; and that supervision should be adequate. To achieve this, the Committee has issued a number of documents since 1975. . . .

Over the past few years, the Committee has moved more aggressively to promote sound supervisory standards worldwide. In close collaboration with many non-G-10 supervisory authorities, the Committee in 1997 developed a set of "*Core Principles for Effective Banking Supervision*", which provides a comprehensive blueprint for an effective supervisory system. To facilitate implementation and assessment, the Committee in October 1999 developed the "*Core Principles Methodology.*"

In order to enable a wider group of countries to be associated with the work being pursued in Basel, the Committee has always encouraged contacts and cooperation between its members and other banking supervisory authorities. It circulates to supervisors throughout the world published and unpublished papers. In many cases, supervisory authorities in non-G-10 countries have seen fit publicly to associate themselves with the Committee's initiatives. Contacts have been further strengthened by an International Conference of Banking Supervisors which takes place every two years, most recently in Basel.

The Committee's Secretariat is provided by the Bank for International Settlements in Basel. The twelve person Secretariat is mainly staffed by professional supervisors on temporary secondment from member institutions. In addition to undertaking the secretarial work for the Committee and its many expert sub-committees, it stands ready to give advice to supervisory authorities in all countries.

Like the FATF, the BCBS operates by consensus, develops recommendations, and publishes guidelines to be applied by relevant authorities as they choose. Unlike the FATF, the BCBS has not expanded its membership, nor sought to undertake self- or mutual assessments or monitoring of members or other countries. It has, however, constantly expanded the parameters of its standard setting, through a system of forming technical working groups consisting of experts from non-member jurisdictions as well as members of the BCBS. Currently, some 30 such working groups exist. The principles for Customer Due Diligence for Banks issued by the BCBS on October 31, 2001 reflected the work of one such group, the Working Group on Cross-Border Banking. This group was a joint effort of both the BCBS and its offshore counterpart, the Offshore Group of Banking Supervisors, and included reg-

ulators from major financial centers such as France, Germany, Italy, Japan, Switzerland, the United Kingdom, and the United States, and from major offshore centers such as Bermuda, the Cayman Islands, and the Isle of Guernsey. Luxembourg and Singapore, which combine aspects of major centers and offshore centers, were also represented.

Like Wolfsberg, the BCBS seeks to lead by example, establishing standards that define best practice, to be emulated because they are prudent and reduce risk to regulated financial institutions. Unlike Wolfsberg, the BCBS is not a self-selected body, having been provided its mandate by the central banks of the world's largest financial markets. Like both FATF and Wolfsberg, the BCBS standards apply directly to those establishing the standards – here in the first instance, the financial regulators of the G10. Like the FATF but unlike Wolfsberg, they also would apply to the institutions regulated by those establishing the standards.

Notably, all three mechanisms are lightly staffed, with minimal secretariats and relatively low administrative costs, sustained by the collective work of political imperatives implemented by technocratic solutions.

4. Proposed White List Standards

Although the list of instruments, guidelines, and mechanisms above is extensive, there has been a remarkable convergence around the utility of the approach taken by the FATF, to which all other elements can be seen as foundations, elaborations, or supplements. Past criticisms of the FATF process and standards, usually articulated by smaller or lesser developed UN member states, have abated in the wake of the proliferation of the regional FATF-style institutions and the agreement by the IMF and the World Bank to adopt the FATF's standards and to provide assistance to jurisdictions seeking help in conforming their financial regimes to global standards. Meanwhile, the BCBS and the OGBS have collaborated on developing guidelines that apply standards consistent with those of the FATF directly to banks themselves, even as the Wolfsberg Group has articulated its own more detailed regime to be applied to private banking, correspondent banking and possible sources of terrorist finance. There are some gaps to these interlocking sets of guidelines: they do not, for example, provide detailed solutions in dealing with all non-bank financial sectors. However, they provide a framework out of which a set of white list obligations could be built.[6]

Key elements of such a framework could include the following commitments to be made by any financial institution that wished to participate in a white list. In each case, the measures would be applied to branches and majority owned subsidiaries of the participating institution, regardless of where located, to the extent permitted by local applicable laws. Should local laws not permit such measures, the participating institution would agree to inform its principal home-state regulator of any such limitations, to permit that regulator to consider whether further measures are necessary.

Each of the white list obligations proposed below is intended to apply to all financial institutions, regardless of sector. In addition to banks, this would include firms involved in the securities business, insurance companies, registered and unregistered investment vehicles, including commodities pools, real estate investment trusts, and hedge funds, money services businesses, loan and finance companies, and those involved in company formation and trusts.

[6] Cross references are also included for the relevant provisions from the 2nd EU Directive on Money Laundering, which is applicable not only to the 15 member states, but to all of the candidates for enlargement, and reflects current standards, becoming effective as of July 2002.

Proposed White List Obligations

Know Your Customer. Taking adequate steps to identify the beneficial owner of all accounts, including customer identification and verification measures before opening any new account. (FATF Recommendations 10 and 11; Wolfsberg Private Banking Principle 1, EU 2nd Directive Article 3) For this purpose, a customer includes not only the person or entity that maintains an account and those on whose behalf the account is maintained, but also the beneficiaries of transactions conducted by professional intermediaries and any person or entity connected with a financial transaction that might pose a significant reputation or other risk to the financial institution. (Basel Committee Customer Due Diligence Principle 2)

No Anonymous or Fictitious Accounts. Prohibiting customers from opening or carrying out transactions through anonymous accounts or accounts in fictitious names. (FATF Recommendation 10)

Document Retention. Retention of transaction information for at least five years following a transaction and account information for at least five years following the closing of an account. (FATF Recommendation 12, Wolfsberg Private Banking Principle 9)

Risk-Based Customer Acceptance Policy. Developing and implementing customer acceptance policies and procedures that include a description of the types of customers that are likely to pose a higher than average risk of money laundering or terrorist finance to a bank and implementation of graduated customer acceptance policies and procedures that require more extensive due diligence for higher risk customers. (Basel Committee Customer Due Diligence Principle 1)

Suspicious or Unusual Transactions Monitoring and Reporting. Adopting measures to insure that directors, officers, and employees pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions which have no apparent economic or visible lawful purpose, and making such information available to supervisors, auditors and law enforcement agencies unless prohibited by law in the country where the financial institution is operating or licensed. (FATF Recommendations 14 and 15; EU 2nd Directive, Article 6)

Duty of Confidentiality on Reporting. Undertaking appropriate measures to ensure that their directors, officers and employees may not warn customers when information relating to them is being reported to competent authorities. (FATF Recommendation 17)

Comprehensive Anti-Money Laundering Programs. Developing, adopting and implementing comprehensive anti-money laundering programs that include internal policies, procedures and controls, including the designation of compliance officers at management level; adequate screening procedures to ensure high standards when hiring employees; adequate employee training; and an audit function to test the system. (FATF Recommendation 19, Wolfsberg Private Banking Principles 8 and 11, Basel Committee Customer Due Diligence Principles 3 and 4; EU 2nd Directive, Article 11.)

Notice to Regulators of Non-Conforming Local Laws. Notifying the principal home-state regulator should local laws or regulations prevent the financial institution from carrying out any of the measures specified within these guidelines. (FATF Recommendation 20)

Responding to Requests for Information From Competent Authorities. Responding promptly and comprehensively to requests from information from competent authorities to the extent permitted under applicable laws and regulations. (FATF Recommendation 18)

High Risk Sectors and Activities. Giving special attention to business relationships and transactions with persons, including companies and financial institutions, (a) from countries listed on the FATF's non-cooperative countries and territories list; (FATF Recommendation 21); (b) involving alternative remittance systems such as hawalas unless they are subject to adequate regulation and any other sectors identified by competent authorities as being widely used for the financing of terrorism (Wolfsberg Terrorist Finance Principles 5 and 6); (c) involving trust, nominee or fiduciary accounts (Basel Committee Customer Due Diligence Principle 2.2.1; (d) involving companies that have nominee shareholders or shares in bearer form (Basel Committee Customer Due Diligence Principle 2.2.2) or (e) when other risk factors are present, involving "politically exposed persons."[7] (Basel Committee Customer Due Diligence Principle 2.2.5, see also Wolfsberg Correspondent Banking Principles 4 and 5)

Compliance with UN Sanctions. Giving special attention to business relationships and transactions with persons, including companies and financial institutions, from countries or involving entities or persons specified as prohibited persons in any UN sanctions program.

Freezing Assets. Freezing or blocking assets of any person or entity reasonably suspected of engaging in money laundering or terrorist finance, to the extent permitted by applicable law. (FATF Special Recommendations on Terrorist Finance, III)

Correspondent Banking.[8] Adopting risk based due diligence regarding correspondent banking relationships to determine whether to subject correspondent banking accounts to basic due diligence, enhanced due diligence, or to not undertake correspondent banking business with a particular financial institution due to the risk factors presented. (Wolfsberg Correspondent Banking Principles 1-6, Basel Committee Customer Due Diligence Principle 2.2.7 and Principle 3)

No Business With Shell Banks. Taking steps to ensure that the institution will not offer its products or services to a Shell Bank. (Wolfsberg Correspondent Banking Principle 7)

[7] "Politically Exposed Persons" are defined as individuals who have or have had positions of public trust such as government officials, senior executives of government corporations, politicians, important political party officials and their families and close associates.

[8] The term "correspondent banking" is ordinarily used solely in a context of relationships between banks, but equivalent activities are engaged in by many securities firms, and it may be applied broadly to any relationship in which a financial institution is able to engage in funds transfers on a regular basis from an account it maintains at another financial institution.

Enhanced Due Diligence on Proceeds of Corruption. Undertaking sufficient measures, including heightened scrutiny of funds involving Politically Exposed Persons, to prevent the placement, layering or integration through the financial institution of the proceeds of corruption. (Wolfsberg Private Banking Principle 2.2, Basel Committee Customer Due Diligence Principle 2.2.5, EU 2nd Directive Article 1(e))

Significant Consequences of Global Adoption of White List Principles

Know Your Customer. Impede access to formal financial services sector by criminals, terrorists, and corrupt officials; facilitate tracing of assets of such persons; facilitate identification of illicit owners of assets; facilitate ability of regulators and law enforcement to freeze assets related to beneficial owners who are believed to have violated applicable laws.

No Anonymous or Fictitious Accounts. Impede access to formal financial services sector by criminals, terrorists, and corrupt officials; facilitate tracing of assets of such persons; facilitate identification of illicit owners of assets; facilitate ability of regulators and law enforcement to freeze assets related to beneficial owners who are believed to have violated applicable laws.

Document Retention. Facilitate tracing of assets and transactions by regulators and law enforcement tracking down criminals, terrorists, corrupt officials.

Risk-Based Customer Acceptance Policy. Target due diligence efforts to focus on customers likely to create greatest risks of crime, terrorism, and placement of proceeds of corruption.

Suspicious or Unusual Transaction Reporting. Provide mechanism by which financial institutions alert regulators and law enforcement to possible money laundering and terrorist finance.

Duty of Confidentiality on Reporting. Prevent targets of regulatory and enforcement action from taking steps to avoid investigations.

Comprehensive Anti-Money Laundering Programs. Prevent regulatory arbitrage by would-be money launderers or terrorist financiers; impede access to formal financial services sector by criminals, terrorists and corrupt officials; facilitate tracing of assets of such persons; facilitate identification of illicit owners of assets; facilitate ability of regulators and law enforcement to freeze assets; reduce risk of banks of losses in connection with being used for improper purposes.

Notice to Regulators of High Risk. Speed the identification of problematic sectors or jurisdictions for further governmental action and thereby to reduce regulatory arbitrage, impede access to formal financial service sector by abusers, and reduce institutional risk.

Responding to Requests From Competent Authorities. Facilitate regulatory and enforcement activity against money laundering, especially that involving cross-border transactions.

High Risk Sectors and Activities. Target due diligence efforts to focus on customers likely to create greatest risks of crime, terrorism, and placement of proceeds of corruption.

Compliance With UN Sanctions. Strengthen global enforcement of sanctions adopted by the Untied Nations, discourage circumvention.

Freezing Assets. Deny criminals, terrorists, and corrupt officials access to illicit proceeds, facilitate regulatory and law enforcement investigations of money laundering and terrorist finance.

Correspondent Banking. Impede access to global financial services infrastructure by poorly regulated financial institutions most vulnerable to abuse by criminals, terrorists and corrupt officials.

No Business With Shell Banks. Effectively deny access to global financial services infrastructure of financial institutions used to hide beneficial ownership, thereby depriving criminals, terrorists, and corrupt officials of important mechanism to hide funds.

Enhanced Due Diligence on Proceeds of Corruption. Impede the ability of corrupt officials to launder funds; enhance probability of exposing and investigating beneficial owners of proceeds of corruption; facilitate prosecution of corrupt officials; facilitate restitution of government funds to governments.

5. Proposed White List Governance and Membership

As noted, there would be many stakeholders in a financial institution white list, including governments, intergovernmental organizations, international organizations, international financial institutions, nongovernmental organizations involved in governance, anti-corruption, and development issues, foundations and other forms of charities, self-regulatory organizations, trade groups, and the financial institutions themselves. Including such a diverse group in a governance process poses obvious problems in the criteria for and selection of membership. Notably, however, there are distinct functions of governance required for a white list. These can be categorized as follows:

Governance

Internal rule making (process)

Standard setting (substance)

External rule making (regulations to implement standards)

Evaluation and monitoring

Consideration of and Imposition of sanctions

Membership

Only a few of these categories require potentially difficult choices. Categories B and D, internal and external rule making, can readily follow established procedures of whatever modality is chosen to house a financial institution white list. For example, if the FATF were to take on the white list initiative, it could do so making use of the identical processes used in carrying out its NCCT initiative. The same would be true of use of the BCBS at the Bureau for International Settlements, or of the UNDCCP. Category C, standard setting, can be done through a standard international negotiation process that begins with a prepared draft that is then scrubbed and amended through consensus. Category E, evaluation and monitoring, can be accomplished technocratically, through volunteers from among the range of entities involved in the process. Here for example, participants in an assessment process could come from the World Bank, IMF, BCBS, IOSCO, IAIS, UN, COE, European Commission, the G10 central banks, domestic financial regulators of various countries loaning experts, NGOs or foundation participants, as well as from the banks themselves, through a process of creating a list of eligible monitors from which particular assessment teams are drawn. In contrast, Category A, governance, Category F, the consideration of and imposition of sanctions, and Category G, membership, are three closely related core issues in which it is important to both incorporate the maximum number of stakeholders while avoiding unwieldy solutions.

Option 1: An intergovernmental model. Governance, membership, and the imposition of sanctions by the FATF were all simplified by making membership automatic for members of the OECD, where the FATF was housed. Technical experts representing OECD countries then developed standards and processes that were applied at first solely to members, and later to non-members. Membership expanded by a process in which existing members sponsored new members, who qualified for participation by going through a monitoring process. From time to time, the FATF has convened meetings involving non-governmental entities, including representatives of the private sector, in some cases setting aside a day for such meetings before or after a regularly scheduled plenary meeting. Under an intergovernmental model, all stakeholders could participate in drafting sessions to establish standards, but only government representatives would vote to adopt the standards. Such a vote would be likely to come only if there were a belief that the standards reflected an approach that would be attractive to private sector financial institution participants (as well as to potential non-governmental customers of financial institutions). Given the voluntary nature of a white list, support from all the non-governmental participants in the process would be an essential criterion for success, even if governance and membership were limited to governments. Thus, if the FATF were to take on a white list, there would be a two-phase process: the first, consultative, to draft standards and procedures, the second, formal, to agree upon such standards and procedures. Representatives of all stakeholders could participate in the former process through one or more working groups. FATF members alone would participate in the second process. A similar methodology would be applied to the consideration of sanctions, by which experts groups made technical recommendations and the FATF meeting in plenary would decide how to act upon them. If a separate organization were envisioned to carry out a white list initiative, its initial membership could be based upon the membership of the FATF, of the BCBS, or of any other body that wished to sponsor the start-up phase of such an organization.

Option 2: A coalition model. As discussed, the Wolfsberg Group represents a self-selected coalition of international financial institutions that agreed upon a set of principles to which each of them then committed, assisted by Transparency International. In principle, private sector, governmental and other stakeholders could voluntarily associate themselves with an initiative administered by a non-governmental organization, which would coordinate consultations to develop consensus on white list guidelines and which could manage both the process of maintaining the white list of participating financial institutions and the list of organizations committing to give preferences to white listed institutions. This approach involves a minimum of formality and if successful could be integrated within an intergovernmental or international organizational mechanism at a later date.

Option 3: An initiative undertaken by an existing organization. There may be a number of individual institutional actors that could unilaterally develop a white list (in consultation with other stakeholders) and implement it as a matter of policy of that institution. For example, were the World Bank to develop a white list and give preference to white listed financial institutions, undertaking the related obligations specified in this paper, its decision to do so could well be a catalyst for others to join in relying on the World Bank standards

and lists. Regional international financial institutions, one or more major foundations or religious or other charities, labor unions, large pension funds (individually or as a group) or self-regulatory organizations choosing to proceed with a white list could have a similar impact.

6. Options Implementation

Several options are described below for undertaking a white list initiative. They are not intended to be mutually exclusive, and any could potentially be useful means of generating appropriate consideration of this concept, depending on political factors which are necessarily beyond the scope of this paper. These are intended to be illustrative only, as there are likely other useful mechanisms to initiate a white list process.

Using the G7/G8 Process. The G7/G8 mechanism (now known as the G8) has long been used as a mechanism to provide political impetus for the consideration of international initiatives, especially in the area of financial regulation. Ordinarily, the Presidency of the G8 undertakes developing the agenda for the annual G8 summit, which takes place in June of each year, in consultation with representatives of other members of the G8 known as "sherpas." The European Commission also participates in G8 meetings as an observer. During 2003, the G8 President is France. France has previously undertaken leadership in initiating new international responses to money laundering, with the creation of the FATF taking place during its presidency of the G7 in 1989. One logical means for rapid consideration of an initiative would be a decision by the French presidency to bring it before the other members of the G8. Alternatively, the any of the other participants, including Canada, Germany, Italy, Japan, Russia, the United Kingdom, the United States, and perhaps the European Commission, could raise the issue for consideration by G8, if such consideration was acceptable to the French presidency. A brief paper could be provided to the sherpas for their consideration outlining a "white list" process. When issuing its annual statement, the G8 could in turn recommend any of several steps for moving forward on the concept. These might include all or any of the following:

The presidency convening a process under its authority to develop a white list and reach consensus on its implementation on a trial basis. In this approach, representatives of the G8 would meet with representatives of other key institutions, such as the UN, OECD, FATF, Council of Europe, OAS, IMF, World Bank, and BCBS, together with private sector associations such as the Wolfsberg Group, non-governmental organizations such as Transparency International, and major foundations with an established interest in financial transparency or governance. Representatives of major financial institutions would also be invited to participate, with due regard to geographical and sectoral diversity. The presidency could prepare papers outlining an approach to the creation and implementation of a white list for consideration and advice by these representatives. Any of the participants in the process could then endorse the product, and agree to participate in the white list, becoming as applicable either as (a) a financial services customer that would give preferential treatment to white listed financial institutions and do business with such institutions whenever possible, or (b) a financial institution that would sign up to the principles of the white list and thereby be

eligible for this preferential treatment by institutional customers with large deposits or volumes of transactions.[9]

Following the initiation of such a process, the G8 presidency could request on behalf of the G8, that the OECD, the Bureau for International Settlements, or another entity agree to house a small secretariat to implement the white list, funded by donations from G8 members and/or other participants in the process other than institutions eligible to join the white list.

Solicitations could then be made by the Secretariat to any and all financial institutions to sign up for the white list by agreeing to subscribe to and abide by the financial transparency principles of the white list, with the white list coming into effect at a period sufficient to permit many such institutions to sign up.

Simultaneously, governments, international organizations, international financial institutions, non-governmental organizations, charities and other entities wishing to provide incentives for white list participation would take appropriate actions to authorize preferential (or mandatory) use of white listed institutions for their financial services business.

Simultaneously, the Secretariat would build a list of financial transparency experts who would agree to participate in compliance assessments of white listed institutions. Initially, white listed institutions would be eligible to be on the list through a self-declaration of participation and filling out a questionnaire demonstrating their compliance with each of the principles. These could be supplemented by compliance assessments whenever the Secretariat determined that a serious allegation of non-compliance had been made justifying such an assessment. In addition, institutions wishing to demonstrate leadership-by-example could volunteer for such assessments. Finally, national regulators could consider examining financial institutions based in their jurisdiction for global compliance with the principles, including compliance by foreign branches and subsidiaries when necessary.

Those participating in the assessment would report back to the Secretariat the results of any assessment, and in cases where an institution was failing to abide by the standards, the Secretariat could recommend remedial action, suspension, or expulsion as might be appropriate, to the governance body for the white list. A system similar to that used by the FATF in its NCCT process might be appropriate, with particular institutions facing the threat of loss of preferential treatment, rather than entire jurisdictions.

Using the UN Process. Below are four mechanisms to use the UN system to give political impetus and administrative structure to a white list process. Of these, the fourth, would take advantage of the current negotiation of a convention to combat corruption that is scheduled to continue throughout 2003.

[9] Preferences for white listed institutions could extend beyond governmental entities, foundations and other charities to individuals who wished to keep their deposits at such institutions as a type of "ethical investment."

A UN Resolution could endorse the concept of white list as a useful mechanism to counter terrorist finance, money laundering, and corruption, calling on member states and other organizations to take appropriate steps to undertake a white list initiative.

A UN member state could bring the proposal up through an appropriate commission (such as the annual meetings of the Commission on Narcotic Drugs or the Commission on Crime), and the UN General Assembly could ask that body to develop the approach at the expert's level for further consideration by the Member States.

A UN member state could call for a special conference on the topic, linking it to any of the UN's existing efforts to combat corruption, money laundering, and terrorist finance, and seeking the approval of the UNGA for such a conference. A UN member state doing so might be expected to volunteer to pay for the costs of hosting such an event.

The white list concept could be introduced within the framework of the draft UN Convention Against Corruption currently being drafted, with a target date of completion being the end of 2003. Notably, three UN member states (Austria, Netherlands and Norway) have currently suggested monitoring mechanisms that could be added to the Convention, proposals that remain pending. These proposals are focused on monitoring compliance with the convention by signatories. There is nothing in the convention to date that would preclude adding further provisions regarding a white list, other than the ambitious schedule for the convention's completion during the current calendar year.

The outputs from any form of relying on a UN-initiated process would be similar to those described above, but under UN rules, only member states could participate in the actual decision-making process, with other participants being limited to acting as observers. Also, any secretariat created to develop and administer the white list might be housed at the UN, becoming an element of an existing component of the UN such as the UNDCCP in Vienna.

Piggybacking on Existing International Initiatives. Several existing international initiatives have the potential to host a white list initiative as an element of the outputs of their work.

Any member of the FATF could ask that the FATF undertake a white list initiative as a complement to its existing black list process. The FATF has tremendous expertise in the area of money laundering. Having the FATF undertake the development of a white list would facilitate harmonization of the FATF's standards with the white list standards. Given its experience in implementing a black list, the FATF might be well-positioned to implement and administer a white list. The FATF's membership has solely been available to governments. However, there is nothing to prevent the FATF from developing a consultative mechanism that would include the full participation of private sector and other entities not currently within the FATF process.

The Global Forum Against Corruption and the International Anti-Corruption Conference are due to be held jointly at Seoul in South Korea in May this year. The Seoul Confer-

ence will mark the first time in which the Global Forum, an intergovernmental conference held on the ministerial-level, and the IACC, an anti-corruption conference in which the participants attend in their personal capacities, are jointly held. The two groups have the common objective of promoting the exchange of knowledge and experiences in curbing corruption. The Global Forum process has focused on the need for involvement of civil society, the private sector and the media in developing and implementing effective national and international anti-corruption strategies. The IACC has sought to provide the opportunity for civil society, the private sector and government officials to develop a wider set of recommendations for action against corruption. The combination of these two initiatives may make an ideal mechanism for endorsement of a white list concept involving both governments and the private sector. The proposal could be tabled at the conference and endorsed by conferees, who could then volunteer to develop the initiative further, perhaps with Transparency International, a cosponsor of the Seoul conference, acting as its secretariat.

The BCBS could undertake the development of a white list, perhaps in tandem with the OGBS, following on the work undertaken by the Working Group on Cross Border Banking in 2001, or any of several other BCBS working groups. Alternatively, the BCBS could convene a new such group with appropriate representation and consultative mechanisms.

Transparency International and another non-governmental organization, Social Accountability International, have undertaken an initiative to create a set of "business principles for countering bribery." A large number of private sector companies are involved in this process, which parallels the work of the Wolfsberg Group in creating transparency principles for financial institutions.[10] The white list concept could be developed as an adjunct to this existing work, or undertaken by Transparency International as a means of implementing both the Wolfsberg Group initiative and the Business Principles for Countering Bribery initiative.

Options for administering a white list include the homes of each of the entities discussed as potentially housing a white list process. These include, for example, the FATF in Paris, the BCBS at the Bureau for International Settlements in Geneva, the UNDCCP in Vienna, and Transparency International in Brussels. Other possible homes to administer a white list could include the Council of Europe in Strasbourg, the World Bank Institute in Washington, or the national capital of any country choosing to spearhead the initiative, to act as a secretariat, and to shoulder the costs involved.

[10] BP plc, Ford of Europe, France Telecom, General Electric Company, General Motors, GlaxoSmithKline plc, Norsk Hydro ASA, PricewaterhouseCoopers, Rio Tinto plc, Shell International Ltd, SGS Société Générale de Surveillance S.A., and UBS AG are among the private sector entities who have participated in consultations on this initiative. See Transparency International, at http://www.transparency.org/building_coalitions/private_sector/business_principles.doc.

7. Frequently Asked Questions

FAQ 1: Why is a white list needed, given the initiatives already underway?
The current initiatives have created globally recognized standards, but have been unable to assure the implementation of those standards in jurisdictions with limited regulatory and enforcement capacity. It is not realistic, for example, to expect governments in low-income countries or areas of conflict to police financial transactions involving those in the private sector with far greater resources and capacities. A white list could bridge this gap by providing incentives to private sector institutions to impose high standards on themselves in all of their operations, regardless of where they are located as a means of securing a business advantage. Such a process could create a virtuous circle as the securing of benefits by institutions implementing such standards would cause others to seek to level the playing field by also agreeing to implement the standards.

FAQ 2: Who would pay for a white list initiative? Would it be costly?
A white list initiative would not be costly to develop or administer. The principle costs would be those associated with carrying out any international conferences needed to initiate the process and those associated with maintaining a small secretariat. Start-up costs could be paid by any sponsoring government or international financial institution. Ongoing costs could possibly be paid through membership fees levied on participants in the white list process. One set of fees could be collected from financial institutions choosing to join a white list, based on a sliding scale associated with the size of the institution. If needed, a second set of fees could be collected from institutions committing to do business on a preferential basis with white listed financial institutions. For example, if a white list was made up of 100 large financial institutions paying an annual fee of five thousand dollars or euros, 100 medium-sized financial institutions paying an annual fee of 2000 dollars or euros, and 500 small financial institutions paying an annual fee of 500 dollars or Euros (with any number of "micro" institutions or institutions in least-developed countries having the fee waived) some one million dollars or Euros would be generated per annum, sufficient to fund a small secretariat. Alternatively, a white list initiative could be funded by grants from foundations, by support from IFIs, or with assistance from governments.

FAQ 3: Why would financial institutions want to participate in a white list?

For at least two reasons: obtaining benefits, and avoiding risks.

Obtaining Benefits: white listed financial institutions would obtain the benefit of more business from governments, development agencies, IFIs, foundations, labor unions, pension funds or anyone else who chose to give preferential treatment to white-listed institutions. If participation became high, those benefits could be substantial.

Avoiding Risks: Financial institutions are borrowers as well as lenders, raising funds from capital markets, and their reputation is an essential component of their ability to do business and to grow. Being used for money laundering, terrorist finance, or to launder the proceeds of corruption or to handle funds of sanctioned entities creates multiple risks for financial institutions, which include the risk of the loss of the funds involved (transactional risk), the risk of a sudden loss sufficient to impair the capital of the financial institution (institutional risk), and the reputational risk, which can increase their costs of obtaining funds from others and cost business opportunities. Financial institutions could reduce these risks by participating in a white list.

FAQ 4: How would we know that those on the white list are complying with the rules?

To be on the white list, a financial institution would fill out a questionnaire, stating the steps it had put into place to implement the principles. Those responses would provide a basis for believing in the first instance that the institution was complying, or seeking to comply. Over time, competitors of that institution, NGOs, or other elements of civil society could report any apparent failures to abide by the principles. For example, given the competitive advantage of being on the white list, there would be strong incentives for financial institutions to report any failures of compliance by competitors to the white list secretariat. Such a complaint would initiate a process of reviewing the complaint and, at the discretion of the secretariat, initiating an assessment process to determine if the complaint appeared to be justified and further action need be taken. Secondly, domestic regulators could decide to examine any financial institution they supervise that had signed up to the white list for that institution's global compliance with those obligations. Third, in some countries, publication declarations by a financial institution that it was adhering to a white list would create an obligation by that institution to its shareholders that it in fact do so, placing officers and directors at risk of liability for any failure of the institution to meet that obligation.

FAQ 5: I can see how a white list might work for banks. How would it apply to other financial institutions?

Many forms of financial institutions do substantial business with governments, international organizations, foundations, and the other entities that could give preferences to white-listed institutions, including investment firms and insurance companies. Some forms of financial institutions, such as loan and finance companies, hedge funds, and money services businesses,

may have less incentive to join a white list. However, financial institutions in the white list could themselves decide to do business preferentially with representatives of such sectors (loan and finance companies, hedge funds, and other money services businesses) that also agree to abide by white list principles. Moreover, many such businesses are themselves owned by or components of the kind of large financial institutions that would make up the core of the white list. There could be other mechanisms to secure greater universality over time once the world's major banks were fully participating.

FAQ 6: What happens when a law, such as bank secrecy, makes it illegal for a financial institution to abide by a principle in the white list?

That financial institution would report the existence of the law and its incompatibility with the white list to the white list secretariat, which could then take appropriate action to secure the elimination of the law, precisely as the FATF and OECD have already done with their black list initiatives.

Appendix: Existing Standards and Frameworks

The following list is intended to provide the basic texts upon which guidelines for a white list would be built, as well as core participants in any white list process. They include:

Basel Committee on Banking Supervision/Bureau for International Settlements (BCBS). The BCBS, established by the G-10 Central Banks, provides a forum for regular cooperation among member countries on banking supervisory matters. It formulates broad supervisory standards and guidelines and recommends statements of best practices in banking in the expectation that national bank supervisory authorities will take steps to implement them.

Guidelines, Prevention of Criminal Use of the Banking System for the Purpose of Money Laundering (1988)

Supervision of Crossborder Banking (1996) (in conjunction with OGBS)

Framework for Internal Control Systems in Banking Organizations (1998)

Customer Due Diligence for Banks (2001) (in conjunction with the OGBS)

Council of Europe (COE). The 40-nation Council of Europe has acted as a standard-setting body by which both EU and non-EU countries have been able to develop harmonized approaches to substantial bodies of law. In addition to enacting an influential Convention covering a broad range of anti-money laundering obligations in 1990, the COE has carried out extensive anti-money laundering assessments of participating member states, accompanied by some follow-on technical assistance.

Convention on Laundering, Tracing, Seizure and Confiscation of the Proceeds from Crime (1990)

Egmont Group of Financial Intelligence Units (FIUs). The Egmont Group was established in 1995, when a number of FIUs began working together in an informal organisation known as the Egmont Group (named for the location of the first meeting in the Egmont-Arenberg Palace in Brussels). The goal of the group is to provide a forum for FIUs to improve support to their respective national anti-money laundering programs. This support includes expanding and systematising the exchange of financial intelligence, improving expertise and capabilities of the personnel of such organizations, and fostering better communication among FIUs through the application of new technologies. Today, Egmont Group members share a secure website for the transmission of financial intelligence, and common capabilities and standards based in large part upon the 40 FATF Recommendations.

Statement of Purpose (2001)

European Union. In addition to establishing standards on financial regulation for its member states, the EU's PHARE program has carried out evaluation and technical assistance on financial regulation, including money laundering, for candidates for membership in the EU through the enlargement process.

First Directive on Money Laundering (1991)

Second Directive on Money Laundering (2001)

Financial Action Task Force. The FATF is an inter-governmental body that develops and promotes policies, both nationally and internationally, to combat money laundering. It currently has 29 member countries and two regional organizations. It was established by the G-7 Summit in Paris in 1989 to develop a program to combat money laundering. In addition to carrying out standard setting and conducting mutual assessments, the FATF has undertaken an extremely successful "name and shame" program with its non-cooperative countries and territories that has resulted in the rapid enactment of money laundering laws in most targeted jurisdictions. The establishment of the FATF has also engendered a series of regional FATF-style bodies that in addition to adopting the FATF's recommendations have added further recommendations appropriate to their regions. The regional bodies have also carried out mutual assessments, monitoring, technical assistance, and training. Currently, they include: the Caribbean Financial Action Task Force (CFATF) (1990), the Council of Europe evaluation mechanism known as the PC-R-EV (1997), the Asian Pacific Group (1997), the Eastern and the Southern African Anti-Money Laundering Group (ESAAMLG) (1999) and the South American Financial Action Task Force (GAFI-SUD) (2000). More than 120 jurisdictions are members or observers of the FATF and/or one or more of the FATF-style regional bodies.

Forty Recommendations (1990)

Revisions to 40 Recommendations (1996)

Non-Cooperative Countries and Territories Initiative (1999)

Terrorist Finance Special Recommendations (2002)

Group of Seven/Group of Eight. The G7/G8 process has played the central role in the creation of two major initiatives to counter money laundering. During the French presidency of the G7 in 1989, the G7 heads of state agreed to create the FATF. A decade later, the Finance Ministries created the Financial Stability Forum as a mechanism to combat instability in global financial markets, focusing especially on such areas of non-transparency as the offshore sectors and hedge funds. Both initiatives resulted in the establishment of inter-governmental organizations that have had sustained impact in setting global standards for financial regulation.

Establishment of FATF (1989)

Expansion of FATF (1998)

Creation of Financial Stability Forum (1999)

International Monetary Fund (IMF). In 2001, the IMF agreed to recognize the 40 Recommendations of the FATF as the appropriate standard for combating money laundering and agreed that the IMF should expand its role in combating money laundering to include more technical assistance for members, particularly for capacity building. In 2001, the FATF endorsed merging the IMF/Bank and FATF Working Group draft methodologies for assessing countries anti-money laundering capacities and sharing experts for IMF/ Bank-led assessment missions. Currently, IMF and Bank staff are collaborating with the FATF Secretariat, other financial standard setters (the Basel Committee of Banking Supervisors, the International Association of Insurance Supervisors, and the International Organization of Securities Commissions), and the Egmont Group in refining a methodology to assess specific sectors of financial services. In 2002, the IMF and World Bank, together with the FATF, reached agreement in principle on a set of global standards for the evaluation of national anti-money laundering regimes.

Endorsement, FATF 40 Recommendations (2001)

Initiation, Anti-Money Laundering Assessment and Technical Assistance Program, based on acceptance of global anti-money laundering standards (2002) (in collaboration with the World Bank and the FATF)

International Organization of Securities Commissions (IOSCO). IOSCO is a coordination mechanism to facilitate cooperation among national regulators of securities and futures markets. It develops and promotes standards of securities regulation to maintain efficient and sound markets, including the supervisory and enforcement functions.

Resolution on Money Laundering (1992)

International Association of Insurance Supervisors (IAIS). The IAIS was established in 1994 to promote cooperation among insurance regulators and supervisors from among more than 100 jurisdictions. It is charged with developing internationally endorsed principles and standards for effective insurance regulation and supervision.

Anti-Money Laundering Guidance Notes for Insurance Supervisors and Insurance Entities (2002)

Organization of American States (OAS). In addition to establishing a model law for the Americas that includes as a predicate offense the crime of “illicit enrichment” as a mechanism to criminalize the proceeds of corruption, the OAS provides technical assistance through the offices of CICAD, the Interamerican Center Against Drugs.

Summit of the Americas Ministerial Conference Concerning the Laundering of Proceeds and Instrumentalities of Crime (1995)

Model Regulations Concerning Laundering Offenses Connected to Illicit Drug Trafficking and other Serious Offenses (1998)

Offshore Group of Bank Supervisors (OGBS). Established in October 1980 at the instigation of the Basle Committee on Banking Supervision with which the Group maintains close contact, the OGBS seeks to promote the effective supervision of banks in their jurisdictions and to further international cooperation in the supervision between the Offshore Banking

Supervisors and between them and Basle Committee member nations and other banking supervisors. Current OGBS members are: Aruba, Bahamas, Bahrain, Barbados, Bermuda, Cayman Islands, Cyprus, Gibraltar, Guernsey, Hong Kong, Isle of Man, Jersey, Lebanon, Malta, Mauritius, Netherlands Antilles, Panama, Singapore and Vanuatu.

Supervision of Crossborder Banking (1996) (in conjunction with the BCBS)

Customer Due Diligence for Banks (2001), (in conjunction with the BCBS)

Organization for Economic Cooperation and Development (OECD). Separately from its hosting of the FATF Secretariat, the OECD launched an initiative to address harmful tax practices in both member and non-member jurisdictions in 1998, which included many elements of the same infrastructure used to carry out money laundering, especially refusal to exchange information with other jurisdictions and no transparency regarding financial transactions. The OECD set out criteria for identifying tax havens and identified in 2000 a number of jurisdictions as meeting the tax haven criteria. In response, 31 jurisdictions took action to end various harmful tax practices, including agreements to exchange tax-related financial information.

OECD Project on Harmful Tax Practices (1998-2001)

Model Tax Convention (amended 2002)

United Nations. The UN established the first international framework for combating money laundering in 1988 with the inclusion of obligations against the laundering of the proceeds of illicit drugs in its comprehensive anti-drug convention. Since then, the UN has continued to address money laundering through expansion of the 1988 obligations to cover non-drug crimes, through the adoption of resolutions against terrorist finance, and through the development of technical assistance programs at the UN Drug and Crime Control Program (UNDCCP) in Vienna. Oversight of these programs is undertaken through annual meetings of the Commission on Narcotic Drugs and the Crime Commission.

Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) (1988)

Convention for the Suppression of the Financing of Terrorism (1999)

Model Legislation on Laundering, Confiscation and International Cooperation in Relation to the Proceeds of Crime (civil law jurisdictions) (1999)

Model Money Laundering and Proceeds of Crime Bill (common law jurisdictions) (2000)

Convention Against Transnational Organized Crime (Palermo Convention) (2000)

Resolution 1373 on Prevention and Suppression of Terrorist Finance (2001)

Resolution 1390 on Prevention and Suppression of Terrorist Finance (2002)

Wolfsberg Group. The Wolfsberg Group consists of twelve international banks that collectively agreed to a set of global anti-money-laundering guidelines for international private banks in October 2000 in collaboration with a team from Transparency International, an

international anti-corruption non-governmental organization. Since then, the Wolfsberg has adopted two further guidelines, covering terrorist finance and correspondent banking. These guidelines largely mirror the toughest emerging international best practices being established by the U.S. and the EU in 2001 and 2002, thus constituting the most comprehensive set of guidelines applicable to financial institutions on a global basis.[11]

Global Anti-Money Laundering Guidelines for Private Banking (2000)

Suppression of the Financing of Terrorism (2002)

Guidelines on Correspondent Banking (2002)

World Bank. In 2001, the World Bank agreed to join the IMF in undertaking monitoring and diagnostics of developing countries regarding their anti-money laundering capabilities in collaboration with relevant anti-money laundering groups including FATF, the regional groups, and the UN. Based on the diagnostic work and policy dialogue, the World Bank would provide technical assistance and support for capacity building in the areas of the Bank's domain and within the framework of its country assistance strategies, while seeking to improve the understanding of the development costs and impact of money laundering and financial abuse, and publicizing the importance of collective actions in this area.

Endorsement, FATF 40 Recommendations (2001)

Initiation, Anti-Money Laundering Assessment and Technical Assistance Program, based on acceptance of global anti-money laundering standards (2002) (in collaboration with the IMF and the FATF)

[11] They are ABN Amro N.V. ,Banco Santander Central Hispano, S.A, Bank of Tokyo-Mitsubishi, Ltd.,Barclays Bank, Citigroup, Credit Suisse Group, Deutsche Bank AG, Goldman Sachs, HSBC, J.P. Morgan Chase, Société Générale, and UBS AG.

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Fafo AIS is an Oslo-based policy research institute that supports the management of change in countries in transition from conflict or economic restructuring. As a compliment to this work, Fafo AIS runs a Programme for International Co-operation and Conflict Resolution (PICCR) as an umbrella for initiatives related to the policies and practices of international responses to armed conflict.

In partnership with other non-governmental organisations, governments, and multilateral institutions, PICCR is actively engaged in efforts to understand and promote sustainable conflict resolution, effective multilateral co-operation and efficient international organisation. Since its inception in 1998, PICCR has implemented a series of policy fora and research projects related to peace operations and international responses to insecurity and conflict.

Globalizing Transparency:
Implementing a Financial Sector White List

Illicit finance networks of global scope are facilitating instability and insecurity. Where there is grand corruption, narcotics trafficking, arms smuggling, civil conflict, terrorism, and war, there is illicit finance. As described in *Illicit Finance and Global Conflict* (Jonathan Winer, Fafo AIS Report 380, 2002), these illicit networks are embedded in the world's licit financial services infrastructure.

In *Globalizing Transparency*, Jonathan Winer builds on the most significant recent work undertaken in the private and public sectors to suggest an incentive-based regime to assist global financial institutions in dealing with the most dangerous aspects of illicit finance. The global financial sector White List suggested here builds on the existing international institutional frameworks that governments and banks have set up to address money-laundering and related phenomena, adding incentives for banks to implement the highest agreed standards of transparency across their operations globally.

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Fafo AIS

The Fafo Institute of Applied Social Studies – Fafo AIS – conducts applied social science research in an international context.

We support the management of change in countries experiencing rapid transition from economic restructuring or the emergence from conflict through a focus on living conditions and policy development.

Our objective is to produce research for domestic and international policy-making and implementation. Our aim is to enable the participation of local actors in the development process.

See www.fafo.no/ais for a full presentation of our projects and publications.

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