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Via Electronic Delivery

Secretariat
Financial Action Task Force
FATF.Publicconsultation@fatf-gafi.org

To Whom It May Concern:

We appreciate the opportunity to offer comments to the Financial Action Task Force (“FATF”) regarding the Interpretive Note to Recommendation 15 (the “Interpretive Note”), in particular, proposed paragraph 7(b).

I. Introduction

The Chamber of Digital Commerce (the “Chamber”) is the world’s largest trade association representing nearly 200 members in the digital asset and blockchain industry. Our mission is to promote the acceptance and use of digital assets and blockchain technologies, and we are supported by a diverse membership that represents the industry globally.

Through education, advocacy, and close coordination with policymakers, regulatory agencies, and industry across various jurisdictions, our goal is to develop a pro-growth legal environment that fosters innovation, job creation, and investment. We represent the world’s leading innovators, operators, and investors in the digital asset and blockchain technology ecosystem, including leading edge start-ups, software companies, global IT consultancies, financial institutions, insurance companies, law firms, and investment firms. Consequently, the Chamber and its members have a significant interest in the proposed Interpretive Note.

The Chamber recognizes that modernizing anti-money laundering (“AML”) laws to counter money laundering and terrorist financing is a critical issue. This objective is particularly important in light of the technological advancements in technology that enable people and industries to engage in borderless commerce in new and important ways. The Chamber supports effective regulatory action to mitigate the risks presented by emerging technologies, including virtual currencies but believes that more work needs to be done before a final Interpretive Note can be issued.

With respect to the proposed language of the Interpretive Note, we offer the following comments.

II. The Broad Scope of the Definitions of Virtual Asset and Virtual Asset Service Provider Render the Proposed Paragraph 7(b) Too Expansive and Potentially Capture Non-Financial Institution Businesses

As presented, we believe that proposed Paragraph 7(b) of the Interpretive Note, as written, is far broader than current AML recommendations, primarily due to the defined terms “virtual asset” and “virtual asset service provider” (“VASP”). The term virtual asset is defined as “a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes. Virtual assets do not include digital representations of fiat currencies, securities and other financial assets that are already covered elsewhere in the FATF Recommendations.”¹

As a result, the term “virtual asset” covers any transferable asset that is used for payment or investment purposes, whether financial or not financial. This could cover a host of other uses, including fractional property interests, for example, as well as in-game tokens and event tickets to name a few. These types of assets are not currently covered in the FATF Recommendations or member-country AML regulations. In the United States, for example, the Bank Secrecy Act applies to certain enumerated financial institutions, which include banks, money transmitters, check cashers, companies offering certain types of insurance products, prepaid access products, and others. It does not apply to interests in non-financial assets.

The complication is compounded by the fact that tokenization now allows consumers to hold an interest, via a digital token on a blockchain, in a real-world asset that is not necessarily a financial or monetary instrument but that may have some value. As a result, we believe the definition of “virtual asset” is too broad for the purposes of the Interpretive Note generally and paragraph 7(b) in particular.

To date, it is more common to see descriptions of regulated financial activity involving a virtual asset limited to its function as a medium of exchange, particularly in the wire transfer context. For example, the United States uses the term “convertible virtual currency” to describe “a medium of exchange that operates like a currency in some environments but does not have all the attributes of real currency. In particular, virtual currency does not have legal tender status in any jurisdiction.”² It is considered convertible when it “either has an equivalent value in real currency, or acts as a substitute for real currency.”³ The European Union uses the term “virtual currencies,” which means a digital representation of value that is not issued or guaranteed by a central bank or a public authority, is not necessarily attached to a legally established currency and does not possess a legal status of currency or money, but is accepted by natural or legal persons as a means of exchange and which can be transferred, stored and traded

¹ See The FATF Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, 124, FIN. ACTION TASK FORCE (Oct. 2018), <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf> (“the Recommendations”). We note that some virtual assets may properly be considered securities. As well, a number of governments are considering the potential of offering a central bank-issued digital currency. This definition does not appear to address these forms of virtual asset consistently across FATF recommendations.

² FIN-2013-G001, *Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies*, FIN. CRIMES ENF’T NETWORK (Mar. 18, 2013), <https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf>.

³ *Id.*

electronically.⁴ The FATF has previously used the term “virtual currency,” which it defined as “a digital representation of value that can be digitally traded and functions as (1) a medium of exchange; and/or (2) a unit of account; and/or (3) a store of value, but does not have legal tender status . . . in any jurisdiction.”⁵ It is unclear how this definition will intersect with these concepts.

Further, the definition of “virtual asset service provider” means “any natural or legal person who is not covered elsewhere under the Recommendations, and as a business conducts one or more of the following activities or operations for or on behalf of another natural or legal person:

- i. exchange between virtual assets and fiat currencies;
- ii. exchange between one or more forms of virtual assets;
- iii. transfer of virtual assets;*
- iv. safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and
- v. participation in and provision of financial services related to an issuer’s offer and/or sale of a virtual asset.

* In this context of virtual assets, *transfer* means to conduct a transaction on behalf of another natural or legal person that moves a virtual asset from one virtual asset address or account to another.

Due to the definition of virtual asset, subsection (iii) remains too broad as it covers more than financial products or services. Subsection (iv) covers the activities of “safekeeping” and “administration” of virtual assets, as well as “instruments enabling control over” virtual assets. Yet these are all undefined terms. The recommendations by FATF can have significant consequences and key terms like these should not be undefined or ambiguous. For example, is “safekeeping” a deposit? Is it maintaining a private key on behalf of a customer? What does it mean to conduct “administration” of virtual assets? These are questions the answers for which have not yet been determined and continue to evolve. Note, for example, that MLD 4 applies only to “providers engaged in exchange services between virtual currencies and fiat currencies” and “custodian wallet providers.” The application of these terms in a virtual asset context need to be clearly understood prior to finalizing the Interpretive Note.

Perhaps most problematic, the term “virtual asset service provider” fails to acknowledge the unique nature of virtual assets and virtual asset platforms. While the FATF definition defines a VASP to include the “transfer of virtual assets,” these can be transferred peer to peer, without the notice or consent of the VASP. Thus, while a financial institution may be considered a VASP and an originator, individuals or businesses may handle the transfer. This definition creates confusion and appears to then apply the VASP definition to individuals and business conducting the transfer itself.

The term is broad enough to raise the question of whether certain third-party service providers, such as a multi-signature service providers and others, would be captured in this new

⁴ See Article 3(18) of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the Prevention of the Use of the Financial System for the Purposes of Money Laundering or Terrorist Financing, 2019 O.J. (L 141), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849> (“MLD 4”).

⁵ *Virtual Currencies, Key Definitions and Potential AML/CFT Risks*, FIN. ACTION TASK FORCE (June 2014), <http://www.fatf-gafi.org/media/fatf/documents/reports/Virtual-currency-key-definitions-and-potential-aml-cft-risks.pdf>.

requirement. The VASP definition (iv) “safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets” could appear to apply to multi-signature services, for example, which operate as a cybersecurity tool to ensure a consumer’s assets are not accidentally or maliciously transferred. The VASP definition (ii) could also capture participants in a payment platform outside traditional transfer activity, such as merchants who accept payment in digital assets. Providers of these services should not be captured in money laundering beneficiary/originator requirements.⁶

The key should be that those institutions acting as a “financial institution” offering financial products and services as a means of payment or exchange on behalf of a customer are subject to these information travel rule requirements. The fact that this paragraph is reflecting on Recommendation 16 (“R. 16”) dealing with “Wire Transfers” supports this interpretation. Whereas the original text of R. 16 addresses “financial institutions,” the proposed Interpretative Note pulls in all “VASPs,” which is a term that is much broader than financial institutions. Treating any transfer of a “virtual asset,” whether by a financial institution or not, akin to a wire transfer would appear to be a significant expansion of R. 16. Thus, the scope of any definition should be limited to regulating the function as a currency and exclude non-currency uses and services that are ancillary to transfer of virtual currency as a medium of exchange, such as digital tokens or assets that do not function as currencies or mediums of exchange, as well as providers of third-party software services such as multi-signature services.

We recommend the following:

1. The definition of “virtual asset” be limited to virtual assets transferable for payment or as “a medium of exchange” and not to all virtual assets transferable for payment *or investment* for purposes of R. 16.
2. The definition of “virtual asset service provider” should be limited to those institutions directly providing a financial service, such as exchange or custody only, to a beneficial owner of virtual assets, and not third-party service providers to those organizations that provide services ancillary to a virtual asset platform.
3. Paragraph 7(b) should make clear that it is only applicable to virtual asset service providers that conduct a transfer on behalf of a beneficial owner of virtual assets and that such virtual asset that operates as a medium of exchange and not all virtual assets.

III. Information Identifying a Beneficiary or Originator May Need Adjustment from Existing Standards Due to the Unique Nature of Virtual Asset Transactions

The new requirement should more clearly articulate that information required to be recorded for virtual assets may differ from current regulation in important ways. Virtual currency transactions,

⁶ The definition is broad enough to potentially include third party service providers who typically are not required independently to maintain an AML compliance program (including customer due diligence (CDD), transaction monitoring, politically exposed persons (PEP) screening, identifying high risk third countries and other high risk sectors, reporting suspicious activity, and others) but, rather, are overseen by the regulated financial institution for their supporting role in the activity. Moreover, these third-party service providers are already subject to indirect financial regulatory oversight (at least in the U.S.) by virtue of being a service provider to a regulated financial institution. Even though the broad and comprehensive AML compliance programs are not required for such third parties, many regulators retain the ability to ensure that the activities of the third parties are not detrimental to the AML compliance regimes of their regulated customers.

for example, typically include a wallet identifier rather than an account number. The possibility of such “equivalent information” is mentioned in a footnote; however, this differentiator is a significant one in the virtual asset context. The information that is required to be maintained has important ramifications for cybersecurity and privacy standards. Clarifications on how any new mandates like AML on these systems would need to include the requisite discussion of global cybersecurity and privacy requirements as well. In many cases, blockchains do not have a central authority and as such, the requirement to collect, retain, use and protect the data becomes unclear, especially in the case of public, permissionless systems.

We recommend that the FATF articulate more directly the fact that the information required in this context may be different than current funds transfer information requirements, and that some new information in the virtual asset context may be required in lieu of other information. For example, the narrative could state that a “wallet” address may be required to be recorded instead of an account number. These are typically precise requirements in enabling legislation, such as in the United States, and should acknowledge that they may not be identical as currently existing provisions.⁷

We recommend the following:

1. The proposed language should allow for the fact that the originator and beneficiary information required, as relevant, may be different for virtual assets transactions than for fiat currency transactions, and that additions and exclusions may be necessary.

IV. The FATF Should Reconsider the Customer Due Diligence (“CDD”) Threshold in Paragraph 7(a) of the Interpretive Note

Paragraph 7(a) of the Interpretive Note, which references Recommendation 10 (“R. 10”) relating to requirements for conducting CDD, sets a threshold of USD/EUR 1,000 in the context of VASPs. We believe this threshold is arbitrarily low and should be reconsidered. In particular, R. 10 references a USD/EUR 15,000 threshold for occasional transactions. Virtual assets should be subject to similar requirements as their “tangible” counterparts and should not be subject to a threshold that differs so significantly from other equivalent asset transfers.

We recommend the following:

1. The threshold for paragraph 7(a) of the Interpretive Note should set a threshold consistent with existing standards within R. 10.

V. The Evolving Nature of Digital Commerce

The FATF is to be commended for working to address concerns around AML and terrorist financing in an evolving digital environment. The underlying technology that underpins virtual currencies and the business community that is utilizing it, however, is: 1) intentionally structured in a way that differs from the current banking and financial services sector; and 2) supports a host of non-financial applications. This can, at times, present a challenge when applying existing principles to these new digital solutions. Conversely, these platforms can utilize advances in technology to help achieve FATF goals.

⁷ See Records to be Made and Retained by Financial Institutions, 31 C.F.R. 1010.410(e) (2016).

FATF acknowledges in its own report to the G20 that few nations actually have extensive laws or regulations addressing these issues.⁸ This creates a competitive disadvantage to those companies operating in jurisdictions that do require such systems. Nevertheless, utilizing definitions that do not fit the industry operationally, seeking to apply AML requirements to non-financial industries, and not making recommendations that are indicative of the nature of the technology and respective use cases will create greater confusion and not achieve the FATF's goals. In order for these issues to be effectively addressed, FATF needs to extend the consultative period, working directly with the private sector, to better understand these systems. The process also needs to recognize the different use cases for virtual assets that are not virtual currencies or do not operate as mediums of exchange.

Finally, the regulatory structure governing virtual assets is still evolving. Even legal and technological experts disagree on the best way to define terms and regulate (or not regulate) the technology. As a result, using terms that do not adequately address the actual state of the technology will scuttle attempts at compliance and cause further confusion.

We recommend the following:

1. The FATF should extend the comment period and solicit greater input from the private sector (particularly the technology community), as well as academia, to develop further analysis and input as to how and whether the Interpretive Note, particularly the requirement to gather identifying information as to the originator or beneficiary of a transmitted virtual asset, is possible and appropriate within the current uses of the technology.

We appreciate this opportunity to offer comments and would be pleased to provide further information to support the FATF's work.

Very truly yours,



Amy Davine Kim
Chief Policy Officer
Chamber of Digital Commerce

⁸ See *FATF Report to the G20 Finance Ministers and Central Bank Governors*, FIN. ACTION TASK FORCE (Nov. 2018), <http://www.fatf-gafi.org/publications/fatfgeneral/documents/report-g20-leaders-nov-2018.html>.