



ICSA

INTERNATIONAL COUNCIL of SECURITIES ASSOCIATIONS

November 30, 2009

Tom Neylan, Co-Chair, FATF Proliferation Financing Project Team
Riccardo Sansonetti, Co-Chair, FATF Proliferation Financing Project Team

Re: Comment on FATF preliminary report regarding policy options for combating proliferation financing

Dear Sirs:

We are writing on behalf of ICSA members in response to your invitation to comment on the preliminary report of the FATF Proliferation Financing Project Team regarding policy options for combating proliferation financing (referred to as the Report).¹ In light of the important issues under discussion, we greatly appreciate the opportunity to comment on this Report. Our comments are detailed below.

Export control regimes a major part of the solution

As a general point we believe that the best means to address the problem of proliferation financing is through “export control regimes”. In such a regime exporters would be required to apply for licenses to export these specific types of goods, which would shift some of the responsibility away from banks and financial institutions and toward those governmental and quasi-governmental agencies that are far better qualified to judge the nature of the activities under review. In this case, financial institutions that provide finance to exporters (bilateral or syndicated means or trade finance route) as part of their

¹ ICSA is composed of trade associations and self-regulatory organizations that collectively represent and/or regulate the vast majority of the world’s financial services firms on both a national and international basis. ICSA’s objectives are: (1) to encourage the sound growth of the international capital market by promoting harmonization in the procedures and regulation of those markets; and (2) to promote mutual understanding and the exchange of information among ICSA members. It should be noted that this comment letter has been prepared by a limited number of ICSA members since many ICSA members do not represent and/or regulate firms that are directly involved with the issues discussed in the Report.

due diligence should be able to obtain confirmation that all necessary export licenses had been obtained and those licenses should be made available to the financial institutions upon request. We recognise that this would need to be an international effort and that it would need to be policed and enforced in a way similar to the process adopted for money laundering, as set out in the FAFT requirements. We are gratified to see that these issues are recognised in the Report.

In practical terms we believe that the trade finance model has certain weaknesses as, for example, the exporter and beneficiary of a letter of credit may not be a customer of the confirming bank and therefore there may be no requirement to undertake CDD, since in these circumstances the bank concerned usually simply checks to see the supporting paperwork is in order.

Countries with no or inadequate export controls

Some ICSA members consider that it would be helpful to have a list of those countries that do not have adequate export control regimes. In addition, it would be useful to have a consolidated international list of those end users about whom there are proliferation doubts similar to the list of 100 Iranian entities produced by the UK's Export Control organisation. Firms could then add those names to their screening processes in order to detect possible transactions with such entities.

The role of banks and other financial institutions

We are concerned that some FATF members may have unrealistic expectations concerning the ability of banks and other financial institutions to stop or detect proliferation. There are certain actions that banks and other financial institutions can take to mitigate their use for the purpose of proliferation. However, we believe that these private firms should not be put in a position where they are asked to take on extra duties and responsibilities for which they are not qualified. We are gratified to see that the Report recognises this situation. However, we would suggest that this specific issue could be strengthened in the final Report, in order to ensure that the point is not lost on the governmental and quasi-governmental agencies that will be considering future policy and requirements concerning proliferation financing.

Additional commentary on the report

We consider that the Report sets out well the issues and problems that banks and other financial institutions face regarding proliferation financial. The Report presents the issues fairly and states the case for cooperation and dialogue between all interested parties in order to arrive at solutions that would lessen the spread of weapons of mass destruction. We were pleased to see that the Report highlights the need for improved export control regimes at the global level.

We think that the final Report would be improved by moving the recommendations (section VIII Summary of Policy Options for Consideration) towards the front of the Report with the detailed text following. Changing the text in this manner would allow the reader to select the matters relevant to his/her sector and then read the in-depth analysis rather than the other way around.

Definition of proliferation financing

We appreciate the effort that has gone into devising a definition which is not overly complex for the reader. However, we are concerned about the possible implications of the definition given in the footnote of page 3 of the Report. Specifically we are concerned that, as is stated in the footnote, “The definition of an *act* of proliferation financing need not involve knowledge. However, when considering the responsibilities of financial institutions or a possible criminal basis of proliferation financing, a subjective element will be indispensable.” ICSA members are concerned about the “no knowledge” aspect of the definition and specifically what this could mean for financial institutions in compliance terms. We are also concerned that the qualification indicates a “suspicion” regime. Under this definition, it is possible that banks and other financial institutions could be seen as participating in proliferation financing even in situations where there was no realistic prospect for them to be able to spot the problem. Given these possible problems, we believe that the definition given in the Report needs further work and we support the view set out in the paper calling on FATF to look at this specific issue in greater depth.

Export Control Systems

As indicated above, we strongly agree with the statement in paragraph 48 of the Report, which states that, “Consistent international implementation of export controls is a prerequisite for effective proliferation finance measures”. We think this point could be made more strongly in the final Report in order to ensure that the authorities realize that they hold the key to better control over proliferation and financial institutions can only play a supporting role.

Targeted financial sanctions

We support the idea behind targeted financial sanctions and set out above the suggestion for lists to assist in screening both jurisdictions and organisations (end users). We support the call for further work in this area.

Responsibilities of financial institutions

We believe that the risk-based approach should be applied to proliferation financing issues and support the need for further analysis to be undertaken by the WGTM in collaboration with the private sector.

Sharing Information

We consider that the report presents this issue fairly and would support the policy options and suggested areas for further work set out in that section of the Report.

In closing, once again we appreciate the opportunity to comment on this preliminary Report and look forward to the final Report.



Marilyn Skiles, Secretary General
International Council of Securities Associations (ICSA)