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# Introduction to Combating Threats to the International Financial System: The Financial Action Task Force

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## Introduction

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## INTRODUCTION

The U.S. legal profession is not as familiar with the Financial Action Task Force (FATF) as it should be. That is perhaps the single most important message of this issue published by the *New York Law School Law Review*, which now makes available to everyone the information and analyses presented at the April 25, 2013 symposium.<sup>1</sup> It is the substance of the work published here that gives meaning to that message.

The FATF is one of the most important legal manifestations of the world in which we live, a world marked by true globalization of capital flows for good and for ill where any one of us can send money to any part of the world for any purpose. The good is the ability to send money quickly and cheaply across national borders, whether for investment or transfer to other individuals. The ill exists because not all of these transfers are seen as good and useful by governments and, no doubt, the many people they represent. The laundering of the profits derived from illicit enterprises, the dispatch of money to fund organizations (large and small, well-known and obscure) bent on accomplishing their goals through violence, and the transfer of funds to avoid legitimate taxation, are all enabled by the same structures that make it possible to invest anywhere in the world and to transfer funds to family and friends.

Governments are determined to protect their populations from both the direct and indirect harm to the public fisc. One of the manifestations of that determination is the FATF, an intergovernmental body whose objectives “are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.”<sup>2</sup> Enforcing these standards often requires financial institutions to monitor and sometimes to report their customers’ money transfers. These demands on institutions raise many questions about the proper relationship between institutions and their clients, as well as practical questions regarding enforcement. Some of the symposium dealt with these sorts of questions as applied to what we can call the corporate world. Much of the rest dealt with the FATF and its relationship to practicing attorneys and their clients.

The symposium panel members were a mix of practitioners, government officials, and academics, who produced a wide-ranging discussion with all of the interest and insights that come from putting into one room highly knowledgeable people with different points of view. For many panelists, understanding and dealing with the FATF is part of their jobs either as government officials or as employees of firms that deal with compliance in its many manifestations. The practicing lawyers who spoke, however, are not FATF professionals—to coin a term—but come to the subject through the effects that FATF standards have on the relationship between lawyers and their individual clients. We should not be surprised that these lawyers’ practices involve real estate and trusts and estates, areas of practice dealing with the plans of individuals for organizing their financial affairs in a world where national boundaries are far less significant for economic activity than they once were,

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1. New York Law School Law Review Symposium: Combating Threats to the International Financial System: The Financial Action Task Force (Apr. 25, 2013). For more information and recordings of this symposium, visit <http://www.nylslawreview.com/fatf/>.

2. *Who We Are*, FIN. ACTION TASK FORCE, <http://www.fatf-gafi.org/pages/aboutus/> (last visited Apr. 10, 2015).

inevitably involving the sorts of transfers of money and property which are the subject of the FATF's pronouncements.

Understanding the FATF is, of course, vital to the competent practice of law in these areas and in many others. What we should remember, however, is that the practicing lawyers who took part in the symposium have devoted time and energy not only to understanding the FATF but also to taking part in the creation and evolution of the FATF regime. They are representatives of the U.S. legal profession, bringing the views of the bar to the FATF deliberations and, in turn, bringing knowledge of the FATF back to the bar.

While the dissemination of the knowledge contained in the following pages is the purpose behind the publication of this *Law Review* issue, it also creates another sort of teachable moment. The full participation from members of the practicing bar in the symposium—itsself predicated on their long and deep involvement in the evolution of the FATF—alongside government officials, academics, and lawyers working in corporate settings, should remind all of us that the legal profession is an integral part of the American polity. A good many of our elected officials are often lawyers, a fact illustrated by the membership of the Constitutional Convention and every session of Congress since, and of course by the membership of state legislatures and the professional affiliation of so many governors and presidents. What we sometimes forget, however, is that lawyers' public role is not limited to holding elective office. Participating in lawmaking outside the scope of public office and (as with the FATF) international organizations is part and parcel of the life of American lawyers. That role is one reason why U.S. legal education has always to some degree been about more than the inculcation of legal rules and principles and has always, again to some degree, tried to make the neophyte understand that lawyers have a duty to help guide the development of law as part of their general obligation of public service. That obligation can be fulfilled in several ways over the course of a legal career, but one way is to take part as a knowledgeable professional in creating statutes and regulations.

Not all of us will necessarily find ourselves included in the deliberations of international organizations making rules and regulations for the entire world, but opportunities on a somewhat smaller scale can come through bar associations and other professional organizations. We lawyers should seize those opportunities and do the best we can to leave the law better than we found it. This issue of the *New York Law School Law Review* is a contribution to that goal.