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FATF Adopts New Anti-Money Laundering Guidelines for Virtual Assets and Related Providers

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The Financial Action Task Force (“FATF”)—an independent intergovernmental body that develops and promotes policies to protect the global financial system from money laundering and terrorist financing—has released new guidance¹ governing virtual assets (“VAs”) and virtual asset service providers (“VASPs”) (the “Guidance”).

The Guidance follows October 2018 revisions to the FATF Recommendations (the “Recommendations”), the comprehensive framework of measures that FATF recommends countries implement in order to combat money laundering and terrorist financing. These revisions clarified that the Recommendations apply to financial activities involving VAs and added “virtual asset” and “virtual asset service providers” to the glossary. In February 2019, FATF released a proposal regarding specifics on how the FATF requirements apply in relation to VAs, which was discussed at a private-sector consultation forum in Vienna in May. The final Guidance was released on June 21.

The Guidance is intended to assist national authorities with understanding and developing regulatory responses to covered VA activities and VASPs, as well as to assist private sector entities engaged in VA activities with understanding their compliance obligations under the FATF Recommendations. Section I provides background information and outlines the purpose and scope of the guidance. Section II examines how VA activities and VASPs fall within the scope of the FATF Recommendations. Section III explains how the FATF Recommendations apply to countries and competent authorities. Section IV discusses how the FATF Recommendations apply to VASPs and similar entities that engage in or provide VA covered activities. Section V offers examples of jurisdictional approaches to regulation, supervision, and enforcement for covered VA activities and VASPs.

VA Transfer Requirements

Under the Guidance, the 37 member jurisdictions and two member regional organizations must assess and mitigate the money laundering and terrorist financing risks associated with VA activities. Most notably, the Guidance unequivocally applies FATF Recommendation 16 to VA transfers. FATF Recommendation 16 is the genesis for the U.S. Treasury Department Financial Crimes Enforcement Network’s (“FinCEN”) so-called “Travel Rule.” Specifically, FATF Recommendation 16 includes the “obligations to obtain, hold, and transmit required originator and beneficiary information in order to



identify and report suspicious transactions, monitor the availability of information, take freezing actions, and prohibit transactions with designated persons and entities.”

The obligation to obtain, hold, and transmit the required information applies to VASPs and financial institutions “when they send or receive VA transfers on behalf of a customer.” The Guidance notes that countries should adopt these requirements for VA transfers greater than or equal to USD/EUR1,000, unlike the FinCEN travel rule that only applies to transfers greater than or equal to USD3,000.

Under the Guidance, the required information for each VA transfer includes:

1. originator’s name (i.e., the sending customer);
2. originator’s account number where such an account is used to process the transaction (e.g., the VA wallet);
3. originator’s physical (geographical) address, or national identity number, or customer identification number (i.e., not a transaction number) that uniquely identifies the originator to the ordering institution, or date and place of birth;
4. beneficiary’s name; and
5. beneficiary’s account number where such an account is used to process the transaction (e.g., the VA wallet).

This information is required due to clarification in the Guidance that countries must treat all VA transfers as cross-border wire transfers rather than domestic wire transfers, which have less onerous transfer information requirements.

Providers of VA transfers must transmit the required information “immediately and securely.” The Guidance explains that “immediately” means “that providers should submit the required information simultaneously or concurrently with the transfer itself.”

VASP Licensing and Registration

Also of note, the Guidance requires countries to “designate one or more authorities that have responsibility for licensing and/or registering VASPs.” At a minimum, countries must require VASPs to become licensed or registered in the jurisdiction(s) “where they are created,” meaning where they are incorporated. A natural person may also be considered a VASP, in which case the person should be licensed or registered in the jurisdiction “where its place of business is located.”

Additionally, FATF is giving countries the option to prohibit VA activities at a national level or require VASPs to be licensed or registered before conducting VA activities in or from their jurisdiction.

The Guidance asks countries to require licensed and registered VASPs to meet appropriate criteria set by relevant authorities. Based on the size and nature of the VASP activities, such criteria may include “requiring a resident executive director, substantive management presence, or specific financial requirements.” Countries should also have supervisory authority to conduct inspections, compel production of information, and impose disciplinary and financial sanctions for VA activity. Specifically, the Guidance requires countries to take action to identify unlicensed and unregistered activity and



cooperate with the international community to “identify, freeze, seize, and confiscate the proceeds and instrumentalities of crime that may take the form of VAs.”

Takeaways

The Guidance was released shortly before the one-year U.S. presidency of FATF ended on June 30. The position was held by Marshall Billingslea, the Assistant Secretary for Terrorist Financing in the U.S. Treasury. Billingslea had mentioned “taking concrete steps to address the illicit financing risks associated with virtual currencies and related assets” as a top priority of his presidency.² Given this, the May 9 FinCEN guidance regarding regulation of convertible virtual currencies³ appears to have been released in anticipation of the new FATF Guidance.

In a public statement issued on June 21,⁴ FATF noted that it will monitor implementation of the new Guidance by countries and providers by conducting a twelve-month review in June 2020. While the FATF Guidance and Recommendations are not binding, member countries are subject to mutual evaluation and scored by other members on their compliance with and enforcement of the FATF Recommendations. Countries that fail to substantially cooperate may face a remediation period or blacklisting. Accordingly, the release of the Guidance and the June 2020 review suggest that an increase in enforcement actions for unlicensed or unauthorized VA activity, and the failure to comply with the Travel Rule, is likely forthcoming in the U.S. and other jurisdictions.



If you have any questions concerning these developing issues, please do not hesitate to contact either of the following Paul Hastings Atlanta lawyers:

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¹ Financial Action Task Force [FATF], *Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers*, FATF (June 2019), <https://www.fatf-gafi.org/media/fatf/documents/recommendations/RBA-VA-VASPs.pdf>.

² Remarks by FATF President Marshall Billingslea, FATF Ministerial Meeting, Financial Action Task Force (Apr. 12, 2019), <https://www.fatf-gafi.org/publications/fatfgeneral/documents/speech-fatf-ministerial.html>.

³ U.S. Treasury Department, Financial Crimes Enforcement Network, *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies*, FIN-2019-G001 (May 9, 2019), <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20CVC%20Guidance%20FINAL.pdf>.

⁴ Public Statement on Virtual Assets and Related Providers, Financial Action Task Force (June 21, 2019), <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/public-statement-virtual-assets.html>.

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