What this talk is **REALLY** about

- **Who** should regulate (or contribute to) lawyers?
- What are lawyers’ roles in the legal system?
- What creates a vibrant *rule of law* system?
  - Do we need lawyers and why?
  - What’s their role in the administration of justice?
- When, if ever, is lawyer exceptionalism valid?
- **These questions should be relevant to ALL who are interested in legal services reg. issues**
Overview of Remarks

• Intro: Relevance of this talk to those at Fordham
• Status of FATF’s 4th Round Mutual Evaluations
  – FATF Process
  – FATF MER conclusions re lawyers
  – 3 examples of legal profession preparation for FATF
• Two examples of FATF’s impact: Peru & US
• Concluding observations

Intro: Why This Topic Matters

• EVERY SPEAKER at Fordham is from a country subject to FATF Recommendations & Mutual Evals.
• FATF’s Recommendations apply to lawyers (DNFBPs)
• FATF Evals. may affect your legal profession regulation
FATF’s Reach

4th MER’s for Conference Attendees

Date Listed for 4th MER In-Country Visit or Plenary*

2017:
– Ghana [5/17], Mexico [1/18], Ukraine

2018:
– China, Hong Kong, Israel, Peru, Solomon Islands, UK

2019:
– Japan, Russia, South Africa
  – South Korea, UAE, Uruguay

2020:
– France, Germany, Netherlands

2021:
– Argentina, Brazil, India

*From FATF’s assessment calendar

4th MER Completed:

2014:
– Spain

2015:
– Australia

2016:
– Canada
– Singapore
– United States

Date To be Decided:* 
– Nigeria, Palestinian Authority, Poland, & Slovak Republic
A Primer About FATF (GAFI)

- **Financial Action Task Force (FATF):** an IGO (intergovernmental organization) started in 1989

- **Goals:** Fight money laundering & terrorist financing [aka AML/CFT; activities increased after 9-11]

- **Members:** 35 Jurisdictions + 2 regional groups

- **Associate Members:** cover most of the globe

- **Focus:** 40 Recommendations (as revised 2012, 2017)

- **Methods:** education, Mutual Evaluations

FATF’s 40 Recommendations

The following unofficial translations, are provided for your convenience.

- Arabic - translated by MENAFATF
- Armenian - translated by the Central Bank of Armenia
- Dari - translated by the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime (UNODC)
- Estonian - translated by the Estonian Financial Supervisory Authority
- Pashto - translated by the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime (UNODC)
- Portuguese - translated by the Portuguese Delegation
- Portuguese - translated by GAFISUD
- Russian - translated by the Russian Delegation
- Spanish - translated by GAFISUD
FATF’s 4th Round of Mutual Evaluations

- Evaluates compliance with FATF 40 Recommendations (2012)
- FATF Recs. for lawyers (DNFBPs) are #22 and #23
- MERs (reports) are discussed & approved by FATF Plenary
- MERs include recommendations with follow-up

All Mutual Evaluation Reports (MERs) are available here

http://www.fatf-gafi.org/home/

FATF 4th Round MER Results

DNFBP Ratings as of 11-2017
Few “C” or green ratings

FATF’s table shows a country’s rating re FATF Recs. 22 & 23 for lawyers & other DNFBPs:

- **R.22** DNFBPs: Customer due diligence
- **R.23** DNFBPs: Other measures
  (Rec. 23 includes suspicious transaction reporting & no tipping off)
Summary of Current 4th Round MERs

Rec. 22 – DNFBP Customer Due Diligence:

- **8 Non Compliant** (Australia, Botswana, Canada, Fiji, Mongolia, Nicaragua, Sri Lanka, US)
- **18 Partially Compliant** (Austria, Bahamas, Cambodia, Costa Rica, Denmark, Guatemala, Hungary, Ireland, Jamaica, Norway, Samoa, Serbia, Singapore, Switzerland, Tunisia, Uganda, Vanuatu, Zimbabwe)
- **13 Largely Compliant** (Armenia, Bangladesh, Belgium, Cuba, Ethiopia, Honduras, Isle of Man, Italy, Malaysia, Slovenia, Spain, Sweden, Trinidad & Tobago)
- **1 Fully Compliant** (Bhutan)

[Data taken from FATF’s 11-2017 Table of Assessment Ratings] 11

Rec. 23 – DNFBP Other Measures (e.g., STR & NTO):

- **5 Non Compliant** (Australia, Canada, Mongolia, Nicaragua, & the US)
- **19 Partially Compliant** (Bahamas, Bhutan, Botswana, Costa Rica, Fiji, Guatemala, Honduras, Hungary, Isle of Man, Jamaica, Samoa, Serbia, Singapore, Sri Lanka, Switzerland, Tunisia, Uganda, Vanuatu, Zimbabwe)
- **14 Largely Compliant** (Austria, Bangladesh, Belgium, Cambodia, Cuba, Denmark, Ethiopia, Ireland, Italy, Malaysia, Norway, Slovenia, Sweden, Trinidad & Tobago)
- **2 Fully Compliant** (Armenia & Spain)

➤ **There has been significant litigation about R. 23**

Note: Data taken from FATF’s 11-2017 Table of Assessment Ratings 12
Treatment of Lawyers in FATF 4th MERs

• **Overall:** It is common for the FATF 4th ME Reports to cite issues related to DNFBPs who are lawyers

• **Note the Burden allocation:** Some MERs say lawyers or regulators haven’t proved their systems are effective

• **Common Complaints about Lawyers in FATF Reports:**
  – Insufficient AML/CFT regimes
  – Lawyers don’t understand their legal obligations (*rule issues*)
  – Lawyers aren’t implementing AML/CFT (*application issues*)

• **Rule of Law concerns are rarely if ever cited** *(but see FATF Interpretative Note to Recommendation 23)*

Competing Narratives *re* Lawyers & AML
Legal Profession Preparation

• We report how some legal professions prepared
  – Australia, Canada, & the United States
  – The US legal profession had the most involvement
  – We invite your info/connections for more countries

• We report their advice re things to consider & how countries might want to prepare for FATF

• We urge EVERYONE to make sure that legal profession reps in your country are monitoring

Possible Impact in Peru & US
Peruvian Lawyers as persons obliged to report to Peruvian AML Authority

Legislative Decrete 1249 (Dec, 2016)

“Lawyers and public accountants who are collegiate members and that, independently or as part of a society, regularly do or intend to do, on behalf of a third party, the following activities:

(a) purchase and sale of goods;
(b) securities, money and bank accounts and other assets management;
(c) collect contributions for the incorporation, operation and management of legal entities;
(d) incorporation, operation and management of legal entities and other legal structures; and,
(e) purchase and sale of legal entities’ shares”. (free translation)
Peruvian Background re AML

- Peru: Drug Trafficking – 1st lucrative crime.
- Lava Jato corruption scandal
- Resistance from political parties in Congress to enact AML rules

FATF’s Impact in the U.S.

- Conversations are underway re whether to add an ethics rule or comment that addresses FATF Rec. 22 re “due diligence”
  - It could be a stand-alone rule as in Canada
  - It could be a new Model Rule
  - It could be a new section in an existing rule
  - It could be a comment analogous to the “technology” comment in ABA MRPC 1.1 [8]
- I think a duty of inquiry implicitly exists (an atty couldn’t fail to inquire re conflicts, could they?) but duty should be explicit
Concluding Observations

- FATF’s 4th Round of Mutual Evaluations is relevant to legal services regulation
- Fordham attendees could help ensure awareness
- Lack of awareness could affect legal services regulation beyond AML issues
- Legal profession reps should consider how best to cooperate and share info

Switching gears: for the debriefing session

Do you have suggestions for how we could better use the IAOLE website?

- There are “committees,” “resources,” & “events” listings

Email ideas to LTerry@psu.edu

http://www.iaole.org