Overview of Remarks

• Introduction

• Status of FATF 4th Mutual Evaluations
  – Process
  – Countries Examined
  – My observations about FATF Mutual Eval. Reports

• My Advice for ILEC Conference Attendees
Why is FATF Relevant to those at ILEC?

- See Prof. Jack Sahl’s slide about FATF Members & Associates
- See my 2010 & 2012 FATF articles & the IBA’s website for additional info about FATF’s global impact:

Where to Go for More Info

FATF has a webpage about the 4th Mutual Eval. Reports:

[http://www.fatf-gafi.org](http://www.fatf-gafi.org) [select publications, then mutual evaluations]
FATF’s 4th Round of Mutual Evaluations

- Evaluates compliance with FATF 40 Recommendations (2012)
- Focuses on both technical compliance & effectiveness
  - These might be thought of as “inputs” and “output”
- FATF has a recommended Mutual Eval. Report template:
  - 5 page Exec. Summary; ≤100 page report; ≤ 60 pages of Annexes
- Exec. Summary identifies priority issues and effectiveness & technical compliance ratings on FATF’s 40 Recs.
- FATF for lawyers (DNFBPs): ##22-23 (see 10-13,15, 17 & 18-21)
- ME Reports are discussed & approved by FATF Plenary
- FATF’s approved “Procedures (2013)” includes follow-up

Countries with FATF 4th ME Reports
(or reports by FATF Associate Members that received FATF endorsement)

- Armenia (MONEYVAL)
- Australia
- Belgium
- Costa Rica (GAFISUD)
- Cuba (GAFISUD)
- Ethiopia (World Bank/ESAAMLG)
- Italy
- Malaysia
- Norway
- Samoa (APG)

- Serbia (MONEYVAL)
- Spain
- Sri Lanka (APG)
- Trinidad & Tobago (CFATF)
- Tunisia (MENAFATF)
- Turkey (Oct. 2014: Follow-up report #15 of its 2007 3rd MER)
- Vanuatu (APG)

Future Reports: Canada, US, & other FATF members
Information about the U.S.

- The US-FATF visit was in Feb. 2016
- US legal profession reps sent info to the U.S. Dept. of the Treasury well before the FATF visit
- At the request of US Treasury, two US lawyers met with FATF reps (without any US gov’t reps)
- The FATF reps had questions – the US lawyers sent follow-up info
- Recap of the US situation: See related L.Terry articles

My Impression of the FATF 4th ME Reports

- Overall: It is common for the FATF 4th ME Reports to cite issues related to DNFBPs who are lawyers
- Note the Burden allocation: Some of the FATF Reports say that lawyers & their regulators haven’t done enough or proved that 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)
Who Cares What the FATF Reports Say?

• FATF’s 40 Recommendations are “soft law”
  – They are not legally binding “hard law”
  – BUT… reports require follow-up and members who
don’t comply with FATF Rec’s may be kicked out
  – Governments find FATF (& related organizations) useful

• Thus, governments may pressure and/or change
legal profession rules if FATF criticizes them

My Advice for ILEC Attendees

• **Ask:** Do your legal profession reps & regulators know
  about FATF & are they involved in the 4\(^{th}\) ME process?

• **Prepare:** Have your legal profession reps & regulators
  prepared a public document about ML/TF risks (&
potential involvement in ML/TF by your lawyers?)

• **Educate on AML “rule” issues:** Do your lawyers know
  when it’s illegal to help clients take certain legal steps?

• **Educate on “application” issues:** Do your lawyers
  recognize AML/CFT red flags? See IBA/ABA/CCBE typologies
Lawyers, FATF & the Future

- I assume that in most countries, as in the US, it is **BOTH** illegal **AND** unethical for a lawyer to intentionally aid a client in money laundering/structuring payments to avoid detection, etc.

- I assume that most at ILEC are embarrassed by lawyer wrongdoing & by the Panama Papers/60 Minutes scandals

- I assume that most at ILEC agree that lawyers have an important role with respect to **both** AML and the rule of law

- Some lawyers may intentionally act illegally (see, e.g., FATF’s Typologies Report re prosecutions) but for many, the issue is education

- In my view, the priorities are educating lawyers on criminal law re ML/TF & on recognizing red flags [cf. Panama Papers]

Concluding Observations

- Lawyers, regulators & academics should pay attention to the FATF 4th Mutual Evaluations
  - Lawyers should **NOT** aid ML/TF, but I believe lawyers are a different kind of DNFBP than casinos & other DNFBPs
  - While the specifics of lawyer regulation vary, there are common principles (e.g., confidentiality, loyalty, and the role of lawyers in preserving the rule of law)
  - I don’t sense great sensitivity in FATF to these concerns

- Global legal professions collaborate vis-à-vis FATF

- **Query**: Should there be more intra-legal professions collaboration/mutual eval. re AML/CFT efforts?
To Read More About It…

- ABA Task Force on Gatekeeper Regulation and the Profession, http://www.americanbar.org/groups/criminaljustice/gatekeeper.html

Laurel Terry’s FATF Articles & Presentations: see http://tinyurl.com/LaurelTerryslides

**SELECTED PRESENTATIONS – BY TOPIC** (Note: the Chronological Listing includes links to related articles)

- **FATF Developments**
  - Over 200 papers that focus on the FATF, the global anti-money laundering and counter terrorism financing standard and regime.

- Australia’s newly passed laws, including the Financial Action Task Force, FATF, and FCTF.
- ABA/IBA initiatives directed towards the legal profession, including the EU’s Professional Services Competitions Initiative.
- The FATF, Legal Services Industry.
- Australian Legal Profession Regulations.
- Corruption, Money Laundering, and Terrorism Financing.
- Classification System for Criminal Legal Entities.
- Drake’s Article: [An ABA Model Rule 1.1 Coalition of Law Lovers] (See 3.710 and 3.711). Note: In October 2013, Professor Terry and Rogers issued the proposed coalition in the ABA. The revised coalition is available at ABA-1312.
- Gawler’s Article: [An ABA Model Rule 1.1 Coalition of Law Lovers] (See 3.710 and 3.711).
- Foreign Bar: [An ABA Model Rule 1.1 Coalition of Law Lovers] (See 3.710 and 3.711).
- Footnote: [An ABA Model Rule 1.1 Coalition of Law Lovers] (See 3.710 and 3.711).
Material Available on My Websites

Articles: http://tinyurl.com/laurelterry

Presentation Slides: http://tinyurl.com/laurelterryslides
This 2016 ILEC Presentation: FATF’s 4th Mutual Evaluations & Lawyers
2014 New York Symposium: FATF Implementation & US Lawyers
2012 NOBC Meeting: The Financial Action Task Force and Lawyer Regulation Or Why NOBC Members Should Help Educate their Lawyers about the ABA’s Voluntary Good Practices Guidance
These slides are available on my presentation webpage and at http://tinyurl.com/Terry-FATF-2014; http://tinyurl.com/NOBC-FATF; and http://tinyurl.com/AALS-FATF and 2016 ILEC

Advice to Regulators Regarding Adding FATF Webpage Resources: linked from Session #5, ABA 40th National Legal Ethics Conference: http://tinyurl.com/FATFadvice