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ARTICLE

THE RELEVANCE OF FATF'S RECOMMENDATIONS AND FOURTH ROUND OF MUTUAL EVALUATIONS TO THE LEGAL PROFESSION*

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ABSTRACT

More than two hundred countries in the world have agreed to abide by the anti-money laundering (“AML”) recommendations developed by the Financial Action Task Force (“FATF”), which is an intergovernmental organization. This Article focuses on the potential impact on the legal profession of FATF’s fourth round of mutual evaluations. During these mutual evaluations, which currently are underway, FATF-affiliated countries examine each other’s compliance with the FATF Recommendations and recommend follow-up action. This Article first presents the legal profession-related results from the completed Mutual Evaluation Reports. A number of these FATF Reports recommend changes that include requiring lawyers to report suspicious client transactions, greater enforcement of existing lawyer AML rules, and changing the entities that supervise lawyer AML

* This Article includes information that was current through July 25, 2018, which is shortly before the Article’s editorial process began, although much of it was written before December 2017 because it was circulated to the attendees at the Fordham University School of Law *Regulation of Legal and Judicial Services Conference*. Because FATF regularly updates its documents and the FATF Mutual Evaluation process is ongoing, the Authors recommend that readers check for updates. All URLs were accurate as of July 2018.

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efforts. The next Part of this Article examines the legal profession AML situation in the Authors' home countries of the United States and Peru, noting the current or potential impact in these countries of the FATF Recommendations, the FATF Mutual Evaluation process, and lawyer-related money laundering scandals. The final Part of this Article suggests an alternative, education-focused, peer-review approach to the legal profession portions of the FATF Mutual Evaluations that arguably would decrease lawyer facilitation of criminal money laundering activities while better protecting traditional lawyer values that are globally recognized as important components of administration of justice and rule of law systems. Because the regulatory impact of FATF's mutual evaluations may be much broader than anti-money laundering issues, everyone interested in the topic of lawyer regulation should be aware of the FATF Recommendations and the ongoing mutual evaluation process.

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I. INTRODUCTION

This Article focuses on international anti-money laundering (“AML”) standards and the “mutual evaluation” assessments that currently are underway to measure compliance with these standards. Viewed from one perspective, this Article focuses on a narrow topic that might seem of interest to a limited audience. The Authors submit, however, that this topic should be of interest to everyone interested in legal services regulation because AML regulations raise issues that address the core of what it means to be a lawyer. Moreover, the developments discussed in this Article have the potential to shape not only lawyers’ AML obligations, but lawyer regulation more broadly, including the nature of the lawyer-client relationship.

This Article proceeds in the following manner. After a brief introduction in Part I, Part II continues by explaining why governments care about money laundering issues and the ways in which lawyers previously have been involved in illegal money laundering. Part III provides an introduction to an international intergovernmental body called the Financial Action Task Force (“FATF”) and its AML recommendations. Part IV focuses on the mutual evaluation process that countries use to evaluate each other’s compliance with the FATF Recommendations. Section IV.A provides information about the FATF mutual evaluation process and Section IV.B analyzes the treatment of the legal profession in the completed reports. Section IV.C explains how the legal professions in three countries prepared for their mutual evaluations. Sections V.A and V.B examine the AML lawyer regulation situation in the United States and Peru, including scandals

the FATF on-site visit.²⁵¹ Thus, in the future, legal profession representatives may find it useful to consider these and other case studies and the ten suggestions contained in the Appendix to this Article.²⁵²

V. THE POTENTIAL IMPACT OF AML SCANDALS AND COMPETING NARRATIVES ON LAWYER AML REGULATION

This Part of the Article focuses on the United States and Peru, which are the Authors' home countries. This Part discusses the anti-money laundering regulatory structure in each country, the role of FATF, and highlights scandals in each country that already have influenced or may in the future influence discussions of lawyer AML regulation. This Part concludes by identifying two competing narratives about lawyer AML issues in anticipation of Part VI, which

251. See generally FATF MER REPORTS, *supra* note 109. The reports also include information the FATF assessment team obtains during the on-site visit. *Id.*

252. Some countries have access to case studies beyond the three described in this Article. For example, the Authors are aware that the CCBE has facilitated discussions on this topic among European legal profession representatives and that different EU Member States have had differing levels of engagement with their governments. See, e.g., Telephone Interview with Peter McNamee, Senior Legal Advisor, CCBE, by Laurel Terry (Nov. 29, 2017). Legal profession groups that want to reach out to other countries can use the resources of the Bar Issues Commission of the International Bar Association and the International Conference of Legal Regulators ("ICLR"). The ICLR is a relatively new, and entirely free, organization whose goal is to provide an international forum where those who regulate legal services can meet one another and exchange ideas and resources. For additional information about the ICLR, see INT'L CONFERENCE OF LEGAL REGULATORS, <https://iclr.net/> [<https://perma.cc/8CKJ-CXGV>]. The ICLR held its fifth-ever conference in September 2017 in Singapore. See *Int'l Conf. Legal Regulators 2017*, INT'L CONFERENCE OF LEGAL REGULATORS <https://iclr.net/conference/international-conference-of-legal-regulators-2017/> [<https://perma.cc/8VJG-VC5Z>]. One of the sessions was entitled "Anti-money laundering and Counter-Financing of Terrorism" and it "explore[d] the role which regulators can and should take in better educating the legal profession about its obligations, the steps that regulators can take in combating money-laundering and terrorist financing, and issues of client confidentiality and legal professional privilege." Int'l Conf. Legal Regulators, *Singapore 2017 Programme: Legal Regulation in a Borderless World: Building Networks*, THE LAW SOCIETY (Oct. 5, 2017), [http://www.lawsociety.org.sg/conference/ICLR2017/pdf/Programme%20Outline\(02102017\).pdf](http://www.lawsociety.org.sg/conference/ICLR2017/pdf/Programme%20Outline(02102017).pdf) [<https://perma.cc/YXE4-ZF9H>]. See also Laurel S. Terry, *Creating an International Network of Lawyer Regulators: The 2012 International Conference of Legal Regulators*, 82(2) THE BAR EXAMINER 18 (June 2013) (short article about the creation of the ICLR).

offers suggestions on how to improve the FATF Mutual Evaluation process.

A. United States

US lawyers are subject to a number of different federal criminal laws that prohibit money laundering activities by lawyers and others. These criminal laws include the 1970 Bank Secrecy Act, the 2001 Patriot Act, the Intelligence Reform & Terrorism Prevention Act of 2004, and the Money Laundering Control Act.²⁵³ For example, the Money Laundering Control Act makes it illegal to knowingly “(i) conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or (ii) to avoid a transaction reporting requirement under State or Federal law.”²⁵⁴ “Structuring” cash payments to avoid the reporting requirements is also a crime.²⁵⁵

In addition to these criminal laws, US lawyers are required to abide by lawyer regulatory provisions as a condition of receiving a law license.²⁵⁶ These regulatory provisions include the rules of professional conduct from the state(s) in which the lawyer is licensed or is practicing.²⁵⁷ The rules of professional conduct are enacted by the highest court in each state and are based on the ABA Model Rules of

253. See U.S. Dept. of Treasury, *History of Anti-Money Laundering Laws*, Fin. Crimes Enf't Network, <https://www.fincen.gov/history-anti-money-laundering-laws> [<https://perma.cc/7XB9-8VJC>].

254. See 18 U.S.C. § 1956(a)(1)(B)(i)–(ii) (2013). The Internal Revenue Code governs the receipt of more than US\$10,000 in cash and authorizes the existing reporting requirements. See, e.g., 31 U.S.C. § 5331 (2011) (reports relating to coins and currency received in nonfinancial trade or business).

255. See, e.g., 31 U.S.C. § 5324 (2004) (prohibiting structuring transactions to evade reporting requirement); 26 U.S.C. § 6050I(f)(1) (1996) (prohibiting structuring transactions to evade reporting requirements). Thus, it would be a crime for a lawyer to deposit US\$9,500 and thereafter deposit US\$600 in order to avoid the IRS US\$10,000 reporting requirement.

256. See *infra* note 258 and accompanying text.

257. See, e.g., *Policy Implementation Committee, Variations of the ABA Model Rules of Professional Conduct, Rule 8.5: Disciplinary Authority; Choice of Law*, ABA CTR. FOR PROF'L RESPONSIBILITY (Sept. 29, 2017), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_8_5.authcheckdam.pdf [<https://perma.cc/QKU2-S3K4>] (state implementation of Rule 8.5(a) regarding disciplinary authority).

Professional Conduct.²⁵⁸ Thus, for ease of reference, this Article will use the ABA Model Rules as a proxy to describe lawyer regulation in US jurisdictions.

The ABA Model Rules contain at least three different rules that are relevant to lawyer AML obligations. ABA Model Rule 1.2(d) provides that “a lawyer shall not counsel a client to engage, or assist a client, in conduct the lawyer knows is criminal or fraudulent”²⁵⁹ ABA Model Rule 1.1 establishes a duty of competence.²⁶⁰ It defines competence to include knowledge of the relevant facts.²⁶¹ ABA Model Rule 1.16(a) creates a mandatory duty on the part of the lawyer to reject certain clients.²⁶² The rule states that “a lawyer shall not represent a client . . . if: (1) the representation will result in violation of the rules of professional conduct or other law[.]”²⁶³ In addition to creating a mandatory *duty to reject* certain client matters, ABA Model Rule 1.16(a)(1) creates a mandatory *duty to withdraw* if the lawyer’s continued representation of the client “will result in a violation of . . .

258. See, e.g., Laurel S. Terry et al., *Adopting Regulatory Objectives for the Legal Profession*, 80 *FORDHAM L. REV.* 2685, 2719-22 (2012) (describing the regulatory system for US lawyers). As of 2018, California’s rules are also based on the ABA Model Rules and thus all fifty US states use the ABA Model Rules. See generally ST. B. CALIF., *Current Rules of Professional Conduct*, <http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules> [<https://perma.cc/E8W8-ZVRL>] (webpage shows that California’s new rules, which took effect Nov. 1, 2018, use the ABA Model Rules format).

259. MODEL RULES OF PROF’L CONDUCT, *supra* note 34, at r. 1.2(d).

260. *Id.* at r. 1.1 (stating that “[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”). *Id.*

261. *Id.* at r. 1.1, cmt. [5] (“Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation.”). *Id.*

262. MODEL RULES OF PROF’L CONDUCT, *supra* note 34, at r. 1.16(a).

263. *Id.* at r. 1.16(a)(1). For a UK article that cited the potential benefits of a regulatory approach in addition to criminal law provisions, see Middleton & Levi, *supra* note 28, at 663:

For us, the notion that if crime is committed, the response should be either criminal justice or nothing seems absurd: the licensing and inspection regime for professionals may be expected to have a preventative effect on the scale of criminality, even if ex post facto professional sanctions do not deter completely, and especially if professional inspections and sanctions are much more likely than criminal conviction to happen.

other law.”²⁶⁴ As noted previously, the United States has criminal laws that prohibit lawyers from engaging in money laundering or assisting money laundering activities.²⁶⁵

When read together, Rules 1.1, 1.2(d), and 1.16(a) arguably impose a “due diligence” obligation on lawyers.²⁶⁶ Moreover, the “duty to reject” provisions in US lawyer regulation arguably go further than FATF Recommendations 22 and 23 because Rule 1.16(a)(1) puts responsibility on the lawyer to stop interacting with the criminal/client.²⁶⁷ The FATF Recommendations, in contrast, transfer that responsibility from the lawyer to a supervisory body. Transferring responsibility to a supervisory body might work adequately in jurisdictions in which the AML supervisor is well-resourced. It is also possible, however, that a system that removes the “stop work” responsibility from the lawyer and transfers it to another entity will result in *more* money laundering rather than *less* money laundering.

As this paragraph explains, in addition to the mandatory *duty to reject* and the mandatory *duty to withdraw* provisions to which US lawyers are subject, US lawyers have broad *discretion* to reject or withdraw from representation in additional circumstances. This discretion to reject or withdraw from a lawyer-client relationship exists at both the front [acceptance] end of the relationship and the back [termination] end of the lawyer-client relationship.²⁶⁸ With respect to the front end of the lawyer-client relationship, it is noteworthy that, except for a very narrow exception regarding court appointments,²⁶⁹ US lawyers do not have a general “duty to accept” any client who

264. MODEL RULES OF PROF'L CONDUCT, *supra* note 34, at r. 1.16(a)(1).

265. *See supra* notes 253-55 and accompanying text.

266. *See supra* notes 259-64, *infra* note 294 (explaining how these three rules work together).

267. *Compare* r. 1.16(a), *supra* note 264 (imposing a duty to reject the money laundering client), *with* FATF Recommendation 23, *supra* note 87, (imposing a duty to file a suspicious transaction report).

268. The discretion to withdraw from representation appears in Rule 1.16(b). The discretion to reject representation can be inferred from the fact that the only rule that requires a lawyer to accept a case is Rule 6.2 regarding court appointments.

269. *See, e.g.*, MODEL RULES OF PROF'L CONDUCT, *supra* note 34, at r. 6.2. *See also* Russell Pearce et al., PROFESSIONAL RESPONSIBILITY, A CONTEMPORARY APPROACH, 94 (Interactive Casebooks) (West 2d ed. 2013) (“Because the general rule is that a lawyer is not “a public utility” who must provide service to every client that requests it, a lawyer has great freedom in deciding which clients to represent.”).

wishes to retain that lawyer's services and is able to pay for the lawyer's service.²⁷⁰ The US situation, which gives a lawyer broad discretion to reject potential clients, is different than the situation that one sometimes finds in other countries.²⁷¹ With respect to the back-end or termination of the lawyer-client relationship, Rule 1.16(b) makes it clear that US lawyers have tremendous discretion to decide to part company with the client.²⁷² Under Rule 1.16(b), so long as a lawyer is not representing a client in litigation, that US lawyer may withdraw from representation at any time and for any reason provided that the withdrawal can be accomplished without material adverse effect on the interests of the client.²⁷³ Moreover, even if the withdrawal would cause material adverse effects on the client's interests, the US lawyer has the discretion to withdraw if any of several rather broad enumerated provisions are satisfied.²⁷⁴

Both the AML criminal laws and the relevant disciplinary rules have been enforced against US lawyers.²⁷⁵ The FATF Legal Profession Typologies Report, for example, lists a number of lawyers who have

270. Compare MODEL RULES OF PROF'L CONDUCT, *supra* note 34, at r. 6.2, with the remainder of the ABA Model Rules. In some states, lawyers may also be subject to anti-discrimination provisions. See, e.g., *Nathanson v. Commonwealth of Massachusetts Commission Against Discrimination*, 16 Mass. L. Rptr. 76, 2003 WL 224806881 (Mass. Super. Ct. 2003).

271. Compare the lack of a mandatory duty to accept rule in the ABA Model Rules, *supra* note 269, with the "cab rank" rule that applies to barristers in England and Wales and that specifies that barristers have a duty to accept a mandate unless an exception applies. For a discussion of the cab rank rule, see Bar Standards Board, Consultation, *The Cab Rank Rule: Standard contractual terms and the list of defaulting solicitors* (March 2015), https://www.barstandardsboard.org.uk/media/1657974/cab_rank_rule_consultation_final_-_march_2015.pdf [<https://perma.cc/5P55-QWH7>].

272. MODEL RULES OF PROF'L CONDUCT, *supra* note 34, at r. 1.16(b)(1).

273. *Id.*

274. *Id.* at r. 1.16(b).

The enumerated reasons include the following that are relevant to this Article:

- (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
- (3) the client has used the lawyer's services to perpetrate a crime or fraud;
- (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement; [or]
- (7) other good cause for withdrawal exists.

Id.

275. See *infra* notes 276 & 279 (citing discipline and criminal cases).

been convicted of violating these federal AML laws.²⁷⁶ A 2016 plea bargain by a San Diego lawyer demonstrates that federal prosecutors are willing to prosecute lawyers on the basis that the lawyer knew or *should have known* that the activity involved illegal money laundering.²⁷⁷ The San Diego lawyer in that case agreed to a plea bargain and was sentenced to a five-year prison term.²⁷⁸ US lawyers have also been disciplined for AML-related involvement and have lost their licenses to practice law.²⁷⁹

As noted in Section III.B, although the US was rated noncompliant for Recommendations 22 and 23, it was rated as having a moderate level of effectiveness for Immediate Outcomes 3 and 4.²⁸⁰ US lawyer organizations, including the ABA and ACTEC, have put considerable effort into educating lawyers about their AML obligations and helping them spot money laundering red flags.²⁸¹ To date, however, neither the ABA nor ACTEC has gone on record as supporting efforts to impose on US lawyers mandatory federal laws that impose due diligence obligations.²⁸² The ABA's policy webpage related to lawyer AML issues notes the ABA's opposition to several specific bills and expresses the ABA's overall concerns about proposed federal legislation.²⁸³ Some of the ABA's policy statements have

276. See Terry, *supra* note 26, at 499 nn.54, 57 (listing in one place the criminal cases cited throughout the lengthy FATF Typologies Report, *supra* note 27). The US has been one of the jurisdictions that has prosecuted the most lawyers. *Id.* at 499.

277. See Laurel Terry, *5 Year Prison Term for a Lawyer Using his IOLTA Account to Launder Money*, CONTEMPORARY PROFESSIONAL RESPONSIBILITY BLOG (Sept. 7, 2016), <https://contemporaryprofessionalresponsibility.com/2016/09/07/5-year-prison-term-for-a-lawyer-using-his-iolta-account-to-launder-money/> [<https://perma.cc/2KM3-GKLW>].

278. *Id.*

279. See Terry, *supra* note 26, at 500 nn.57-58 (listing, *inter alia*, discipline cases in the FATF Typologies Report, *supra* note 27); *Att'y Grievance Comm'n of Md. v. Blair*, ___ A.3rd ___, 2018 WL 3414216 (Md. Ct. of Appeals, July 13, 2018) (discussing a suspended lawyer who was permanently disbarred for money laundering activities).

280. See *supra* notes 238-48 and accompanying text (describing the results of the US Mutual Evaluation Report).

281. See Terry, *supra* note 26, at 501-10.

282. The ABA's 2010 red flags guide uses the word "voluntary" in its title. See *ABA AML Guidance*, *supra* note 233. See also *infra* note 283.

283. See *Policy: Gatekeeper Regulations on Lawyers*, AM. BAR ASS'N, https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/independence_of_the_legal_profession/bank_secrecy_act.html [<https://perma.cc/ASP6-7DK5>]:

The ABA supports reasonable and necessary domestic and international measures designed to combat money laundering and terrorist financing. However, the

included in one document discussion of lawyer regulation principles and discussion of substantive corporate law beneficial ownership disclosure rules.²⁸⁴

The discussions about US lawyer AML obligations have taken place against the backdrop of AML scandals, several of which were previously cited in Section II.B, as well as debates about corporate secrecy laws and the overall robustness of the US' AML regime. For example, US law firms did not figure as prominently in the Panama Papers leak as law firms from some other countries, but their involvement has been noted.²⁸⁵ After several high profile news stories about the use of shell corporations to purchase luxury US real estate,²⁸⁶ the United States imposed "Geographic Targeting Orders" ("GTOs") that require disclosure of beneficial ownership information in certain high-value real estate markets and thus affect lawyers and others who are assisting clients with certain kinds of real estate transactions.²⁸⁷ While the full impact of these GTOs is not yet known, a July 2018 headline in the *Miami Herald* stated: *How Dirty Is Miami Real Estate? Secret Home Deals Dried Up When Feds Started Watching.*²⁸⁸ Because

Association opposes legislation and regulations that would impose burdensome and intrusive gatekeeper requirements on lawyers, including bills that would subject the legal profession to key anti-money laundering compliance provisions of the Bank Secrecy Act. If adopted, these measures would undermine the attorney-client privilege, the confidential lawyer-client relationship, and traditional state court regulation of the legal profession, while also imposing excessive new federal regulations on lawyers engaged in the practice of law.

284. See *supra* note 208 and accompanying text (citing the ABA webpage that contains multiple policy statements).

285. See, e.g., Baxter, *supra* note 41; John Cassidy, *Panama Papers: Why Aren't There More American Names?*, THE NEW YORKER (Apr. 5, 2016).

286. See, e.g., Story & Saul, *supra* note 47 and accompanying text.

287. See, e.g., U.S. DEP'T OF TREASURY, Press Release: *FinCEN Expands Reach of Real Estate "Geographic Targeting Orders" Beyond Manhattan and Miami*, FIN. CRIMES ENF'T NETWORK (July 27, 2016), <https://www.fincen.gov/news/news-releases/fincen-expands-reach-real-estate-geographic-targeting-orders-beyond-manhattan> [<https://perma.cc/L8A7-T2XD>].

288. See *How Dirty is Miami Real Estate*, *supra* note 47. This news story included a summary of a study entitled *Anonymous Capital Flows and U.S. Housing Markets* written by an employee of the Federal Reserve Bank of New York and a professor at the University of Miami. It concluded that the transparency order affected markets beyond the high-priced markets where it was enforced. *Id.*

of the manner in which lawyer AML obligations and substantive corporate disclosure laws related to beneficial ownership have been intertwined in FATF Mutual Evaluation Reports and public discussions,²⁸⁹ the US author of this Article believes that beneficial ownership real estate scandals such as those in New York and Miami are likely to create additional pressure in the United States for lawyer regulation reform.²⁹⁰

What arguably has gotten the most attention in the United States, however, is the *60 Minutes/Anonymous Inc.* TV program. As noted earlier, a number of individuals have criticized the behavior of the US lawyers who were the subjects of the Global Witness “sting” in which an actor sought legal assistance for a simulated transaction that it intended to represent a money laundering scheme.²⁹¹ Although the American Bar Association²⁹² and a prominent US legal ethics expert²⁹³

289. *See, e.g., supra* note 242 and accompanying text (US Mutual Evaluation Report combined discussions of lawyer AML obligations, lawyer privilege, and beneficial ownership rules) & note 49 (citing a number of articles that discussed both substantive corporate law beneficial ownership disclosure rules and lawyer regulation and privilege issues). The US Author finds it regrettable that lawyer regulation and beneficial ownership issues have become commingled. In her view, the desirability of substantive corporate law disclosure rules—that is, beneficial ownership rules—is not a lawyer regulation issue. Discussions that equate these two issues and that commingle discussion of corporate beneficial ownership rules with lawyer regulation issues arguably put the traditional role of lawyers at risk.

290. In addition to these real estate scandals discussed *supra* notes 286-88, US lawyers’ representation of Equatorial Guinea’s president Teodoro Obiang Nguema, has often been the subject of scathing critique. *See, e.g.,* Michael D. Goldhaber, *Little Theodor’s Big Troubles*, AM. LAW. 62, Feb. 1, 2013). US lawyers’ representation of Obiang has been the subject of Congressional Hearings and other reports. *See* S. Comm. on Homeland Sec. and Gov’t Affairs, *supra* note 48; *Puppet Masters*, *supra* note 39.

291. *See supra* note 49 and accompanying text; Michael D. Goldhaber, *When A Kleptocrat Comes Calling*, AM. LAW, Mar. 2016, at 18.

292. *See ABA President Paulette Brown responds to “60 Minutes” segment*, *supra* note 49 (explaining that the ABA supports the highest ethical standards for lawyers as well as reasonable efforts to combat money laundering and that “both 60 Minutes and Global Witness confirm Silkenat acted legally and ethically.”).

293. *See, e.g.,* Weiss, *supra* note 49, at 3:

Silkenat provided the ABA Journal with an opinion by ethics expert Stephen Gillers of New York University School of Law. ‘A preliminary meeting with a prospective client,’ he wrote, ‘is ordinarily not the place to voice suspicions about what the prospective client has said or to accuse the prospective client of dissembling, lying or violating the law.’ Generally explaining vehicles for home ownership is not unethical, Gillers said.

have defended the actions of the former ABA President who was one of the targets of the sting, the US Author's anecdotal impression is that US lawyers are embarrassed by the *60 Minutes/Anonymous Inc.* TV program. The *60 Minutes/Anonymous Inc.* TV program arguably has contributed to greater interest in, and discussion of, the topic of lawyer involvement in money laundering activities.

Regardless of the reason, there seems to be growing interest in the United States in creating or making more explicit²⁹⁴ lawyers' due diligence obligations.²⁹⁵ The ABA "Gatekeeper" Task Force has been the primary group responsible for initiating discussions about ethics rule changes.²⁹⁶ Task Force representatives have spoken with members and staff of the ABA Standing Committee on Ethics and Professional Responsibility and the ABA Standing Committee on Discipline.²⁹⁷ They have asked these committees to amend the ABA Model Rules of Professional Conduct in order to add or make more explicit lawyers' AML due diligence obligations.²⁹⁸ Although the phrase "due diligence" is not one that is used in the ABA Model Rules, the idea that

But see Memorandum from John Leubsdorf, Distinguished Professor of Law and Judge Frederick B. Lacey Distinguished Scholar, Rutgers School of Law & William H. Simon, Arthur Levitt Professor, Columbia Law School, and Gertrude and William Saunders Professor Emeritus, Stanford Law School, to Global Witness (Jan. 28, 2015), https://www.globalwitness.org/documents/18209/Opinion_of_John_Leubsdorf_and_William_Simon.pdf [<https://perma.cc/4C6R-UYFH>] ("In our opinion, the conduct by the above-named lawyers shown in these interviews does not comply with the professional responsibilities of lawyers asked for assistance with potentially unlawful transactions.").

294. Author Laurel Terry is among those who have argued that if read together, Rules 1.1, 1.2(d), and 1.16(a) create a due diligence obligation. For a discussion of these Rules, see *supra* notes 259-64.

295. See Kevin Shepherd, *ABA Needs a New Model Legal Ethics Rule*, LAW 360 (Apr. 6, 2017), <https://www.law360.com/articles/910316/aba-needs-a-new-model-legal-ethics-rule> [<https://perma.cc/AKG5-GFFG>].

There may also be growing interest in the United States in "decoupling" US lawyer AML regulation issues from substantive corporate law issues about disclosure of beneficial owners and the optimal level of corporate transparency. There arguably are quite strong reasons to support this decoupling, but this issue is beyond the scope of this Article. See *supra* note 289.

296. Author Laurel Terry has personal knowledge of this fact.

297. *Id.* This Committee is now known as the ABA Standing Committee on Regulation.

Id.

298. *Id.*

a lawyer may have a duty to make a factual inquiry is a familiar one.²⁹⁹ For example, it is the US Author's impression that few people would allow a lawyer to avoid the mandatory conflicts of interest provisions by simply failing to inquire about the identity of the opposing party. A New York City Bar ethics opinion recently concluded that when a lawyer is asked to assist in a transaction that the lawyer suspects may involve a crime or fraud, a duty of inquiry in some circumstances is implicit in the Rules.³⁰⁰

In sum, the US has both a criminal law system and a lawyer regulatory system that prohibits lawyers from assisting clients or others in money laundering activities. Moreover, there are ongoing conversations in the United States about the scope of a lawyer's ethical duties, including whether Rule 1.1 or another rule imposes a "due diligence" obligation on lawyers, and whether the ethical rules should be amended to supplement or make more explicit existing obligations. Meanwhile, the US's AML system for DNFBPs has been rated "noncompliant" by other FATF Members. Moreover, one of the action items in the 2016 US Mutual Evaluation Report called on the United States to apply "appropriate AML/CFT obligations" on lawyers. This FATF Report and the recent money laundering scandals are likely to create pressure for change in the US AML-lawyer regulatory situation.

B. Peru

This Section begins with background information about Peru and its lawyers. In 2016, Peru's population was approximately 32 million.³⁰¹ It has one of the fastest growing economies in Latin

299. See, e.g., MODEL RULES OF PROF'L CONDUCT r. 1.1, cmt. [5] ("Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners.").

300. NEW YORK CITY BAR, *Formal Opinion 2018-4: Duties When an Attorney Is Asked to Assist in a Suspicious Transaction*, https://s3.amazonaws.com/documents.nycbar.org/files/2018415-Assisting_Suspicious_Activity.pdf [<https://perma.cc/AQ3F-ARKH>].

301. *World Bank, Country Profile: Peru*, WORLD BANK, http://databank.worldbank.org/data/views/reports/reportwidget.aspx?Report_Name=CountryProfile&Id=b450fd57&tbar=y&d=y&inf=n&zm=n&country=PER [<https://perma.cc/M4QG-93WG>] [hereinafter *World Bank Data Peru*]. During 2016, its inflation rate was 2.9%. *Id.*